



**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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### Austria: Reintroduction of bonus malus system

The government of Austria recently announced that they would be bringing in a new "bonus malus" system for the hiring and dismissal of persons over the age of 50. The system would be introduced with full effect from 2017.

Austria abandoned its last bonus malus system in September 2009. Before then, if an employee over the age of 50 had their employment terminated, a levy had to be paid to the regional social insurance fund. If employers hired someone above the age of 50, they did not have to pay contributions to the unemployment insurance fund for that worker.

In January 2013, a termination levy was reinstated. This is due to remain in force until 2017 when it will be replaced by the new "malus" payment (applicable only to employers with 25 or more employees). A bonus is due be introduced for the employment of unemployed persons aged 50 and over during 2014.

### European Union: Preliminary ruling on application of EU Framework Agreement

The European Court of Justice (ECJ) has issued a ruling on Clause 4 of the European Framework Agreement on fixed-term work (March 18th 1999). This Clause ensures the application of the principle of non-discrimination to improve the quality of fixed-term work and prevent abuses that occur from successive fixed-term contracts.

Questions regarding the application of Clause 4 were referred to the ECJ during proceedings in an Italian court concerning the unlawful inclusion of a fixed-term clause into an employee's employment contract (the main proceedings). By partial judgment it was found that an indefinite contract had existed and the employee should be paid remuneration for the intervening period. As regards compensation, however, Italian national law affords less favourable protection to individuals unlawfully engaged under a fixed-term contract than that provided under civil law or afforded to indefinitely employed individuals who are unlawfully dismissed.



In response to the questions referred to it, the ECJ first of all confirmed that Clause 4 was sufficiently unconditional and precise for individuals to be able to rely upon it against a state body before a national court. The ECJ also ruled that the concept of “employment conditions” as laid down in Clause 4 does cover the compensation that an employer must pay to an employee for being unlawfully engaged on a fixed-term contract. The Court concluded, however, that Clause 4 does not require that this compensation be treated in the same way as that paid in respect of the unlawful termination of a permanent employment relationship. [C-361/12]

## European Union: Employee rights to information and consultation

The Court of Justice of the European Union (CJEU) has ruled that Article 27 of the EU Charter of Fundamental Rights (EU Charter) on employees' rights to information and consultation cannot be used in a dispute between individuals as a reason to disapply national provisions that are contrary to EU law.

Article 27 of the EU Charter establishes a general framework for informing and consulting employees. EU Directive 2002/14 sets out minimum requirements and practical arrangements for this right: where an undertaking has a certain number of employees, a union representative must be assigned or an employee representative elected and a works council must be established.

In its legislation implementing the Directive, France provided for certain categories of employees (such as apprentices) to be excluded when counting the number of staff at an undertaking. The CJEU ruled that this deprives workers of their rights and renders the Directive

ineffective. Despite this, the CJEU has confirmed that private individuals cannot rely on Article 27 of the EU Charter — alone or in conjunction with Directive 2002/14 — to disapply national law: only state authorities may rely on these provisions. Individuals may, however, receive compensation for any loss sustained as a result of national law not conforming to EU law. [Case C-176/12]

## France: Deadline for setting up single databases approaching

Under the Law of June 14th 2013 on the protection of Employment, all companies with at least 50 employees in France must provide their employee representatives with a "single database" (Base de Données Unique) through which they may have permanent access to data needed for consultation on the strategic direction of the company.

A decree published on December 31st 2013 has confirmed a number of details including the deadline for introducing these databases and the information that must be included in them.

Companies with at least 300 employees in France have until June 14th 2014 to set up the required single database whereas companies employing 50 to 299 employees in France must have their single database set up by June 14th 2015.

The details to be included in the databases of companies with 300 employees or more are listed under Article R2323-1-3 of the Labour Code and those to be included in the databases of companies with fewer than 300 employers are listed under Article R2323-1-4 of the Labour Code. The information includes that relating to social and financial investments; equity, debts and taxes; employee and managers' wages; social and cultural activities; tax cuts and other financial benefits afforded to the company.



