



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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Belgium: Unlawful restriction on annual leave

The European Commission has requested that Belgium ends the current practice of preventing some workers from taking annual leave during their first year of employment. Although all employees in Belgium are formally entitled to the minimum leave required under the EU Working Time Directive (four weeks for each year worked), some face delays of up to 12 months before they can actually take the leave, as it must be accrued during the current holiday year and taken during the following one.

The Commission considers this situation contrary to EU working time rules which require employers to permit workers to take minimum annual leave entitlements within a reasonable period. Belgium has two months to inform the Commission of measures taken to bring national legislation in line with EU law.

EU: Accumulation of annual leave entitlement

The European Court of Justice (ECJ) has made a preliminary ruling in the case of *KHS AG v*

Winfried Schulte following the Advocate-General's opinion offered earlier in the year.

In 2009 Mr Schulte brought an action before the German courts for payment of allowances in lieu of paid annual leave not taken in 2006, 2007 and 2008. Although he had been on sick leave throughout those reference periods he had been denied his right to paid annual leave.

The ECJ has held that a worker who is unfit to work for several consecutive years does not have the right to accumulate entitlements to paid annual leave for an unlimited number of consecutive years. EU law does not preclude national provisions, such as collective agreements, which limit the accumulation of entitlement to such leave. Therefore, a carryover period of 15 months for leave entitlement was considered to be acceptable in this case.

France: Excessive workload when colleague not replaced

The Court of Appeal in Paris, France has recently held that an employer had been grossly negligent when one of its employees suffered a heart attack



as a result of his excessive workload.

The employee in question had been working over 70 hours a week as a result of having to undertake the responsibilities of his own position as well as those of a former colleague who had not been replaced. At Court the appellant was able to show that he and other employees were under pressure to achieve unattainable targets and that there was a culture of being overworked in the company. The Court made clear that the employer had an obligation to address such a situation and that its obligation towards the health and safety of employees was paramount.

France: Employer sanctioned for misuse of device

The Labour Chamber of the French Supreme Court has recently upheld a decision against an employer that unlawfully used a geolocation device to track the company car of one of its salesmen. Although the company notified the salesman that such a device would be used to optimise productivity (by analysing the time spent on business trips) it was, in fact, used to monitor the salesman's working hours and this ultimately led to a pay cut. According to the French Labour Code, employers must give employees advance notice before using any device to collect personal information about them or using it for a specific purpose.

The Court ruled that the use of a geolocation device to monitor the activities of employees is lawful only if such monitoring cannot be conducted by other means. In this case, the use of the device was unjustified since the salesman's employment contract allowed him to determine his own schedule via a daily report of his activities. The Court added that the use of a geolocation device constitutes a data processing activity for which employers must submit a prior registration with the French Data Protection Authority (CNIL) (C Cass, Ch. Social, 10-18036).

Germany: Amendments to labour leasing law

The second phase of amendments to the German labour leasing laws became effective on December 1st 2011.

The most important changes included a tightening of the requirement for possessing a licence for conducting a labour lease between companies, or company groups. Leased employees have acquired new rights in relation to notification of vacancies in the lessee's organisation, as well as rights to use workplace facilities.

A fuller explanation of the implications for employers can be read at <http://www.fedee.com/fedmembers/kb/questions.php?questionid=2109>. This information has been kindly provided by Dr Gregor Dornbusch of Baker & McKenzie's Frankfurt office (Gregor.Dornbusch@bakermckenzie.com).

Irish Republic: Widening public-private pay gap

Official figures from the Irish Central Statistics Office indicate that wages have risen across public and private sectors by an average 1.5% over the last year. Gross earnings now average 693 euros a week, up from 683 euros in 2010. Gross hourly earnings have risen in seven of the 13 economic sectors, with the biggest average increase in the administrative and support services sectors (+5.4%). The largest decrease was seen in the construction sector, where earnings fell by 4.3%.

There is further evidence of the gap in earnings between public and private sectors, with the public sector earnings almost 50% more than those in the private sector. The growing gap means that average earnings for public servants are almost 300 euros a week higher than for those in private companies.



