



FedEE
Federation of European Employers
Fédération des Employeurs Européens

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Latest News from the Federation of European Employers (FedEE)

Inside this Issue:

Germany: Holiday accrual during Parental Leave

Austria: Comprehensive Temporary Agency Law comes into effect

Global: Recession has hit jobs more than pay

Netherlands: Further threat to international tax management

Iceland: Talks suspended on membership

Europe: Review of workplace minimum temperatures

UK: Domestic politics target for speech on Europe

Netherlands: Joblessness too comfortable for professionals

Germany: Holiday accrual during Parental Leave

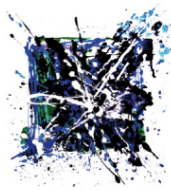
In recent years a number of cases have been brought before the European Court of Justice regarding the accrual of an employee's holiday entitlement during periods of leave. It has been established that holiday entitlement is accrued during sickness leave and maternity absence, yet the issue of holiday accrual during parental leave remains largely a grey area.

In Germany, however, a court decision seems to have clarified the law on this matter. The Federal Labour Court's ruling confirmed that holiday entitlement is accrued in full during parental leave, although the employer is permitted to make deductions 'pro-rata' for each full month of parental leave taken during that respective year. In other words, although annual leave does accrue during parental leave it does not actually have to be granted.

According to employment law expert Dr Gregor Dornbusch of Baker & McKenzie's Frankfurt Office: 'Holiday entitlements during parental leave

are a bit of an odd construction: they do accrue and come into existence in full during parental leave, but according to section 17 of the Federal Parental Pay and Parental Leave Act (Bundeselternzeit- und Elterngeldgesetz – BEEG) the employer can make pro-rated deductions for each full month of the respective year during which the employee was on parental leave. Only full months count by this method of calculation" Therefore..."a full year's worth of parental leave would equate to a holiday entitlement of zero days.

Dr Dornbusch has also made clear in his advice that "Holidays having accrued prior to the parental leave, but which have not been taken by the employee are kept, and are to be granted in the calendar year during which the parental leave ends, or in the calendar year thereafter. In case the employment relationship ends during or at the end of the parental leave, and consequently such holiday entitlements having accrued prior to the leave cannot be taken they need to be paid out instead. For further information please contact



Gregor by email
(gregor.dornbusch@bakernet.com).

Austria: Comprehensive Temporary Agency Law takes effect

Austria has finally introduced the EU Temporary Workers Directive (2008/104/EC) into its national legislation more than 12 months after the deadline set for implementation. The new law is broad in scope and goes beyond the Directive's minimum requirements.

Temporary agency workers (überlassene Arbeitskräfte) - whether they are leased from an agency in Austria or another country - now enjoy the same protection against discrimination as a user company's own employees and a right to the same remuneration rates. They must be given equal access to the benefits and facilities offered to employees - such as childcare facilities, canteens and transport services. From 2014 agency workers will also be entitled to join a company pension scheme once they have been on-assignment with a company for four years.

Companies may only hire agency workers on the basis of a written agreement containing a number of specified conditions. The worker must be informed in writing about the conditions applicable to the contract and if the duration of an assignment exceeds three months the agency must give the worker at least 14 days' notice before the arrangement may be terminated.

Agencies must provide data about the assignments undertaken each year to a bureau specified by The Federal Ministry of Labour. They must also pay an annual levy to the Sozial und Weiterbildungsfonds (Social and Further Education Fund). This will only apply to blue collar workers until 2016 - but to all workers thereafter.

Europe: Review of workplace minimum temperatures

As midwinter snows hit the northern hemisphere many companies are becoming concerned about minimum office working temperatures.

Under the EU Workplace Directive (89/654/EC) all employers must ensure that temperatures in "rooms containing workstations .. are ...adequate for human beings, having regard to the working methods being used and the physical demands placed on the workers".

* In the UK the law does not state a minimum temperature, but a Health and Safety Executive Code of Practice sets down a minimum temperature of 16 degrees Centigrade for sedentary jobs and 13 degrees where the work carried out is of a physical nature.

* In Germany workplace regulations set a minimum of 20 degrees (ASR 3.5 p1), with a limit of 17 degrees where moderate physical activities are undertaken and 12 degrees for heavy physical labour.

* French employers must ensure that enclosed spaces are heated during the cold season (Decree No. 2008-244 of 7 March 2008), but minimum temperatures should only be established after consultation with the company's doctor and the committee on health, safety and working conditions.

