



**FedEE**  
Federation of European Employers  
Fédération des Employeurs Européens

# Mettre à jour

## Latest News from the Federation of European Employers (FedEE)

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### European Union: Revised Pensions Directive proposed

The European Commission has published a proposal for the revision of the EU Pensions Directive (Directive on Institutions for Occupational Retirement Provision).

The proposed new Directive includes provisions to guarantee better governance of occupational pension institutions, improve transparency and increase cross-border activity. In particular, the Directive stipulates that individuals exercising key pension scheme functions must be "fit" and "proper" and that institutions must have a sound remuneration policy (to be disclosed publicly) and effective risk-management system in place. The Directive also lays down the information that must be provided to members or prospective members of pension schemes, and introduces a standardised pension benefit statement so that host member states may no longer impose additional information requirements on institutions carrying out cross-border activities.

The text still needs to be approved by the EU Council and the European Parliament, but it is expected to come into force by December 31st 2016.

### Finland: Collective agreement against EU rights to parental leave

The European Court of Justice (ECJ) has found a Finnish collective agreement provision to be against European Union law. The provision stipulates that a pregnant employee who interrupts a period of unpaid leave to take maternity leave is not entitled to the same level of maternity remuneration as if they preceded maternity leave with a period of work.

The intention of the provision was to avoid long absences by offering employees who returned to work between maternity and unpaid leave a higher rate of maternity pay than the statutory minimum compensation. Although the Advocate General and other EU member states gave opinions supporting the provision, the ECJ held it



to be incompatible with EU law as it discouraged workers from exercising their rights to parental leave and undermined the effectiveness of relevant EU directives. [Cases C-512/11 and C-513/11]

## **Germany: Dismissal for frequent sickness absence justified**

In a recent case, the Court of Appeal of Cologne in Germany confirmed that a dismissal for frequent sickness absence was legitimate.

The employee bringing the appeal had been absent for 75 days in 2009, 72 days in 2010, 166 days in 2011 and 63 days in 2012 — and for at least 58 of these days each year the employee received sick pay. In August 2011, as part of corporate integration management (BEM), the applicant submitted that the reasons for her frequent sickness absences were psychosomatic illness following the death of her father, and stress due to a change in her working hours. As part of the BEM, a number of measures were recommended, including yoga for relaxation and stress reduction. After further periods of absence occurred in the subsequent period a final interview was conducted with the applicant in May 2012. The employee gave no explanation for her further absences. The employer proceeded to dismiss the employee following a request for permission from the works council.

In Germany it is possible for an employer to terminate an employee's employment contract because of long or frequent periods of illness provided that, at the time of termination, the employer can present evidence that the employee's illness is likely to continue and that the expected absence(s) of the employee will lead to a substantial impairment of the operational or economic interests of the company. The interests of both employer and employee must also be weighed up.

In this case, the Court agreed with the decision of the Labour Court that the dismissal was fair. The Court considered that the incurred and anticipated future sick pay costs resulted in an unreasonable economic burden on the employer. It was held that the employer had made every effort to reduce the sickness periods through BEM and had not hastily dismissed the employee. The balance of interests also fell in the employer's favour. [Az 11 Sa 462/13]

## **Irish Republic: Call to change law on taxation of termination payments**

The European Commission has asked Ireland to revise its law on the taxation of employment termination payments.

Under Irish law, termination payments are taxed at different rates — depending on the employee's age and length of service. However, although years of service spent working in group companies in Ireland are taken into consideration when calculating the tax relief on these payments, years of service spent in group companies in other EU and EEA states are not. This results in higher taxes for those working for an Irish corporate group in another EU member state.

The Commission considers this to be discriminatory and contrary to the free movement of workers provisions. If Ireland fails to comply with the Commission's Reasoned Opinion within two months, the matter will be referred to the European Court of Justice.

## **Montenegro: New general collective agreement now in force**

A new general collective bargaining agreement was signed in Montenegro last month. It came into force on March 30th 2014 and will be valid for a period of two years.



