



**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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### EU: Equal rights for non-EU seasonal workers

On February 5th, the European Parliament adopted an EU Directive to provide greater protection for non-EU seasonal workers. The Directive provides that migrant workers coming to the EU to undertake seasonal work must be subject to the same rules and benefits as EU nationals in relation to working time, leave, health and safety and wages. Member States will still have the freedom to decide how many seasonal workers are permitted each year, but the maximum stay for these workers must be between five and nine months in a 12-month period.

If a seasonal worker wishes to enter the EU to work, they must have a contract of employment or a binding job offer which lays down key terms and conditions. Evidence must be given that the worker has suitable accommodation. If the employer organises the accommodation for its worker, the rent must be proportionate and not automatically deducted from a worker's remuneration. Employers who violate any of their obligations under the Directive will face severe

sanctions. This may include compensation for the worker or being banned from employing seasonal workers in the future.

EU member states now have two and a half years to implement the Directive.

### France: Facilitated access to “contrat de génération” financial aid

The French National Assembly has voted in favour of an amendment to the law on “*contrats de génération*” (generation contracts). This amendment requires companies with between 50 and 300 employees to negotiate a company-level agreement — or be part of a wider sectoral agreement — on the recruitment of young people and retention of older workers under the “*contrat de génération*”.

Financial aid in the amount of 4000 euros per year per employee for a period of three years is available to companies who hire a young person aged 16–25 years on indefinite contract and at the same time retain a senior employee aged 57 or over until they reach retirement age. Currently,



companies with 50 to 300 employees may only benefit from this financial aid when they are part of a sectoral or company-level agreement on generation contracts. As a result, many companies miss out on financial assistance.

Making such agreements compulsory will make it easier for these companies to claim financial aid, however, the amendment also introduces a fine equal to 1% of the company's wage bill for companies that fail to enter into an agreement — whether or not they claim financial assistance.

## **Luxembourg: Employee liability for damage to company vehicles**

In Luxembourg, a case has come before the Court of Appeal regarding employee liability for damage to company vehicles.

In this case an employer deducted the insurance excess deductible arising from a claim for damage to a company car from the employees' wages — as permitted under the terms of the employment contract. The Court, however, held that the employer was not entitled to do this without demonstrating evidence of the employee's fault or serious negligence.

In such cases, the burden of proof is on the employer. In principle, any employment contract that obliges the employee to be liable for damage to company vehicles is null and void under public order rules. However, the employer may commence disciplinary procedure for violating contractual obligations. [Court of Appeal Case 37274]

## **Netherlands: Changes to temporary contracts**

Subject to approval by the Senate, important changes to Dutch labour law are due to come into effect on July 1st 2014, as part of the Work and Security Act.

Under the proposed changes, when consecutive fixed-term contracts are interrupted by fewer than six months, the last contract will become an indefinite contract if it is the 4th contract or the total combined duration of the successive contracts is more than two years. Currently, successive fixed-term contracts become permanent if the gap between the contracts is shorter than three months or the total duration reaches or exceeds three years.

In addition, under the new law, trial periods will not be allowed in temporary contracts of up to six months' duration and non-competition clauses will not be permitted in temporary contracts unless justified by business reasons. An employer will also have to give an employee at least one month's notice of the termination of their temporary contract.

## **Poland: A secondment is not a business trip**

Poland's Supreme Court has published an important decision on the secondment of employees to other EU states.

The Court held that a secondment to work abroad is not a "business trip". The secondment of an employee will only be classified as a business trip if it is infrequent, of temporary duration and takes place to fulfil a specific task. Employees whose effective workplace has changed as part of a secondment to another EU state are not considered to be on a business trip. The definitions are important because social security benefits for business trips are more favourable to employers and employees than the benefits afforded for secondments.

In the case under review, the employer had reduced employee salaries to the minimum wage — so that subsistence payments were relatively very high. In coming to its decision the court did concede that employers may make certain



deductions from the "contribution base" on a daily basis for seconded employees according to public sector deductions for those on business trips outside the country — provided that the fixed monthly income used as a basis for contributions remains at no less than 'the average wage'.