## France: New tax obligations causing problems for HR

Since January 1st 2014, employees in France have to pay tax on the contributions made by employers to collective supplementary health schemes (known as "mutuelles santé d'entreprise"). Before this date, employer contributions to these schemes were entirely tax deductible.

Only collective health schemes to which membership is obligatory are affected by the new tax obligations — optional health schemes which did not benefit from tax exemption are unaffected by the changes. Equally, only those covering illness, maternity and accidents are affected — contributions to insurance schemes covering incapacity, disability and death remain tax exempt.

Employer contributions will be tax deductible within the limit of 5% the annual social security ceiling (PASS) and 2% gross annual remuneration.

Because of the effect of these changes on tax from 2013, the deadline for employers to submit their annual declaration of social data (DADS) 2013 to the social security authorities has been pushed back from Friday January 31st to Wednesday February 12th.

From January 1st 2016 it will be mandatory for all employers to offer supplementary health insurance to all employees.

## Germany: Court rules symptom-free HIV is a disability

The German Federal Labour Court has recently held that symptom-free HIV constitutes a disability.

In the case in question, an employee with symptomless HIV was dismissed on the grounds of having a contagious infection when the company doctor revealed this information and his concerns to the employer. The employee claimed unfair dismissal on the basis of disability discrimination and won, entitling him to reinstatement or damages.

Anti-discrimination legislation sets out that a disability is a condition that restricts physical or mental abilities and has an impact on the individual's participation in society on a long-term basis. It was held that the social stigma attached to HIV affects the ability of those carrying the infection to take part in society, and as a result it can constitute a disability.

The ruling has caused concern for employers as it could potentially lead to other chronic and long-term illnesses being recognized as a disability and triggering anti-discrimination laws in the case of termination of employment. [Judgment of December 19th 2013-6 AZR 190/12]

## Germany: Upcoming works council elections

In 2010, over 87,000 businesses elected works councils in Germany. As elections are generally held every four years between March 1st and May 31st, the next election period is shortly due to commence. In 2014, regularly deployed temporary workers will be included in the headcount determining the size of the works council for the first time [Federal Labor Court decision of 13 March 2013 7 ABR 69/11].

It is important for employers to be aware of the election rules for works councils as any violation could render the election results null and void and the whole process of election would have to be repeated. This would prove expensive as the



employer bears all the costs of the elections. Employers must also not refuse to hold elections or obstruct them in any way as if they do they may face up to one year imprisonment or a fine.

Employers must pay employees their normal salary whilst they are voting and provide additional compensation to members of the election committee who undertake work-council tasks outside of working time. Employers must provide the election committee with all information necessary to publish the voter's list. Employees must be notified of how the election process works, including their rights and the date of voting. This information must be clearly displayed for the duration of the election process.

## **Spain: Initial approval of Royal Decree Law**

The lower house of Spain's parliament has approved a Royal Decree Law to improve the hiring and employability of workers. It provides regulation on more flexible working time and promotes part-time work. Currently, only 14% of employees in Spain are on part-time contracts — 6% below the European average.

The Decree Law eliminates overtime for part-time contracts and provides more flexibility for employees to work additional hours if they wish. Under the law, daily working time under an indefinite part-time contract may be increased to 90% if agreed by collective agreement — provided that the worker is employed at least 10 hours a week on average.

The law also contains measures to facilitate the balance of professional life with family life: it extends the period during which parents may voluntarily reduce their working time to care for a child to until their child is aged 12 years (currently the age is eight years).

## **UK: Ruling on the meaning of "employee"**

The UK Employment Appeal Tribunal (EAT) has issued an important decision on the meaning of "employee" under the Equality Act 2010.

In the case *Halawi v World Duty Free*, the claimant worked as a beauty consultant in a World Duty Free shop at Heathrow airport selling cosmetic products. Her security pass was taken away meaning she was no longer able to work. She claimed unfair dismissal and discrimination against two companies: Caroline South Associates and World Duty Free. However, in order to make such claims she had to be an "employee" of the companies. The issue was therefore whether, under section 83 of the Equality Act 2010, she was employed under a "contract personally to do work".