The agreement establishes the elements that should be taken into account when calculating an employee's salary and introduces provisions on salary increases. It also provides that 0.2% the employee's salary should be paid to a Montenegrin representative trade union for work disability prevention and recreational leave.

The agreement details increases to minimum annual leave based on length of service, state of health and parental status of the employee. It also introduces new grounds for termination, including violation of non-competition clauses and abuse of medical leave entitlements.

Sectoral collective bargaining agreements must be harmonised with this agreement within six months and company collective agreements must be harmonised with all agreements within nine months.

## **Spain: Supreme Court rules on unilateral variation of employees' working time**

Spain's Supreme Court has ruled in favour of employees working for Carrefour in an employment dispute concerning variation of working time.

Due to changes made to the law on trading hours in Madrid, Carrefour decided to increase the number of days worked on Sundays and on bank holidays. They accordingly changed their employee's working time; however, they did this unilaterally without consulting with the works council.

The Court confirmed that business decisions that lead to a modification of working time may only be taken following the appropriate consultation procedures. Failure to follow this procedure would

be a violation of Article 82.3 of the Statute of Workers — as it was in this case.

Companies are free to be open and trade whenever is convenient, however, they may not unilaterally change employees' working conditions in such a way that may significantly affect family life. They also may not make employees work more Sundays than had previously been agreed.

## **UK: Inferred contractual right to enhanced redundancy pay**

In a recent case, the UK Employment Appeals Tribunal (EAT) has held that an implied contractual entitlement may arise in cases where employers constantly make enhanced redundancy payments to their employees.

Between the early 1980s and 2002, the employer in question had made redundancy payments which were higher than the statutory minimum — with no cap on either years of service or the amount of weekly wage. Between 2002 and 2006, however, it was not clear that greater redundancy payments were made.

The EAT found that the employer's decision to provide enhanced redundancy payments for a considerable period inferred a contractual obligation for enhanced redundancy payments to always be made. There were no circumstances that demonstrated that this had been superseded. Thus, by not offering an enhanced redundancy payment to an employee, the employer was in breach of contract.

Even if there is no written policy in place, if an employer has consistently made higher redundancy payments for a number of years it will be difficult to justify that these payments are discretionary. [Peacock Stores v Peregrine & Ors UKEAT/0315/13/SM]



## Pay, Tax and Benefit Trends

**EUROPE:** Labour costs in Europe have been increasing overall according to data from the statistical office of the European Union, Eurostat. The recently published statistics show that hourly labour costs rose by 1.4% in the Eurozone and by 1.2% in the European Union between October and December 2013 in comparison to the same period in 2012. The largest annual increases were recorded in Estonia (+7.2%), Latvia (+5.9%), Lithuania (+5.7%) and Bulgaria (+4.3%). Decreases in labour costs were recorded in Cyprus (-6.5%) and Portugal (-0.4%).

**GERMANY:** The German Cabinet has approved Germany's first national minimum wage of 8.50 euros an hour. The new national minimum wage is due to take effect from January 2015, although it will not be extended to interns, minors, volunteers, trainees, or the long-term unemployed for their first six months of employment. Certain employers — including those who employ temporary or seasonal workers — will have two years to gradually introduce the national minimum wage. From January 1st 2018, the wage will be reviewed on an annual basis. It is expected that Parliament will debate the initiative in the Summer.

**GREECE:** Greece's General Confederation of Greek Workers and employers association have signed a new national general collective agreement. Under the new agreement, basic terms and conditions were maintained, such as 13th and 14th month salaries and marriage allowances. The agreement also establishes that fathers are allowed to take time off work to care for their children where the mother is self-employed; if both parents are employed, they will have the choice of who goes on parental leave and must issue a joint statement to their employers. As minimum wage is now set by law, there was no specific discussion on the issue, however, the parties agreed that should this

legislation change while the collective agreement is in operation, negotiations would commence immediately to establish wage levels. The new agreement is effective as of January 1st 2014 and will expire on December 31st 2014.