UK: New constraints on top pay in plcs

The UK's Deputy Prime Minister Nick Clegg has announced that a Bill will be published early next year that will set new limits on top executive remuneration. Apparently the Business Secretary, Vince Cable, is considering three options:

- * To make it obligatory for a large company to include an employee representative on its remuneration committee.
- * To give shareholders the power to make binding their decisions on Directors' remuneration packages.
- * To require companies to publish the ratio between their top executive pay levels and the median for all company employees.

The most likely outcome is that all three options will be adopted, but with exceptions for foreign companies, privately-owned companies and professional partnerships.

Pay, Tax and Benefit Trends

ESTONIA: Over the year to Q3 2011 the gross average monthly pay level in Estonia grew by 6.6% to 809 euros and gross average hourly pay grew by 4.7% to 4.82 euros. The greatest increase in the monthly pay level was in the mining and quarrying sector (+13.4%) and the biggest jump in the hourly pay level was in real estate sector (+12.2%). Labour costs rose over the year to 1096 euros per month and 7.64 euros per hour.

IRISH REPUBLIC: The Irish minister for social protection has confirmed that the government is considering the introduction of statutory sick pay. This is one of a range of options being examined with a view to reforming the social welfare system to bring it into line with practices in other countries. Any scheme would be likely to include a short unpaid "waiting period", then require the

employer to pay for several weeks before the state steps in. No scheme will, however, be introduced before further consultations with both sides of industry.

NETHERLANDS: The gross statutory minimum wage will rise in the Netherlands with effect from January 1st 2012. The new rates will be 1.446,60 euros per month, 333,85 euros per week and 66,77 euros per day.

NETHERLANDS: Employees in the Netherlands earning more than 3,315 euros a month will have to pay 30 euros per month more in tax next year. This is partly because the government is scrapping the career savings scheme. Health insurance premiums are also set to rise for those on higher incomes.

POLAND: The first Polish institutions have been given the go ahead to offer individual retirement accounts. Poland's financial regulator has given the green light to PKO BP Bankowy PTE and PTE PZU to establish such accounts starting in 2012.

PORTUGAL: The Portuguese government has approved a bill which prevents the directors of public companies from earning more than the country's prime minister (circa 5,000 euros per month). However, exceptions may be made for top executives in exporting companies and those in competitive market sectors. The new pay ceiling will save the government 5 million euros a year.

SWITZERLAND: Negotiations between the Swiss Contractors Association and trade unions over a new national labour agreement have broken down - with the current deal due to expire on January 1st 2012. Unions have called for a new agreement, with increased protection in the case of illness, accidents and bad weather. The Contractors Association has responded by offering an across the board increase of 1.5%, but with an extension of the current agreement.



UK: The UK government has taken the surprise decision to delay pension auto-enrolment for firms employing 49 or fewer staff. Under the revised timetable, small businesses will begin automatically enrolling their staff in May 2015, instead of April 2014. The delay also means that large and medium-sized companies will benefit - as the proposed minimum employer contribution will remain at 1% for a further year. Instead of rising in 2016, it is likely to increase to 2% in 2017 and 3% in 2018.

UK: According to latest figures from the UK's Office for National Statistics median gross weekly earnings in the UK rose by just 0.4% over the year to April 2011. Earnings for full-time female employees rose by 1.4%, compared with just 0.2% for full-time male employees. Higher paid workers in the top decile of earnings increased their hourly earnings by 1.8% compared with just 0.1% for those in the lowest earnings decile.

Other European HR news in brief

EU: The European Commission has requested that Greece, Italy, Luxembourg and the Netherlands incorporate new legislation on European Works Councils (Directive 2009/38/EC) into their national laws, following the deadline for transposition on June 5th 2011.

EU: The EU Commissioner for Administration is pushing ahead with plans to increase the working week of officials in the EU institutions. Savings will also be made by raising the retirement age and cutting staff - although all measures will have a deadline of 2018. This move is an attempt to mirror the actions being taken by the European Commission in respect to a number of EU member states.