* Austrian statutory temperature ranges are enforced by the Health and Safety Authority and the normal minimum is 19 degrees, 18 degrees where there is some physical activity and 12 degrees where there is high physical activity.

* In Denmark the minimum office temperature is 18 degrees, but the Working Environment Authority accepts lower temperatures for shorter periods in exceptional circumstances - such as



"unforeseen and sudden low outdoor temperatures or unfavourable wind conditions".

Where regulations or norms are set there is generally a higher minimum for rest areas and a requirement that those working outside during cold weather are provided with adequate clothing and insulation.

Global: Recession has hit jobs more than pay

The ILO's latest Global Wage Report reveals that whilst real average wage growth has remained below pre-crisis levels, real wages have nevertheless continued to grow across much of the world since 2007. Even if China is excluded, real average global wages rose by 1.3% in 2010 and 0.2% in 2011.

From a pay perspective there has thus been no worldwide recession for those in work. The impact of the downturn has been felt sharply in some regions such as Western Europe, but on a global basis the downturn has largely impacted on the working population through the growth of unemployment. Worldwide the fall in economic growth has resulted in the loss of 27 million jobs.

A longer term trend has also been at work which has been exacerbated by the downturn. For the past ten years productivity has grown at twice the rate of average wages. Hence the share of income achieved through labour has declined relative to the share achieved from capital investment and distributed in the form of profits and dividends. This has largely been the outcome of technological progress, trade globalization, the expansion of financial markets, and a fall in union membership (with a consequent decline in the bargaining power of labour).

Iceland: Talks suspended on membership

Talks have been suspended between Iceland and the European Union about EU accession until after the forthcoming Presidential elections on April 27th. This is because if the Independence Party candidate wins the election, EU membership will be taken off the agenda.

Although Iceland is a member of the European Economic Area and passport-free Schengen zone negotiations have only been completed on 11 of the 27 areas where compliance is necessary before membership can go ahead. If talks resume this Summer there are big problems ahead for negotiators - especially in such areas as fishing, agriculture and energy. Many of the Icelandic population are also angry that the UK and Netherlands required taxpayers to fund the repayment of 4bn euros to foreign investors after the bank failures of 2008.

Netherlands: Further threat to international tax management

Multinational enterprises which use one of the 23,500 special financial institutions (BFIs) as "letterbox companies" in the Netherlands to reduce their corporate tax liability may experience closer regulation in the future following a report on BFIs due to be published in April.

Currently Dutch tax treaties make it possible to direct money flows at a low or zero tax rate to countries which have little or no corporation tax. This encourages companies, especially in the European Union, to consolidate their profits in Dutch BFIs. However, Finance State Secretary Frans Weekers has recently indicated that he would be reluctant to endanger the advantages to the national exchequer by imposing significant greater regulation or by imposing a minimum profit tax (as in Luxembourg) - in spite of increasing international pressure on the Netherlands to discourage the use of tax havens.



Netherlands: Joblessness too comfortable for professionals

Many companies in the Dutch Engineering sector are finding it increasingly difficult to hire technically qualified personnel. The problem is particularly evident in the region around Eindhoven where the machinery manufacturer Frencken has recently announced it is being forced to expand abroad to meet demand from clients such as Philips and ASML.

Although the Economic Affairs Minister Henk Kamp has reacted by pointing out the need for educational institutions to produce more technically qualified professionals the primary problem is clearly not one of supply. Unemployment is running at over 9% in many Dutch provinces, yet across the border in Germany it is below 3%. German engineering companies have not been able to attract Dutch workers either, even though many technically skilled workers in the Netherlands are unemployed.

UK: Domestic politics target for speech on Europe

There have been mixed reactions to the UK Prime Minister's speech about the conditions necessary for Britain's continued membership of the EU. Lest international companies should view the speech as a reason to reassess future investment intentions in the UK it should be noted that the speech was purely political and, indeed, very little to do with the EU itself.

The current UK government coalition will not be sustained through the next general election and the public opinion polls for the junior coalition party the Liberal Democrats are indicating it will have a poor showing at the next election (which must be held by May 7th 2015). The biggest challenge to David Cameron's senior coalition Conservative party is the UK Independence Party

(UKIP). The speech is therefore largely directed at the eurosceptic followers, and potential followers, of UKIP - as well as nationalistic members of his own party.

