



# Dernières nouvelles

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## China: Use of social media posts as evidence in court

A number of recent cases in China have demonstrated that employers are increasingly able to rely on evidence from social media in employment disputes brought before the courts.

In one case, an employer submitted a number of photographs and posts that had been published on the social media website Weibo, which showed that their employee had been travelling whilst taking sick leave. As a result of this evidence, the legitimacy of the employee's dismissal on the grounds of unauthorised absence was confirmed.

In another case, an employee had stated on Weibo that they were no longer employed by their former employer. These posts were used to establish that the employee had acknowledged termination, despite no official termination notice being issued.

Another employee was found to have breached a term of the employer's rules and regulations by posting negative comments about their employer on Weibo.

## Europe: Measuring up to environmental objectives

Central to the European Union's 2020 strategy is a move towards a more resource-efficient, low-carbon economy. One of the principal measures of this is 'resource productivity'. This refers to how changes in the wealth of a country relate to the consumption of physical resources by its population. These figures are important to companies because they act as a benchmark for their own environmental policies.

Recently published figures reveal that resource productivity in the EU grew by 29.2% over the period 2000–2012. But the pattern was by no means even across the EU's member states. Both Spain and Ireland more than doubled their resource productivity, whilst significant falls took place in Romania and Estonia. But the gains and losses were from different starting points and so by 2012 the most resource-efficient countries in the EU were Luxembourg, the Netherlands and the United Kingdom. On average, each individual in the EU consumes 13.5 tonnes of physical material each year and the populations with the lowest physical consumption per head in 2012 were Spain, Hungary and the United Kingdom.

## France: Dismissal invalid if correct procedure not followed

France's Supreme Court recently ruled that a dismissal for gross misconduct was not valid because the employer did not follow the rules of procedure correctly.

In this case, an employee was dismissed for serious misconduct after testing positive for alcohol. The company's internal regulations stated that, where appropriate, employees performing certain dangerous jobs may be asked to submit a breath test if they appear to present a danger to their own safety or the safety of their colleagues, in order to immediately put an end to the situation.

However, the alcohol test that the employee in question was subjected to was not a targeted test — a total of 18 employees had been asked to take the test. In addition, the employee had not shown the apparent state of intoxication necessary to allow such a test to be carried out. The Supreme Court ruled that, although the employee tested positive for alcohol, the employer was not permitted to sanction the employee as they had not observed the rules of procedure. [Case No. 13-13757]

## Germany: Court rules on dismissal for statements spread via social media

The German Federal Labour Court has had to consider for the first time whether an employee may be dismissed for spreading detrimental statements about their employer via social media.

The detrimental statements in question were made by the employee in the lead up to the selection of an electoral committee for the creation of a works council. The employee was nominated to sit on the committee

but unfortunately the first election meeting did not result in the selection of a committee. Ver.di, a trade union, applied to the Labour Court to have a second election initiated and in this application stated that the employee was one of its members.

With the production assistance of Ver.di, the employee published a video on Youtube and shared this on Facebook. The video featured the employee stating, amongst other things, that he could 'almost claim' that no machine was '100 percent equipped' and there were 'no specialists' in the business, despite the employment of many skilled workers in the workplace. In response the employer summarily dismissed the employee.

The Court highlighted that a distinction should be made between an employee knowingly spreading false allegations that would cause detriment to the employer and an employee making objective criticisms. Whilst objective criticisms would be permitted, false allegations would not. To establish which type of statements had been made in this case, the Court looked at the content and context of the statements. The Court concluded that, given the context of the upcoming committee selections, the purpose of the video was to convince viewers that a works council would be beneficial. Furthermore, the Court believed that the employee had not intended to suggest that mainly unskilled workers were employed at the company. As a result, it was held that the summary dismissal was invalid for lack of good cause. Whether the approach of this case will have general application is yet to emerge. [BAG 2 AZR 505/13]

## Malta: Discrimination against transgender individuals prohibited by law

As of August 12th 2014, it is illegal for employers in Malta to discriminate against transgender persons on

the grounds of sex. Previously, the law referred to sexual orientation without specifying those undergoing gender reassignment.

