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FedEE
Federation of European Employers
Fédération des Employeurs Européens

Mettre à jour

Latest News from the Federation of European Employers (FedEE)

Inside this Issue:

Denmark: Discrimination against young employees not against EU law

Denmark's Supreme Court has ruled that there is no violation of the EU Employment Directive when a company dismisses an employee because they have reached the age of 18 and would be entitled to a higher salary.

In Denmark, the law on age discrimination in relation to pay and dismissal does not apply to workers under 18 if their employment is subject to a collective agreement that lays down specific rules on payment rates for that age group.

According to Article 6(1) of the EU Employment Directive (Council Directive No 2000/78/EC), national laws may treat workers differently on the grounds of their age provided the law is "objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary." The Court decided that the different treatment of workers under the age of 18, as permitted by Danish law, is justified as it pursues the legitimate aim of ensuring integration of young people into the labour market. [Danish Supreme Court case No 185/2010]

European Union: Directive to prevent harmful chemical exposure in the workplace

The European Union's Council of Ministers has adopted measures to protect workers from exposure to dangerous chemicals in the workplace. The new Directive amends five EU health and safety directives in order to align them to Regulation 1272/2008 EC that lays down rules on the classification, labelling and packaging of chemicals.

According to the Directive, employers will be required to use information provided by manufacturers and suppliers of chemicals on the risks and hazards associated with the chemicals, in order to carry out workplace risk assessments. In this way, employers will be able to implement the appropriate preventive measures to ensure the health and safety of their employees. EU member states must implement the Directive into their domestic legal systems by June 1st 2015.

Italy: Collective dismissal consultation requirements do apply to executives

In conclusion of a long on-going case against Italian legislators, the Court of Justice of the European Union has finally ruled that Italy wrongly implemented European Directive 98/59/EC on collective dismissals by excluding executives ("dirigenti") from the categories of employees affected by collective dismissal procedures.

During the procedure, the Italian government attempted to justify the exclusion of "dirigenti" by the fact that this category of employees already enjoyed a great deal of protection in the case of dismissal, from collective agreements. However, the Court did not accept this argument as the Directive clearly states that all employees (save a very few exceptions) must be covered by the same protection.

As our contacts in Baker and McKenzie's Italian offices have stated, "the consequences of this decision are hardly predictable. On the one hand European directives do not have direct effect on the relationships between private parties (in this case employees and their employer). On the other hand however, such a clear-cut position as that taken by the Court of Justice could be invoked by "dirigenti" employees who have been dismissed without complying with the consultation procedure and in that event it remains to be seen whether Italian Courts will stop enforcing the provisions that the Court of Justice deemed in breach of the directive. It is clear that action by the Italian law-makers is now necessary and urgent." [Case C-596/12] For more information on this topic please contact Uberto Percivalle at uberto.percivalle@bakermckenzie.com

Spain: Reduction in social security contributions for employers

Spain's Prime Minister, Mariano Rajoy, has announced that employers who hire a new worker on an indefinite contract will pay a flat rate social security contribution of just 100 euros a month (for common contingencies) during the first 24 months of service. This will only apply if the job is created as part of an increase in the overall workforce — an employer cannot dismiss an employee and hire another to benefit from these new conditions.

All businesses will be able to benefit from the scheme regardless of their size or the age of employee, provided they keep the worker on for a period of at least 3 years — if they dismiss the employee before this, they will have to pay back all the benefits received. If employers have made individual or collective redundancies in the six months prior to entering into a new contract, this will be considered unfair dismissal. Employers must also make sure they are up-to-date with all their other tax and social security payments. It is estimated that this measure, which should be approved this Friday, will save employers approximately 75% of social security contributions.

Spain: New system for part-time workers to claim pensions

The Spanish Congress of Representatives has approved a new law concerning the minimum social security contributions that part-time employees must have paid in order to access their pension benefits.