The claimant provided services through her own independent limited company to Caroline South Associates, who then provided staff to another company Shiseido. Shiseido sold their products in the duty-free shop. However both the shop and the staff were all under the control of World Duty Free. As the claimant provided her services through her own limited company, she did not have a contract with either company as an individual. Caroline South Associates, Shiseido and World Duty Free did not have to give her any work, she could change shifts, not go to work or send a substitute to perform the work. She was not entitled to sick pay or holiday pay.

The EAT upheld the employment tribunal's decision that there was no employment relationship between the parties and dismissed the appeal. [UKEAT/0166/13]



## Pay, Tax and Benefit Trends

**ESTONIA:** Following agreement last year between employers, employees and trade unions, at the beginning of January 2014 the national minimum wage in Estonia increased by 10.9%. The new monthly minimum wage is 355 euros — due to rise to 390 euros in 2015.

**GERMANY:** Employers should be careful regarding their bonus arrangements following a recent decision by the German Federal Labour Court (BAG) on bonus cut-off dates. The Court has always allowed appropriate cut-off provisions in the case of retention bonuses, but as regards performance related bonuses the situation has been less clear-cut. Although the Court accepts that such bonuses are remuneration for services already rendered and therefore cannot easily be denied, past case law generally indicated that cut-off dates may be acceptable under certain circumstances (if the cut-off date fell within the period to which the bonus referred). The latest judgment from the BAG on this topic however, which concerned a bonus of a mixed nature, seems to fully reject the use of cut-off date provision for performance related bonuses. [AZR 848/12]

**ITALY:** The Ministry of Labour and Social Policy in Italy has entered into a Memorandum of Understanding with the National Council of Labour Consultants (the Council) for the issuing of statements of labour law compliance. Employers wishing to obtain an affidavit confirming their conformity with the laws relating to child labour, working hours, collective agreements, tax obligations and payment of wages regulations may apply to the Council on a voluntary basis. Employers who obtain an affidavit will be listed on the websites of both the Ministry of Labour and the National Council of Labour Consultants. Affidavits will last for one year and be subject to quarterly checks to ensure compliance with the law continues. Sanctions will apply in the case of

false certification by either the employer or the consultant.

**LATVIA:** The national minimum wage in Latvia increased by 12.5% at the beginning of January 2014 to 316 euros per month. A further increase of 10 euros is planned for 2015.

**RUSSIAN REPUBLIC:** The Organisation for Economic Co-ordination and Development (OECD) has published an economic survey of the Russian Federation in 2014, in which it makes a number of recommendations. In order for the state to achieve an equal and skills-based society and stronger and more sustainable economic growth, the OECD believes that more investment is required in human capital and innovation. It suggests that educational spending should be a priority and that more emphasis should be placed on life-long learning by providing more incentives to employers and employees. The Organisation detected a real need to invest more in existing labour market programmes and to improve the situation for employees — especially in terms of wages and working conditions. The OECD also recommended raising the female retirement age to the same as that for men and suggests that more collective agreements should be entered into at a company level.

**SPAIN:** As a result of reforms made in 2011 and 2013 to ensure the sustainability of the pension system, the retirement age in Spain is now 64 years and 3 months. The knock-on effect of the later retirement age has been a 10.4% increase, over the last year, in the number of people retiring at the legal retirement age and a 6.5% reduction in the number of workers retiring early.

**UK:** The UK Minister of State for Pensions, Steve Webb, has announced plans to combine workers' retirement contributions into collective pension schemes in order to share the risk and rewards of investments. Under the plan, when an employee retires, the income is paid from a pool rather than



an individual retirement scheme. It is hoped that such schemes will reduce costs for employers as well as benefiting employees. Collective contributions schemes are common in the Netherlands, but proposals to introduce them to the UK have previously been rejected due to claims that they are too risky.

## Other European HR News in Brief

**BELGIUM:** Belgium's Ministry of Employment has published statistics regarding collective dismissals for the period January to December 2013. During this time, 132 companies announced their intention to proceed with collective dismissal affecting a total of 8865 workers. Of the workers affected, 983 worked in the Brussels region, 3758 in Flanders and 4123 in Wallonia. The provinces of Hainaut and Liège in Wallonia were the most significantly affected. As regards sector, workers in the metal processing industry were the hardest hit by collective dismissals, whilst workers in the finance sector were the least affected.