Under the amendment to the Employment and Industrial Relations Act, employers are not allowed to reject transgender candidates because of their gender identity. Harassment of a transgender employer or employee on this ground is also unlawful. Discrimination against transgender individuals includes all those people who have undergone, are undergoing or are considering or intending to go through gender reassignment.

Malta is the first European country to include gender identity as a protected ground in the Constitution.

## **Netherlands: Short-time working for companies affected by Russian boycott**

The possibility of subsidised short-time working has been introduced in the Netherlands in order to lessen the impact of the Russian boycott of EU goods on businesses.

Companies that have been directly affected by the Russian ban on imports from the EU may apply to the Ministry of Social Affairs to introduce shorter working hours for their employees. If the application is accepted, the affected employees will receive unemployment benefit for the hours not worked from the date the application is received. In order to be eligible, companies must expect their work to be reduced by at least 20% for a minimum of two weeks and a maximum of 24 weeks.

Short-time working is also a measure that has been recommended in the Czech Republic to help prevent companies having to make redundancies as a result of the boycott.

## **South Africa: Amendments to Employment Equity Act**

Amendments to the Employment Equity Act came into effect in South Africa earlier this month.

Amongst the changes, the grounds of discrimination have been extended beyond the previously stated grounds (sex, race etc.) to include 'any other arbitrary ground'. Employers may also now be found liable for discrimination where it cannot be shown that a differentiation in pay for work of equal value was based on fair criteria, such as experience.

In addition, the new law stipulates that certain affirmative action targets for 'designated groups' are limited to those persons who were citizens of South Africa before April 1994. Further restrictions on the use of psychometric tests have also been implemented.

In terms of claims, the jurisdiction of the Commission for Conciliation and Arbitration has been enlarged to enable the Commission to hear claims of sexual harassment and discrimination from those earning less than 205,433 rand (19,308 US dollars) per year.

Failure to comply with the terms of the amended Act will render employers liable to pay a newly-increased fine.

## **UK: Guidance on e-cigarettes in the workplace**

The Advisory, Conciliation and Arbitration Service (ACAS) has produced guidance for employers in the UK on the use of e-cigarettes in the workplace.

E-cigarettes do not fall under the scope of smoke free legislation as no substance is burnt. Therefore, employers have the freedom to choose whether or not

to allow them in the workplace.

ACAS suggests that employers may wish to allow e-cigarettes in order to support employees who are trying to stop smoking. However, the long-term health effects of e-cigarettes are still unknown and it is possible that there could be health risks for those passively inhaling the vapour emitted.

Another issue that employers should consider is that some e-cigarettes look like real cigarettes which may make it seem to other employees or clients that real cigarettes are being smoked.

The full guidance from ACAS may be accessed here: <http://www.acas.org.uk/index.aspx?articleid=490>

## Pay, Tax and Benefit Trends

**EUROPE:** The Single Euro Payments Area (SEPA) came into operation in all eurozone countries on August 1st. Thanks to SEPA, individuals, businesses and public authorities in these countries may now make fast and secure payments to other eurozone countries under the same basic conditions, rights and obligations as domestic transactions. It also means that businesses and individuals will only need one bank account to make and receive payments within the whole of the eurozone. Non-eurozone countries in the European Union will adopt the SEPA standard by October 31st 2016.

**JAPAN:** Revised statistics issued this month show that growth in employee earnings in Japan continued to accelerate in June 2014. The Ministry of Labour first issued data in July suggesting that the growth in employee earnings (base pay, plus overtime and bonuses), as compared with the same month of the preceding year, had decelerated in June (0.4% growth) when compared with May (0.6% growth), April (0.7% growth) and March (0.7% growth). However, when the

data was reanalysed it was found that, in fact, earnings rose by 1.0% in June. This is the best monthly gain since 2010.

**MOROCCO:** The Moroccan Government has announced plans to increase the retirement age from the current 60 years to 62 years in July 2015. Thereafter, from 2016, the retirement age will increase by six months each year until the retirement age reaches 65 in 2021. The announcement comes as part of the Government's overall proposals to reform the pension system, focussing particularly on the Moroccan Retirement Fund. It is expected that the draft law will be ratified before the end of the fiscal year.