**MALTA:** Malta's National Statistics Office has published a new Labour Force Survey. This indicates that the average gross annual salary of employees in Q4 2013 was 16,022 euros — not including bonuses, overtimes or allowances. The highest average gross national salary was in finance and insurance whilst the lowest was in retail, transportation and food services. Average annual salaries ranged from 26,656 euros for managers to 10,747 euros for those in elementary positions.

**NETHERLANDS:** Income tax is set to decrease in the Netherlands for incomes of between 40,000 and 110,000 euros. The increase in the tax discount was agreed by the coalition government in exchange for the withdrawal of the plan to make illegal stays a criminal offence. Middle-income individuals will see a gain of 300 euros per year thanks to the measure.

**SPAIN:** Spain's largest airline, Iberia, has agreed on a wage deal for their ground workers. Workers will recover 4% from the decrease in wages in 2013, resulting in an overall pay cut of 7%. The deal also includes a pay freeze until 2015. Two of Spain's largest trade unions, Unión General de Trabajadores and Confederación Sindical de Comisiones Obreras have approved the pact, but others such as Asetma have rejected it. This latest agreement follows pacts made in February with nearly 1,100 pilots and 3,000 cabin crew members.

**UK:** From April 6th 2014, the UK's Percentage Threshold Scheme will be abolished. Under this scheme, employers were able to recover any statutory sick pay paid by HMRC to their employees if the total statutory sick pay paid in a



tax month was higher than a certain percentage of gross Class 1 National Insurance Contributions (employers' and employees') liability for that month. Transitional provisions have, however, been put in place - these will allow employers to reclaim statutory sick pay until April 6th 2016 for days of incapacity prior to April 6th 2014.

**UK:** In his 2014 Budget, the UK's Chancellor, George Osborne, announced major changes to company car tax. From April 2015, there will be two new company car tax bands at 0-50 gCO<sub>2</sub>/km and 51-75 gCO<sub>2</sub>/km. In 2015-16, the percentage of the P11D price (percentage of the official price of the car determined by the car's CO<sub>2</sub> emissions) subject to tax for the 0-50 gCO<sub>2</sub>/km band will be 5%. This will increase to 7% in 2016-17. For the 51-75 gCO<sub>2</sub>/km bands, the percentage subject to tax will be 9% in 2015-16 and 11% in 2016-17. For company cars emitting more than 75 gCO<sub>2</sub>/km, the tax rate will increase by 2% on the previous year in both 2017-18 and 2018-19. The maximum tax rate will be capped at 37%. As previously announced, from April 2016, there will no longer be a 3% diesel supplement — diesel cars will be subject to the same level of tax as petrol cars.

## Other European HR News in Brief

**DENMARK:** In February this year, three out of 17 complaints heard by the Danish Equal Treatment Board were upheld — all of them relating to employment. The successful cases included that of an employee who claimed sex discrimination when she was dismissed during maternity leave and that of a fixed-term worker whose contract was not extended when she announced she was pregnant, despite an agreement to extend the contract by another 12 months. The third case was that of a worker with progressive muscle disease whose employer, it was found, had not taken the necessary remedial measures to redeploy her in a flexible job, despite it being stipulated in the termination agreement that they

must. Compensation awards of between DKK 25,000 and DKK 270,000 were awarded to all the successful complainants.

**EUROPE:** The European Agency for Safety and Health at work has launched its Healthy Workplaces Campaign 2014–2015 with the support of the European Commission. The campaign entitled "manage Stress" looks to help employers, managers, workers and workers' representatives to recognise and manage stress and psychosocial risks in the workplace. For more information see <http://www.healthy-workplaces.eu/>.

**FRANCE:** The French Constitutional Court has made an important decision regarding the "Florange" law, which was adopted by Parliament at the end of February 2014. The Court held that both the duty to accept a buyer offer in the absence of a legitimate reason not to, and the Commercial Court's jurisdiction to impose heavy sanctions for violation of this obligation, would impose unnecessary burdens on companies' business decisions and excessively affect their constitutional rights. The sanction of a fine up to 20 times the minimum wage per laid-off worker was also deemed to be disproportionate to the aim pursued.