The law provides that part-time employees will no longer have to prove that they have worked the equivalent of 15 years full-time in order to gain access to their pension. The required minimum contribution period will be adapted in line with the employee's "part-time coefficient" (the average proportion of full-time work undertaken by the employee over their entire working life). Therefore, if a part-time employee has a part-time coefficient of 50% (i.e. their working day is half that of a full-time worker), the minimum contribution period required to receive their pension would be 7.5 years rather than the current 15 years. The pension amount will then be calculated by adding to this regulatory base a certain percentage based on the number of years the employee has made social security contributions.

The Ministry of Employment estimates that this will benefit more than 2.5 million employees in Spain

Switzerland: Consultation on shop opening hours

On February 19th 2014, the Swiss Federal Council started a consultation process on a new national law regarding shop opening hours.

It is proposed that Swiss retail businesses will be permitted to open between 6am and 8pm from Monday to Friday and between 6am and 7pm on Saturdays and each Canton would be free to adopt more generous legislation.

Currently, no federal law on shop opening hours exists — the matter is governed by cantonal law. The new law is thus a way to partially harmonise opening hours throughout Switzerland. It is hoped the new law will address concerns that different opening times lead to distortions of competition. Consultation is due to end on May 30th 2014.

UK: Concerns raised in emails may amount to whistleblowing

A UK Employment Appeal Tribunal (EAT) has held that an employee who voiced his health and safety concerns in a series of emails to his employer had made a protected disclosure, and as such was protected under whistleblowing legislation. This is despite the fact that the employee did not address all the emails to the same one person in the company (two emails were sent to a senior manager, the third was sent to HR) and did not provide exact details about the risks.

The EAT found the employee was protected as he had, through email correspondence, drawn attention to the dangers posed to team members by driving in heavy snow. The EAT decided that, although each individual email was not a protected disclosure, the three e-mails taken together amounted to such a disclosure as the employee was communicating information — not just stating his opinion or making an allegation.

Regardless of the period of employment, employees will be entitled to bring an unfair dismissal claim against their employer if they were dismissed because they disclosed information about a specific type of malpractice and reasonable belief that it either has occurred, is occurring, or will occur. It is important that employers, when receiving numerous emails about a potential or actual malpractice, address the issues properly and consider all comments made by the employee and do not just take each concern in isolation. [Norbrook Laboratories (GB) Ltd v Shaw UKEAT/0150/13]

Pay, Tax and Benefit Trends

AUSTRIA: The Austrian government has agreed on a new labour market package that it is hoped will be adopted in March. The package will see 200 million euros invested in reducing incidental wage costs for employers. In addition, 350 million euros will be invested to encourage the employment of individuals over the age of 50. It is intended that 100 million euros will be spent on wage subsidies for the over 50s in both 2014 and 2015, with the amount rising to 150 million euros in 2016.

BULGARIA: Bulgaria's Social Minister, Hasan Ademov, has announced that pensions will rise by 3% on July 1st 2014. The rise is in accordance with the "Swiss rule" which includes the inflation rate and the growth of social security income. A lower inflation rate over the past year means the rise should be 2.7% but the Minister has promised an increase of 3%. The Ministry will seek consultation with employers and trade unions regarding the rise.

GLOBAL: The world's biggest economies (G20) have agreed on stricter controls on cross-border corporation tax. These will close the loopholes that currently allow large multinational companies to avoid paying tax. Common standards were agreed for the sharing of data between tax authorities across borders — a process that will become automatic among G20 members by the end of 2015. Greater emphasis has been placed on the fact that multinational companies should be taxed in the countries where they earn their profits. More than 40 countries have already committed to adopting the measures.

NETHERLANDS: The Social Affairs Inspectorate in the Netherlands is planning on making the inspection data of individual companies increasingly more public. If the proposal is adopted, from the second quarter of 2014, information on violations of environmental rules will be disclosed. Companies guilty of illegal employment or underpayment of employees may also soon be publicly named if a Bill due to be presented during the course of 2014 is adopted.