## **Romania: New rules on internships**

A new Internship Law in Romania will come into effect in March 2014 under which interns will be employed under a contract of employment as well as a supplementary internship agreement. They will fulfil their work duties based on a plan approved by the employer under the supervision of a mentor. Employers who enter into a graduate internship agreement may receive a monthly monetary incentive.

Before the end of the internship, an appraisal committee will draft a report on the intern's performance. The intern must also write a self-appraisal report. Based on these reports the employer may then decide whether to continue or terminate the employment contract. If the employer decides to terminate the contract they may do so without notice.

Any training costs incurred by the employer must be reimbursed if the intern terminates their contract before the end of an agreed extended period.

## **Russia: New legislation on assessment of workplace conditions**

A new law on special assessments of workplace conditions came into force in Russia on January 1st 2014, replacing the previous system of "attestation".

Under the new law, employers who have established that no harmful working conditions exist at their work premises will have to present to the labour inspectorate a statement of

compliance. Where harmful conditions do exist in a workplace, a review of the harmful or dangerous conditions will be performed and their level of risk measured. The same classification of conditions that existed under the old system will apply under the new system, with just a few adjustments.

A special assessment of work conditions must be carried out every five years — or when requested by an elected representative employee or trade union body or a state labour inspection body — for all employees except home-based employees, distance employees or employees working for physical persons who are not individual entrepreneurs. Results of workplace attestations performed before January 1st 2014 remain valid for five years from the date of attestation.

Special assessments must be carried out jointly by employers and an accredited organisation. Employers must inform their employees of the results of the assessment within 30 calendar days.

Not all provisions of the law came into force in January but the changeover from the old to the new system will be fully completed by the end of 2018.

## **Switzerland: Restrictions on the free movement of labour**

The Swiss people have narrowly approved a referendum on the re-introduction of annual quotas on all foreign migrants living and working in Switzerland — including EU citizens and daily cross-border commuters. There will also be a new requirement to give preference to Swiss nationals when filling job vacancies and more limits imposed on the claiming of welfare payments by immigrants.

This vote throws uncertainty over bilateral agreements between the EU and Switzerland concerning the free movement of workers (up to a



quarter of all employees in Switzerland come from abroad) and access to Europe's single market for goods and services. It is not yet known what the annual limits will be, but the Swiss Parliament now has three years to incorporate the referendum decision into legislation. Meanwhile, signatures are now being collected in support of a further referendum that would set the annual quota at 0.2%.

## **UK: Clarification on fixed-term contracts and collective redundancy consultations**

A case has been heard in the UK that clarifies the rules on thresholds for collective redundancy consultation prior to April 6th 2013.

The law states that where an employer is proposing to make 20 or more employees redundant at one establishment within 90 days, they must consult the affected employees' representatives. The question was whether the expiry of certain fixed-term contracts would count towards the threshold for collective redundancy. In April 2013, before the case in question was appealed, legislation was enacted by the UK government clarifying that all fixed-term contracts coming to an end as agreed would not count as redundancies for the purposes of collective redundancy consultation. However, as this legislation did not have retrospective effect it did not apply to the case in question.

Based on the law applicable to this case, for a dismissal to count as a redundancy it had to be based on "a reason not related to the individual concerned". The Court held that the non-renewal of the fixed-term contracts would not count towards the threshold because the individual workers had accepted that their employment would end after a certain period of time. The Court did, however, concede that the situation would depend on the circumstances of each individual case. [Court of Session CSIH XA90/12]

## **UK: OECD requests better mental health support for employees**

The Paris-based Organisation for Economic Cooperation and Development (OECD) has published a report recommending that more should be done in the UK to help employees who suffer from mental ill health get back into work. Mental health problems currently cost 70 billion pounds a year due to lost production and the payment of benefits.

The OECD recommends that the new UK Health and Work Service, due to be launched later in 2014, should be mandatory for all employers. The UK government has proposed plans whereby employers may refer staff to an occupational health specialist for a non-compulsory health assessment if the employee has been — or will be — off work due to illness for more than four weeks. In order to release funds to pay for the scheme, the government is eliminating a statutory scheme — the contributions to which give relief to companies dealing with high levels of employee absence.