EU: The head of one of Europe's largest information technology services companies is to ban staff from sending each other emails. The CEO of Atos has insisted on a 'zero email' policy -

arguing that only 10% of the 200 internal messages received on average per day turn out to be directly relevant to an individual's job.

FRANCE: The French President Nicolas Sarkozy has announced that the system of subsidies available to companies hiring young apprentices has been extended by six months. The programme now allows companies that take on new young apprentices to do so without payment of employer social security contributions until June 30th 2012.

HUNGARY: A leading international supermarket chain has been found by a Hungarian labour court to have unlawfully dismissed a trade union official. The prosecutors office had based its case on surveillance carried out by two police officers who misused their position to obtain data on officials of the independent union of trade workers and had then passed it on to the retailer.

ITALY: The European Commission is putting pressure on the Italian government to stop discriminating against academic staff from other EU countries who wish to work in Italian Universities. Under current rules applicants for professorial jobs from outside Italy must undergo a special teaching test - even if they hold an existing post at an associate professor level. Furthermore Italy infringes EU rules (as established by C-586/08 *Rubino*) by not automatically accepting university teaching qualifications awarded by an institution in another member state.

ITALY: The Italian Constitutional Court has reaffirmed the *Collegato Lavarò* law (2010) in relation to the indemnity that an employer must pay when an individual is employed under a temporary employment agreement that has no legal validity. An employer is required to pay an indemnity of between 2.5 months and 12 months' salary. The Court also confirmed that this is in addition to the main remedy of reclassification of



the employment agreement as permanent (Decision 303/2011).

NETHERLANDS: The new Dutch nationality law currently being debated by the lower house of parliament will severely limit the holding of dual nationality by Dutch citizens and foreign residents taking Dutch nationality. A proposal to allow Dutch expatriates to retain their Dutch nationality when taking a second nationality whilst living abroad has been defeated. In such circumstances the expatriate will therefore have to surrender their Dutch passport.

NETHERLANDS: The Dutch government is being taken to the European Court of Justice because it has not correctly transposed EU rules on cross-border mergers. This is because, under Dutch law employees from outside the Netherlands would not be given the right to participate in the appointment of supervisory board members if the merged entity was registered in the Netherlands.

NETHERLANDS: The Dutch Infrastructure Minister Melanie Schulz has decided to launch a special fund to help small-medium sized companies establish staff teleworking arrangements. The fund will initially be worth 24m euros annually and will begin accepting applications next year for assistance with the

costs of software and hardware and necessary organisational changes.

NETHERLANDS: Life expectancy in the Netherlands is rising quite dramatically. The average lifespan for males born between 2000 and 2010 has risen from 75.5 to 78.8 years and for females it has risen from 80.6 to 82.7. 63% of men aged 60 can now expect to reach 80 compared to 52% in 2000.

UK: The UK Immigration minister has announced that entry restrictions on Bulgarian and Romanian workers will be extended until the end of 2013. Such nationals seeking to work in the UK will continue to require work permits issued through the UK Border Agency. Permission to work will normally be granted only where the worker has a specific job offer and the work is in skilled employment for which the employer has been unable to find a suitably qualified resident worker.

UK: Many UK employers have welcomed the recently published Lofstedt health and safety report. The report makes several recommendations for simplifying health and safety law, including the removal of employers' automatic responsibility for workplace accidents or injuries.

FedEE news:

'WITHOUT PREJUDICE'

FedEE Media's first training film '**Without Prejudice**' is now available for sale or hire. The training pack consists of the 26-minute film about workplace racial discrimination, a 14-minute filmed discussion about the film involving leading experts from ACAS, the TUC and Baker & McKenzie and a full set of trainer's notes.

A trailer for '**Without Prejudice**' may be viewed at <http://www.fedee.com/trailer.php>



FedEE member companies may view both films on approval. Just complete the online order form provided below the trailer window and insert into the order number or comments section the words "Seven-day approval please." If you return the film within seven working days there will be no charge. If you retain it beyond that period we shall invoice you at the reduced member sale price.

To read a recent review of the film by People Management magazine, please go to:
<http://www.peoplemanagement.co.uk/pm/articles/2011/12/review-without-prejudice.htm>

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