**FRANCE:** A law updating the organisation of the labour inspection system on a local, regional and national level (Decree No. 2014-359) has just been published in France. It organises the labour inspectorate units into three different levels — territorial, sectoral and thematic — with the aim of improving efficiency. From January 1st 2015, a national group of standby, support and inspection (groupe national de veille, d'appui et de contrôle) will be put in place to lead and support operations that require special expertise, support services or a specific inspection. Until then, ministerial decrees will determine the number of inter-departmental or departmental inspection units.





**ITALY:** In a recent case, the Italian Supreme Court has confirmed that breach of trust is sufficient justification for the dismissal of a manager. According to the court, any reason may be a justified reason for the dismissal of a manager, provided it is fair and not discriminatory. [Corte di Cassazione case n. 6110 of March 17th 2014]

**LUXEMBOURG:** Following lengthy negotiations with employers and trade unions, Luxembourg's Government Council has adopted a Bill to amend the Labour Code. The Bill introduces a series of measures to improve the position of older workers in the workplace and gives employers and trade unions flexibility to adopt measures best suited to their company. Under the law, companies with more than 150 employees will have to make plans which are age appropriate and promote the continued employment of older workers. The Bill also emphasises the importance of lifelong training and the need to facilitate reintegration into work following job loss. The Bill will now be submitted to the State Council.

**NETHERLANDS:** Individuals from outside the EU, Liechtenstein, Norway, Iceland and Switzerland, who go to work in the Netherlands for more than three months, will no longer have to apply for

separate residence and work permits. From now on, such individuals will need to make only one application — to the Immigration and Naturalisation Service (IND) — from whom they will receive a combined work and residence permit.

**ROMANIA:** The government of Romania has officially declared May 2nd 2014 a non-working holiday following a proposal from two Romanian tourist associations. The additional holiday, that will link May 1st with the weekend, will be recovered on another day. Whether or not this holiday applies to employees in the private sector will depend on agreements between employers' organisations and trade unions.

**RUSSIAN FEDERATION:** The President of the Russian Federation, Vladimir Putin, has signed Federal Law No. 35-FZ which amends Federal Law No. 98-FZ in relation to commercial secrets. The law establishes that employees have a duty to compensate their employer for any losses sustained when they divulge confidential information or trade secrets that became known to them in connection with their employment. Determining the losses caused by the employee's actions will be pursuant to civil law. This new law will come into force on October 1st 2014.

## FedEE News:

**FELLOWSHIP MEETING:** The Spring 2014 Fellowship Meeting will take place on Friday, May 23rd 2014 at the Novotel London West, Hammersmith. The day will run from 9.30am (Registrations and Coffee/Tea & Pastries) for a 10am start and will finish at around 4.30pm, with refreshment breaks and a buffet lunch. If you are interested in becoming a Fellow please contact Angelika Rivero ([angelika.rivero@fedee.com](mailto:angelika.rivero@fedee.com)) for details.

**INVITATION TO LATIN AMERICAN LABOUR LAW SEMINAR:** In anticipation of our expansion into Latin America, members of FedEE are invited to attend Baker & McKenzie's forthcoming Annual Latin American Employment and Labor Seminar, which will take place on April 23rd 2014 at the Conrad Hotel in Miami. Please see the following [invitation](#) for further details and information on how to register.



**TRAINING FILM OFFER:** FedEE's professionally produced training film on workplace racial discrimination is now available on special offer at just £59.94 (+ VAT where applicable, free P&P). To purchase a copy while this offer lasts please follow the following link to our online [eShop](#).

**REFER A COLLEAGUE TO FEDEE AND WE WILL DISCOUNT YOUR MEMBERSHIP FEES:** Don't forget our 'refer a friend' scheme. If you refer a colleague from another company to FedEE we will discount your company's next-due membership fee by £100 for each new member that comes out of your referral. To refer a colleague contact Angelika Rivero, with their contact details on [membershipservices@fedee.com](mailto:membershipservices@fedee.com).

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