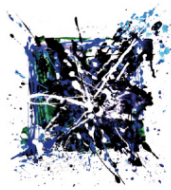
This is a high risk strategy that depends on informed opinion realising that the UK has no future outside the EU, whilst allowing the generally uninformed opinion of the electorate to view him as a champion of UK sovereignty.

Pay, Tax and Benefit Trends

EUROPE: According to the OECD the national minimum wage in Europe is largely concentrated between 44% and 57% of overall median pay levels. There are, however, some countries where the minimum wage is relatively low - such as the Czech Republic (35%) and Estonia (39%), and where it is relatively high - such as in France (60%) and Turkey (71%).

EUROPEAN UNION: The proportion of total remuneration appropriated by the state in the form of income tax and social security remained virtually constant at 36% in the European Union between 2002 and 2010 (the latest available year). Although there was a sharp fall during this period in such countries as Bulgaria (33.4% to 24.4%) and Lithuania (38.1% to 31.7%), the tax take increased significantly in Cyprus (22.3% to 27%), The Netherlands (31.5% to 36.9%) and the UK (24.7% to 25.7%).

GERMANY: Wage agreements for 12.5 million workers in Germany come up for renewal in 2013. Unions are gearing up for negotiations and the union Ver.di has already announced that it will be seeking increases of 6% in the public sector. Private sector demands are likely to be slightly lower and negotiations tougher than unions expect - with several sectoral employer associations still talking about conditions being even worse than last year. A rise in German



unemployment levels and the fact that Germany has been the principal banker funding EU support programmes for ailing EU economies means that there will be little scope for wage increases over 3% in the coming year.

GERMANY: Over the period from 2000 to 2011 the proportion of employees in Germany applying for disability benefits on the grounds of depression, anxiety or other psychiatric grounds rose from 24% to 41%. The latest available figures from the Federal Ministry of Labour indicate that in 2010 alone 53.5 million working days were lost for mental health reasons.

GREECE: The Greek parliament has approved a revision of its tax laws that reduces the top rate of income tax from 45% to 42%, but makes it payable on all income above 40,000 euros instead of 100,000 euros. Corporate tax rates are to rise from 20% to 26%, but tax on distributed dividend payments will be cut from 25% to 10%.

LATVIA: The Latvian government has announced that Monday, May 6th will be a public holiday this year because Declaration of Independence Day falls on a Saturday.

SWITZERLAND: The Swiss Federal government is bringing into force the Administrative Assistance Act (TAAA) on February 1st. This will ease some of the country's banking secrecy guarantees and introduce a measure of cooperation with other governments that are investigating possible tax evasion by individuals. However, the Act does not go far enough to satisfy the European Commission, whose Tax Commissioner Algirdas Semeta has recently warned that Switzerland could well find itself on its tax haven blacklist by the summer of this year.

Other European HR news in brief

CROATIA: The French and German governments have announced that they will not give free

access to their labour market for Croatian workers when Croatia joins the European Union in July. Both countries will apply at least a two year restriction - although Germany has decided to make an exception in the case of researchers and scientists and seasonal workers.

EUROPEAN UNION: Companies have until May 31st 2013 to comply with the EU's REACH (Registration, Evaluation, Authorisation & restriction of CHemicals) regulations covering substances manufactured or imported into the EU in quantities of 100 tonnes or more per annum. These regulations, which provide health and safety protection to employees and consumers, cover around 30,000 substances - and companies must ensure registration with the central European Chemicals Agency (ECHA) if they wish to continue manufacturing or supplying them legally. Failure to comply with this duty will be a criminal offence and could result in both fines and imprisonment.

EUROPEAN UNION: The European Commission's Directorate-General for Mobility and Transport has been working for some time on a new policy that to date has included a unified structure for port labour agreements. In view of the failure of past attempts to introduce pan-European measures to regulate port labour it has been decided to divert the debate on labour issues to a joint ports and port union committee. This will avoid the pitfalls of the previous approach which was based on the principle "one solution to fit all".

EUROPEAN UNION: Following the breakdown of talks last month between employers and trade unions about proposed changes to the EU Working Time Directive the European Commission is trying to redraft amendments in the hope that they will prove to be a better basis for agreement. The principal area of disagreement has been the treatment of "on-call" time which, under EU case law must be treated as working



time if the individual on-call is required to remain at their workplace during inactive periods of their on-call duties.