## **Pay, Tax and Benefit Trends**

**FRANCE:** The President of France, François Hollande, has announced his intention to reduce employers' social security contributions through a "pact of responsibility". Specifically, President Hollande intends to remove employer contributions for family allowance which are currently paid for each employee at a rate of 5.25% of salary. Employers and trade unions will meet in February for initial discussions of the pact in preparation for a major social and economic conference in Spring 2014.

**GERMANY:** Germany's Federal Cabinet has approved a draft law to reform statutory pensions. Under the law, employees who have paid contributions to the social security system for 45



years may retire at the age of 63 with a full pension. Also under the new system, mothers of children who were born before 1992 (who currently receive lower benefits compared with mothers who have given birth after this year) will obtain higher pensions. The law also increases disability pensions. Despite criticism over the expense of the reforms, they are expected to come into effect on July 1st.

**IRISH REPUBLIC:** Minister for Jobs for the Republic of Ireland, Richard Bruton, has introduced reforms to Joint Labour Committees. These are committees that set wages and determine terms and conditions in specific sectors (including catering, hairdressing and hotels). The reforms have reduced the number of Committees by 50% and ensure that without the confines of legislation, employers and unions will negotiate the terms of each sectoral agreement that are most appropriate for their industry.

**MACEDONIA:** In March 2014 the national minimum wage in Macedonia will rise from the current MKD 8,050 to MKD 8,800 a month (net). It is due to increase again in March 2015 to MKD 9,590 (net) and then again in March 2016 to MKD 10,080 (net). In areas that are not included in the national minimum wage framework, such as in the textile and leather manufacturing industries, the national minimum wage will increase to MKD 7,500 (net) in March 2014 and will gradually rise annually until March 2018.

**NETHERLANDS:** Under proposed changes to the law on dismissals in the Netherlands, from July 1st 2015 employees who have worked for more than two years and whose contracts are due to end will be entitled to a "transitional payment". This payment will be one third of a monthly salary for each year of work. The maximum amount will be 75,000 euros (gross) or the annual salary for those who earn more than this amount. In certain cases, this payment will not be obligatory. If an employee has decided to leave and the

termination agreement has been concluded, the employee has two weeks to retract their decision in writing and they do not have to provide reasons.

**SPAIN:** The Spanish Minister of Economy, Luis De Guindos, has announced government plans to reform corporation tax to make larger businesses pay more. In Spain, the nominal corporation tax rate is 30%, however, large companies pay much less due to a series of fiscal incentives and deductions. Often, it is as low as 5% to 10%. For small and medium sized businesses there is little difference between the nominal rate and the real rate, but for larger businesses the difference between the two rates is significant. The Minister announced that this difference should be eliminated. It is expected that the reforms will include a fall in the nominal rate and an elimination of deductions.

**SWEDEN:** The government of Sweden has referred to the Council on Legislation an amendment to the Parental Leave Act. The amendment does not change the law but rather clarifies it: the right for a working parent to take parental leave until their child is 18 months old — or in the case of adoption, for 18 months not to exceed the child's eighth birthday (or completion of their first year of school if this comes later) — does not deny adoptive parents their rights under Chapter 12 of the Social Code to take leave with parental benefits beyond 18 months or the child's eighth birthday. The amendment is due to come into force on August 1st 2014.

**UK:** Unlike many other countries, the UK's tax year runs from April 6th to April 5th. As an employer, if you operate a pay as you earn scheme (PAYE), there are important tasks that need to be completed towards the end of the tax year. For instance, a final full payment statement and/or employer payment summary for the tax year must be submitted online to HM Revenue and Customs (HMRC), and must be filed no later





than 19<sup>th</sup> May 2014 for the current 2013/2014 tax year. HMRC will then use this data to ensure that the employer and the employee have paid the correct amount of tax and National Insurance and to calculate pensions and state benefits. It should also be noted that when preparing for the coming tax year, employers must set up new payroll records for their employees.