NORWAY: The Norwegian Technical Calculation Committee for Wage Settlements (TBU) has released its preliminary report on the basis for wage settlements in 2014. The report summarises developments in pay, incomes, prices, macroeconomic development and competitiveness in Norway over recent years and also forecasts consumer price growth from 2013 to 2014. The report estimates an average pay growth of 3.9% from 2012 to 2013 (excluding central government), ranging from 3% for health trust employees to 6.7% for financial services employees. In the manufacturing industry, the wage cost share for 2013 was estimated to have been nearly 4% higher than the average wage cost share in the last ten years. The report shows a deterioration in cost competitiveness in Norway's manufacturing industry over the past few years.

PORTUGAL: In Portugal, Law no. 83-C/2013 which recently passed the state budget for the year 2014, has introduced significant changes to the Code of Social Security Welfare System Contributions Scheme (Código dos Regimes Contributivos do Sistema Previdencial de Segurança Social). One of the most important amendments concerns the meaning of "regular" as regards calculating the contributory tax base (the benefits paid by employers subject to social security contributions). The amendment clarifies that social security contributions will be considered to be regular when awarded every five years or less. The law has also changed certain administrative requirements regarding communication of admission of workers to the social security system and introduced a new system of tax incentives to encourage investment in small and medium-sized businesses.

UKRAINE: Under the Law on the State Budget, the national monthly minimum wage in Ukraine is due to rise on July 1st 2014 to UAH 1,250.00, and again on October 1st 2014 to UAH 1,301.00. Since December 1st 2013, the national minimum wage has been set at UAH 1,218.00 per month. The income tax rate applied to employment income in 2014 is 15% for workers earning up to 12,180.00 UAH and 17% for those earning above this threshold.

UK: The UK HM Revenue and Customs (HMRC) has announced that it will delay the introduction of real-time information (RTI) penalties for employers who are switching to the new system. The new automatic Pay-As-You-Earn (PAYE) in-year penalties for late filing and late payments on tax and national insurance contributions were due to commence on April 6th — the start of the new tax year. RTI penalties for in-year interest (charged on tax and national insurance contributions that are paid late during the year) not made by the deadline will still be implemented in April, but automatic in-year late filing payments will be introduced in October 2014 and automatic in-year late payment penalties in April 2015. The delay is intended to give employers more time to adapt to the system.

Other European HR News in Brief

DENMARK: The Danish National Board for Industry and Recruitment has released statistics that reveal a significant decrease in the number of people in Denmark being made redundant or dismissed during a large round of redundancies. In 2013, 10,200 workers were laid off in such a context compared with 28,200 in 2009. This is a decrease of 64%. The mass redundancy rate for 2013 is the lowest since before the crisis hit in 2007.

ENGLAND AND WALES: Following consultation with the judiciary and other stakeholders, the Sentencing Council for England and Wales has published definitive sentencing guidelines on fraud, bribery and money laundering offences committed by corporate offenders. The guidelines apply to businesses convicted of corporate crimes on or after October 1st 2014, regardless of the date of the offence.

EUROPEAN UNION: According to the statistical office of the European Union, Eurostat, gross domestic product (GDP) rose by 0.3% in the Eurozone in Q4 2013, up from a growth of 0.1% in Q3. In the same period GDP rose by 0.4% across the 28 EU member states including increases of 0.4% in Germany, 0.3% in France and 0.1% in Italy as compared with Q3. Despite these figures, the economy shrank by 1.9% in 2013. The EU Commission estimates that, in 2014, GDP will grow at a rate of 1.5% in the EU and 1.2% in the Eurozone.

FINLAND: In its Economic Survey of Finland 2014, the Paris-based Organisation for Economic Cooperation and Development (OECD) has advised Finland that it should raise its retirement age above the current 63 years in order to deal with the ageing population. The OECD has also recognised the need for the country to lengthen employers' and employees' working lives, enhance the employability of older people and reform labour market policies to improve the participation of women, young people and the long-term unemployed.