**BULGARIA:** It is now expected that Bulgaria will accede to the Schengen area in 2017. There had been a possibility of both Romania and Bulgaria joining the border-free Schengen zone on January 1st 2014, however, despite approval from the European Commission, certain European states opposed their accession and used their veto against it. Bulgaria's Foreign Affairs Minister Vigenin has now announced that it expects air borders to be opened in 2015 and land borders in 2017. Full accession to the Schengen area would be complete in 2017.

**CROATIA:** On January 23rd 2014, the government of Croatia sent to parliament draft amendments to the Labour Act. The Bill of Amendments provides for a simpler and quicker procedure for making redundancies during restructuring. It also removes the requirement for employers to try to find work for employees at another workplace before they may be dismissed.

In addition, notice periods will no longer be interrupted by periods of sickness. Regarding working time, the Bill provides for a working week to consist of 56-60 working hours, provided monthly working time does not exceed the number of weeks in that month multiplied by 40 hours. The Bill also provides for more flexible employment, such as part-time work and casual work, and extends the period during which workers may bring a claim against their employer from three to five years.

**EUROPE:** Data from the Organisation for Economic Co-Operation and Development (OECD) reveals that there was an overall increase in the employment rate in the OECD area in Q3 2013. In Q3 2013 the employment rate in the euro zone rose for the first time since Q2 2011 (by 0.1% up to 63.5%). Within Europe, the largest increases in Q3 2013 were recorded in Portugal (up 0.7% to 61.3%), Slovenia (up 0.7% to 63.7%) and Ireland (up 0.6% to 70.8%). The greatest decreases in Q3 2013 were in Estonia (down 1.1% to 67.9%), Turkey (down 0.5% to 49.2%), the Netherlands (down 0.4% to 74.0%) and Denmark (down 0.4% to 72.4%).

**EUROPEAN UNION:** On January 14th 2014, the European Parliament agreed upon a non-binding resolution to improve working conditions in Europe. The aim is to avoid cases of undeclared work, exploitation and social dumping. Members of the European Parliament voted to create a European platform for labour inspectors so they can monitor undeclared work, identify "letterbox" companies and increase cooperation between EU states. They recommended guidelines on investigations regarding specific high-risk categories, including agency workers and posted workers. The European Parliament has asked the European Commission to consider establishing a European social security card and implementing a pilot scheme for a European early-warning system to detect undeclared work.



**IRISH REPUBLIC:** The government of the Irish Republic has published its Legislation Programme for Spring/Summer 2014. Bills expected to be published later on in the year include: the Employment Permits Bill, which strengthens existing legislation and takes into consideration the developing body of case law; the Industrial Relations (Amendment No.2) Bill, which focuses on collective bargaining rights; and the Workplace Relations Bill, which will reform statutory workplace relations bodies.

**ITALY:** Italy has approved a new Code of conduct for labour inspectors, which replaces a previous Code from 2006. The new Code takes into account the legislative changes from recent years as well as the comments of all those involved in the preceding public consultation process. The Code defines and clarifies the rules of conduct, ethics and procedure for labour inspectors; it incorporates the duties of care, loyalty, fairness and good conduct and provides more transparency and uniformity.

**SERBIA:** Serbia has now begun formal accession talks with the European Union. The country's target date of entry into the EU is 2020, when the EU's next seven year budget period commences. Before accession is permitted important reforms need to be made regarding the country's judiciary, rule of law and its relationship with its neighbouring countries - in particular Kosovo.

**SPAIN:** According to data published by Spain's Ministry of Employment and Social security, 1,844 collective agreements were concluded in 2013 affecting over 4.2 million workers. This represents an increase of nearly 70% on the number of collective agreements concluded in 2012, and a 62% increase in the number of workers affected. There has been a significant increase in bargaining and negotiating in areas where there was previously no agreement, however, the statistics also demonstrate that the number of derogations from collective agreements tripled from 2012 to 2013. As regards pay, last year marked a historical low as wages increased by an average of just 0.57%.

## 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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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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