## Other European HR News in Brief

**BULGARIA:** Amendments to Bulgaria's Labour Code have passed the first stage of the legislative process having been adopted by the country's Parliamentary Committee on Labour at first reading. A proposal to make employers, partners, shareholders, management and supervisory bodies jointly and severally liable for delayed or unpaid salaries was rejected by the Committee. However, measures regarding the right of Interns were adopted. According to the latest proposals, interns must have an internship contract and a separate contract of employment. They must be recruited for an internship that matches their qualification and this must be for a period of six to twelve months. Within two weeks of the end of the internship, the employer must issue a statement certifying the intern's skills.

**FRANCE:** The French National Assembly adopted the Equality Bill at first reading on January 28th 2014. The Bill reforms parental leave by extending it by an extra six months for the parents of one child if this additional leave is taken by the "second parent". For parents of two or more children parental leave will be reduced by six months unless the second parent takes at least six months of the leave. This will apply to parents whose children are born or adopted after July 1st 2014. Companies with 50 workers or more that do not respect the new provisions will be penalised. The Senate will now proceed to a second reading of the Bill in Spring 2014.

**FRANCE:** The Organisation for Economic Co-operation and Development (OECD) has published a report that encourages France to promote more quality employment for older workers in order to ensure a sustainable pension system. The employment rate for workers between the ages of 55 to 64 in France is below international averages. The OECD suggests that terminating the contract of an older person nearing the end of their working life should be made less attractive for employers. It emphasises the importance of supporting older workers to update their skills and qualifications to ensure more chances of professional mobility. They believe older workers should be given more assistance by the Public Employment Service to return to work and more access to re-training and part-time work.

**SLOVAKIA:** From January 2014 higher level collective bargaining agreements in Slovakia are applicable to employers regardless of whether they have given their consent. Certain exemptions do apply, such as to employers who have fewer than 20 employees, employ more than 10% disabled workers or are insolvent. Previously, collective agreements were negotiated between unions and employers' organisations, but needed approval by the company's board of directors to be enforced. This amendment to the Collective Bargaining Act has been passed by parliament after having formerly been sent back by the country's President last November.

**SPAIN:** The International Monetary Fund has recognized the progress Spain has made through its labour reforms, but has stated that these reforms are being hampered by the judiciary's narrow interpretation of labour provisions. They advise that Spain should review its labour legislation in order to set common standards for workers under indefinite and temporary contracts, eradicate indexation and eliminate the automatic extension of collective contracts when they end. It encourages the Government to have a



contingency plan in case the reforms are not sufficient to create a dynamic job market.

**SWEDEN:** Sweden's government has launched an inquiry to evaluate the protection of workers of private sector employees in the health care, education and welfare sectors who "sound the alarm" in regard to abuse, misconduct or criminal offences. It will then make legislative recommendations to provide more protection to these workers and a clearer framework. The report is due by May 22nd 2014 and it is hoped that the creation of a new Act will enter into force on July 1st 2015.

**UK:** From April 2014, the majority of UK workplace disputes will be resolved through the Advisory, Conciliation and Arbitration service (ACAS), relieving the burden on Employment Tribunals. Before resorting to litigation, a claimant must contact ACAS first. Conciliation will be offered as an option to resolve the dispute. The decision to take part in conciliation proceedings will be optional for both employers and employees. If the claimant refuses to take part, ACAS will provide a certificate stating that the claimant complied with the obligation to contact ACAS. The claimant will then be able to proceed to the Employment tribunal to resolve the dispute.

## FedEE News:

**FEDEE BLOG:** The new FedEE Blog is now live on the FedEE public website. Visit the [website](#) now to see the latest entries on Europe going beyond its powers, corporation tax and corporate crime, contributed by the Federation's Secretary General, Robin Chater. New articles on topics of current interest will be added to the blog weekly, so be sure to check back regularly.

**CALLING ALL FEDEE FELLOWS:** We invite our Fellows to join our new [FedEE Fellows LinkedIn group](#). We hope you will use the group as a forum for the exchange of information and experiences. Please feel free to start a discussion or to contribute to those started by others. If you have not yet joined our Fellowship programme and are interested in doing so, please contact Angelika Rivero on [angelika.rivero@fedee.com](mailto:angelika.rivero@fedee.com) for more information.

**NEWS BY COUNTRY:** The news pertinent to each European country is now available in our knowledgebase under each individual country section. See the sub-section entitled 'Recent news'.

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