FRANCE: The French draft law on vocational training, employment and social democracy (formation professionnelle, emploi et démocratie sociale) has been approved by the National Assembly and is currently before the Senate. The Bill transposes the national interprofessional agreement on vocational training that was concluded on December 14th 2013. It provides for the creation, as of January 1st 2015, of a personal training account for each individual worker. This will follow them throughout their professional life — in every job they hold and even during unemployment. This "account" will be credited with 20 hours per year of vocational training time, up to a limit of 150 hours. It will also be obligatory for employees to attend an interview every two years to examine the possible options regarding their professional development.

ICELAND: In Iceland, a Bill has been sent to parliament proposing the withdrawal of the country's application to join the European Union. The Bill will be debated in parliament this week. Many Icelanders are unhappy that they were not given the opportunity to vote on the issue in a national referendum.

IRISH REPUBLIC: The Republic of Ireland's Central Statistics Office has published data that show a 76% rise in the number of working days lost due to industrial disputes in 2013 as compared with 2012. In 2013, 14,965 days were lost due to twelve disputes. Two disputes in the transportation and storage sector constituted 65.6% of the days lost. In 2012, 8,486 days were lost as a result of five disputes.

ITALY: The Italian Minister of Labour and Social Policy, Enrico Giovannini, has signed a new decree simplifying the legal obligations of small and medium-sized companies that agree to adopt a health and safety management model (MOG) to prevent criminal activity arising from non-compliance with preventive accident measures. The management model is not obligatory and should be evaluated by employers on the basis of their company's particular needs and organization. Forms will be available to small and medium-sized businesses on the Labour Ministry's website after publication of the decree in the Official Gazette. These may be amended, as necessary, by individual businesses.

NETHERLANDS: The Dutch Social and Economic Council has announced its plans to revise the Dutch Merger Code — the code that lays down rules to protect the rights of employees involved in mergers and acquisitions. The Code ensures that trade unions are involved before negotiations for a takeover are concluded. However, the stringent rules on the timing of consultation have caused problems for businesses as they do not allow much freedom to protect commercial interests. The Social and Economic Council has appointed a committee to assess the situation and make appropriate revisions to the Code to solve the identified problems. It hopes to finalise the revisions in Autumn this year.

SWITZERLAND: Switzerland has refused to sign a proposed deal that grants Croatian nationals unrestricted access to the Swiss employment market. The protocol to extend the Agreement on the Free Movement of Persons to the EU's newest member was originally agreed in August 2013 — one month after Croatia joined the European Union. However, following the recent referendum decision that has put into question Switzerland's agreements with the EU on free movement of workers, Switzerland has said that this deal is no longer feasible in its present form and will need to be reworked. The Swiss government has announced that it will present a law on how it will deal with the EU labour market by the end of 2014.

UK: From April 6th 2014, the UK Employment Tribunal will be authorised to order an employer who has lost a claim to pay a fine to the Secretary of State. This financial penalty will be in the range of £100 to £5,000 and will be imposed when the employer has breached employee's rights and the violation has "aggravating features". The fine can be ordered regardless of the nature of the remedy awarded. However, if the remedy is financial in nature, the fine must only be 50% of the amount awarded (it cannot exceed £5,000) and the Tribunal will consider the employer's ability to pay. If employers pay the fine within 21 days, they will receive a 50% discount. At present, aside from awarding various remedies, Employment Tribunals have no powers to penalise employers for breaches of employment law.

FedEE News:

FEDEE GEOGRAPHICAL EXPANSION: FedEE is expanding its coverage beyond Europe and we want to know which countries our Members would most like us to cover. Please email us on membershipservices@fedee.com with the names of the countries outside Europe you are most concerned with and would like to see covered in our HR knowledgebase and other resources. We also welcome any other suggestions you may have on how we can improve our service to you.

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.

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'.

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.

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