**NORWAY:** The oil industry in Norway has reached a pay deal with the trade union SAFE, removing the threat of strike action. Under the deal, the workers in oil service companies will receive a 12,000 Norwegian krone (1,470 euro) increase in their annual pay, dating from June this year, and a further 12,000 krone (1,470 euro) increase at the start of 2015.

**SLOVAK REPUBLIC:** Slovakia's Ministry of Finance has proposed increasing the national minimum wage by nearly 8% next year — from 352 euros to 380 euros per month. The minimum wage normally increases just 3-4% each year. To offset the increased cost for employers the Ministry has proposed decreasing health insurance contribution payments for employees earning between 380 and 494 euros per month.

**SPAIN:** The introduction earlier this year of a 100-euro flat-rate employer social security contribution for new, permanent employees has led to 111,025 permanent contracts being created in Spain, according to the country's Ministry of Employment. This represents 20% of permanent contracts signed since the launch of the scheme in late February. The flat rate was introduced to encourage stable employment by saving employers approximately 75% on social security contributions when they hire a worker on a permanent basis. The

autonomous regions which have made the most of the incentive are Catalonia (23,716), Madrid (21,343), Andalusia (14,389) and Valencia (12,232).

**USA:** Three years after a federal class action claim for unpaid overtime was launched, employees of Morgan Stanley's US division have agreed to a settlement worth 4.2 million US dollars. It was alleged that the brokerage firm had violated the Federal Labor Standards Act and the state labour laws of New York by failing to provide employees, in this case 'client service associates', who worked more than 40 hours per week, with overtime pay. The settlement cited that approximately 8,300 current and former associates had been entitled to the additional pay, although it estimated that only 865 would have been able to claim for the unpaid amounts.

## Other Global HR News in Brief

**ALGERIA:** Employers and trade unions in Algeria have been asked to review a new draft of the Labour Code. Submissions on the draft law, which consists of 26 titles and 630 articles, will be made to a committee responsible for producing a final version of the Bill. The current draft includes new provisions on sexual harassment, service awards and the prohibition of smoking in the workplace. The draft law also intends to limit abuse of fixed-term employment by limiting the maximum number of successive renewals of this type of contract to three. It is hoped that a final draft will be complete by the end of the year.

**DENMARK:** A new website has been launched in Denmark to help companies organise their work environment in a way that complies with health and safety rules. The website, which was created through collaboration between the Knowledge Centre for the Working Environment, the Working Environment Council, employers and trade unions, can be accessed via the following link:

<http://www.arbejdsmiljoviden.dk/Viden-om-arbejdsmiljoe/amo/>

**FRANCE:** New fathers in France now enjoy legal protection against dismissal during the four weeks following the birth of their child. During this four-week period, new fathers may be dismissed only for gross misconduct or genuine economic reasons — the reason for dismissal must not relate to the birth of their child. This new provision, introduced into the Labour Code by the Law on Equality between Men and Women, applies to all potential dismissals from August 6th 2014.

**INDIA:** Proposals have been made to reform four key labour laws in India: the Industrial Disputes Act, the Factories Act, the Contract Labour Act and the Apprentices Act. Significant amendments include a reduction in the number of days a person must have been employed before they become eligible to certain benefits, such as paid leave, and increasing the number of overtime hours that may be worked in various circumstances. The amendments have been proposed as part of the Bharatiya Janata Party's manifesto promise, following suggestions that the 44 national and 150 state labour laws are hard for employers to navigate.

**IRISH REPUBLIC:** The Republic of Ireland's Minister for Business and Employment, Ged Nash TD, has said he hopes to have new legislation on collective bargaining rights in place by the end of 2014. The Bill, which will amend the Industrial Relations (Amendment) Act 2001, is currently being drafted following approval in mid-May. The legislation will give employees in Ireland the legal right to bargain collectively and thus will significantly increase their ability to negotiate their working conditions.

**SOUTH AFRICA:** The South African President, Jacob Zuma, has given assent to a new Labour Relations Amendment Act which aims to give greater

employment protection to temporary workers. The Act provides that temporary and fixed-term contracts should not exceed three months in duration and persons engaged on these contracts should receive the same benefits as permanent employees, subject to limited exceptions. The law also provides that in the event of certain contraventions of employment law, the employment agency and their client will be held jointly and severally liable. The Act is expected to come into force in the next few months although no date has, as yet, been set.