FRANCE: French automakers continue to struggle with declining demand for their vehicles. EU car registrations fell by 16.3% over the year to December 2012 compared with a year earlier, putting further pressure on managements to cut capacity and improve productivity. Renault SA has been in talks for some time about its proposal to cut its French workforce by 7,500 by 2016 and increase working hours. PSA Peugeot-Citroën is close to concluding a deal to reduce its French workforce by 8,000, but the price for plant closure will be high with severance deals amounting to as much as two years' salary and an obligation to redeploy some workers to other plants.

GERMANY: In a recently reported German case the Higher Labour Court in Berlin-Brandenburg found that a company was not justified in dismissing an alcohol-dependent electrician who had been undergoing therapy at the company's request. The dismissal had taken place on the grounds of safety after the employee continued to report for work under the influence of alcohol. In the court's view the company had not fully justified its safety concerns and had not established that, although relapses had taken place, the employee's addiction could not be rectified. (Az 15 Sat 911/12)

JERSEY: The State's legislative council of the channel island of Jersey will begin to debate the text of the island's first anti-discrimination law in May. Although it is intended to establish a comprehensive range of legal protection covering recruitment, workplace relations, education and clubs the initial measure will focus on race. It will then be followed by further legislation covering gender, age and disability. The first of these new laws are likely to come into force by the middle of 2014.

MOLDOVA: A law introducing penalties for infringement of Moldova's anti-discrimination law has now passed its second stage in the national parliament. The proposed penalty for workplace discrimination is 9,000 Moldovan lei (559 euros) and for discrimination leading to the death or suicide of the victim will carry a prison sentence of up to six years.

NETHERLANDS: Following the abdication of Queen Beatrix the Dutch public holiday called Queen's Day is to be renamed King's Day (Koningsdag) and from 2014 will no longer be celebrated on April 30th, but April 27th. However, the first celebration will also be an exception as it will fall on a Sunday. The day will therefore be celebrated on Saturday, April 26th next year.

RUSSIAN FEDERATION: The upper house of the Russian Parliament has approved a Bill increasing the penalties for violations of immigration laws. The maximum penalty for employers has risen from 200,000 to 300,000 rubles (7,446 euros) and offending managers may also be required to undertake unpaid community work for up to three years. Those found to be organising the smuggling of immigrants into Russia will face up to 7 years imprisonment.

SERBIA: Although Serbia has aspirations to join the European Union, many of its population still harbour attitudes that underlay the Balkan conflict (1991-2). This is well illustrated in the recent public campaign against Serbia's Commissioner for the Protection of Equality. A petition has been sent to the Serbian Parliament and press reports have also called for her dismissal because she is seen to be protecting the interests of minority groups in the country. The campaign has led the intergovernmental watchdog - the Organisation for Security and Cooperation in Europe (OSCE) - to issue a statement maintaining its "firm support for



independent institutions and regulatory bodies and an independent, professional media".

SWEDEN: A special government Commission in Sweden has proposed that current dismissal laws should be amended. The proposals include a reduction in the available financial penalties for unfair dismissal, a one-year limit to employment rights when an ongoing dispute arises (rather than unlimited employment until the dispute is resolved) and less scope for a court to declare a dismissal null and void. If approved by the Swedish parliament the amendments will come into force during 2014.

SWITZERLAND: A study carried out by Lausanne University has found that two-thirds of Swiss workers losing their job through a mass

redundancy in 2010 were able to find themselves alternative employment within two years and 11% took early retirement. 80% of those securing a new job did so with a permanent contract and the majority secured a salary equal to or higher than their last job. The researchers found that being in an older age cohort was the biggest barrier to re-employment - greater than a lack of qualifications or an individual's immigration status.

TURKEY: A major campaign is being organised in Turkey to lobby the government to lift its headscarf ban in the public sector. Government regulations currently specify that all public employees must not wear any hair covering. They also specify employee hairstyles, shoe types and the moustache that a male civil servant may grow.

FedEE news:

JSB EMPLOYMENT LAW TRAINING OFFER: FedEE and [JSB](#) are working in partnership to offer FedEE members a 10% discount on any international employment law course booked using the discount code 'fedee12'.

JSB offers a wide range of employment law training for HR professionals, covering all aspects of UK and international employment law.

Full details of their employment law programmes can be found [here](#).

Their full range of **international employment law courses** covers over 30 countries, including comprehensive 1-day seminars on many European jurisdictions. Each seminar is led by a legal expert from the country in question, providing first class legal expertise that links legislation to practical HR management challenges. Full details of their upcoming courses can be found [here](#).

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