**SWITZERLAND:** According to data released by the State Secretariat for Economic Affairs (SECO) in Switzerland, reductions in working time (partial unemployment) affected 2,034 people in May 2014. This was 202 (or 11%) more than in the previous month. The number of working hours lost as a result increased by 5.9% to 113,085. In May 2013, 6,256 people were affected by reductions in working time and 312,094 working hours were lost due to these reductions.

**UAE:** A new entry visa system has been introduced in the United Arab Emirates by the General Directorates of Residency and Foreign Affairs at the Ministry of Interior. Under the new fee and fine structure, non-nationals working for private companies in the Emirates must pay a fee of 250 UAE dirhams (68 US dollars) per year. Where an employer fails to change the legal

status of a sponsored worker or fails to report a change in the company's details, a fine of up to 1,000 UAE dirhams (272 US dollars) will be payable. The new system is effective in all seven emirates.

**UK:** Following the decision to ban exclusivity clauses in zero-hour contracts, the UK government has launched a consultation which aims to recognise and close any potential loopholes regarding these clauses. In particular, the government is seeking views on the likelihood of employers avoiding the ban, what the government should do to prevent this and what consequences there should be for employers who sidestep the ban. All views submitted during the consultation will contribute towards the provisions regarding zero-hour contracts in the Small Business, Enterprise and Employment Bill. The closing date for all responses is November 3rd 2014.

**UK:** The Prime Minister of the UK, David Cameron, has said he would consider giving grandparents new rights to leave from work when they care for a child whose parents have died or fallen ill. From April 5th 2015, adoptive parents will be entitled to take up to nine months of paid leave. It has been suggested that these leave rights could be extended to grandparents. Alternative suggestions include providing grandparents with four to six weeks of unpaid leave where necessary to care for the child.

## Dates for your diary:

**September 1<sup>st</sup> 2014:** New laws regarding the prevention of psychosocial risks at work come into force in **Belgium**.

**September 1<sup>st</sup> 2014:** Interns in **France** receive a monthly pay increase of 43.50 euros, making their new minimum wage 469.50 euros per month.

**September 9<sup>th</sup> 2014:** Consultations on four proposed reforms to the taxation of employee benefits in the **UK** end.

**September 15<sup>th</sup> 2014:** **Norway's** Directorate of Immigration ends its consultation on the amendment of the country's immigration laws.

## Latest news for business travellers:

Business travellers should be aware that heavy rainfall, flooding and landslides continue to affect road and rail travel in **Bosnia and Herzegovina**.

Flooding and landslides have also affected the Assam and Uttar Pradesh states in **India**. Those planning to travel to these states should monitor the news and follow official advice.

According to the World Health Organisation, there is a low risk of tourists or business travellers becoming infected with the Ebola virus during a visit to the areas affected by the recent outbreak in **West Africa**. Transmission requires direct contact with bodily fluids, therefore, in non-medical professions infection can be normally avoided. Cases of the Ebola virus have been reported in **Guinea, Liberia, Nigeria, Sierra Leone**. A separate outbreak, unrelated to the outbreak in West Africa, has been reported in the **Democratic Republic of Congo**.

Strikes are planned to take place in **Argentina** today (August 28<sup>th</sup>). These are likely to affect some public transport including national and international flights.

Increased seismic activity around the Bardabunga volcano in **Iceland** has caused concern that a similar situation to that which occurred in 2010, when ash from a volcanic eruption in Iceland severely disrupted flights, may soon arise again. Travel experts are monitoring the situation but the country's meteorological office has said there are no signs of volcanic activity.

## FedEE news:

**NEW ADDRESS AND TELEPHONE NUMBER:** As previously reported, our head office has now moved to new premises in Bristol. Please note that our new address is 6th Floor, Broad Quay House, Prince Street, Bristol, BS1 4DJ, UK and our new telephone number is 0044 (0)117 975 8611. Please direct all future communications to our Bristol office. Our email contact details remain unchanged.

**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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