



Dernières nouvelles

Latest news | Neueste Nachrichten | Ultime notizie | Últimas noticias | 最新消息

June 18th 2015

Inside this Issue:

Lithuania: Significant reforms to employment laws approved

Australia: Fair Work Commission issues decision on annual leave provisions

Sweden: More parental leave for fathers

UK: Dress requirement found not to unfairly discriminate against Muslim women

Canada: Large award against employer for sexual misconduct

Italy: Court finds covert monitoring of employee's social networking activities to be legal

Singapore: New wage guidelines published

India: New online portal for foreign employers recruiting Indian workers

Australia: Fair Work Commission issues decision on annual leave provisions

As part of its review of modern awards, the Full Bench of the Fair Work Commission (FWC) in Australia has issued an important decision regarding annual leave. In its decision the Full Bench responded to a number of proposals put forward by employer groups.

The Full Bench agreed with employer groups that modern awards — agreements which set minimum wages and employment conditions — should contain provisions for dealing with 'excessive annual leave accrual', however it revised the proposals set out by these groups. The Full Bench drafted a model term regarding excessive leave, which it believes should be included in all modern awards. Interested parties will, however, have the opportunity to make further submissions on the provisions of this model term and its application.

The model term defines excessive leave accrual as the accrual of more than eight weeks' paid annual leave

(10 weeks in the case of shift workers). The model term states that before an employer may compel an employee who has accrued excessive annual leave to take some of this leave, the employer must request a meeting and try to agree on ways to reduce the employee's excessive leave accrual. If no agreement can be reached, the employer may, in writing, direct the employee to take a period of paid annual leave. However, the employee cannot be required to take a period of leave shorter than one week and must be given at least eight weeks' notice. Furthermore, the direction to take leave should not leave the employee with less than six weeks' accrued leave. The model term also provides for employees to require that leave be granted.

In addition, the Full Bench granted the employer groups' claim to insert a standard clause relating to 'cashing out' of annual leave into 120 modern awards, reflecting the requirements of the law. However the Full Bench insisted that four additional safeguards also be incorporated. These include the provision that a maximum of two weeks' paid annual leave can be cashed out in any 12-month period and that if the employee is under the age of 18, the agreement to

cash out some accrued leave must be signed by their parent or guardian.

Various employer groups wished to insert a model 'annual close-down' clause into 65 modern awards, which would allow companies to shut down and compel employees to take annual leave at times that are most convenient for the company. However, the Full Bench was not persuaded by these arguments.

Other issues that were explored by the Full Bench include purchased leave, payment of annual leave entitlements upon termination and payment by electronic funds transfer. [[2015] FWCFB 3406]

Canada: Large award against employer for sexual misconduct

In a recent case, the Human Rights Tribunal of Ontario, Canada awarded substantial damages to two workers who were sexually harassed by the owner of the business for which they worked. Although the case focused on the misconduct of the owner as an individual, the owner and his company as a corporate entity were, jointly and severally, ordered to pay compensation in the amount of 150,000 Canadian dollars (121,883 US dollars) to one worker and 50,000 Canadian dollars (40,628 US dollars) to the other worker.

The circumstances of this case were as follows: two workers from Mexico had come to Canada under the Temporary Foreign Worker Programme to work for Presteve Foods Ltd. The workers brought before the Tribunal a series of claims that the owner had touched them inappropriately, sexually propositioned them and forced them to engage in sexual activities several times. They claimed that the owner's advances and solicitations were unwanted — they had felt obliged to comply with the owner's demands because he threatened to send them back to Mexico.

The Tribunal held that there was credible proof that the owner had persistently sexually harassed the workers and as such, the owner had violated the Ontario Human Rights Code. The owner was in a position of authority and had used his position to threaten the workers and create a sexually poisoned work environment.

When determining the amount of damages that should be awarded, the Tribunal considered the vulnerability of the claimants, the loss of self-respect and dignity, and the seriousness of the mistreatment. Particular emphasis was placed on the fact the Temporary Foreign Worker Programme only allows workers to work for one designated employer, making it almost impossible to transfer employment to another employer. [O.P.T. v. Presteve Foods Ltd., 2015 HRT0 675]

India: New online portal for foreign employers recruiting Indian workers

The Indian government has recently launched an online e-Migrate portal for foreign employers wishing to recruit Indian workers.

The Ministry of Overseas Indian Affairs has now made it obligatory for foreign employers of 'Emigration Check Required' countries to register on the e-Migrate portal and to accredit themselves with the appropriate Indian Mission or Consulate if they wish to recruit Indian workers. At the time of accreditation, the foreign employer must provide the terms and conditions of employment for the job which will form part of the employment contract at the time of recruitment. Once the employer has been accredited, employers may indicate how many Indian workers they require and obtain work permits to recruit the workers — either directly or through recruiting agents.

The deadline for registration will depend upon the number of Indian workers the company wishes to

recruit. Foreign employers wishing to hire more than 150 Indian workers must register online now to seek work permits. Employers who wish to recruit between 50 and 150 Indian workers must register before June 30th 2015. Those wishing to recruit between 20 and 50 workers must register by July 31st 2015, whilst employers who require less than 20 workers must register before August 31st 2015.

Lithuania: Significant reforms to employment laws approved

The government in Lithuania has approved a number of amendments to the country's employment laws. The amendments will now be submitted to parliament for their approval. The government hopes this approval will be received in October 2015.

Under the amendments, the amount of severance pay to be awarded in the event of dismissal by the employer would be reduced. Currently, dismissed employees are entitled to a severance payment that increases with years of service up to a maximum of six months' wages. However, the draft law approved by the government would standardise severance pay to two months' wages no matter the employee's length of service.

Furthermore, under the agreed draft law, notice periods would be reduced to one month for all employees — except those close to retirement age, who would be entitled to 2-3 months' notice, and disabled workers and parents of children under the age of 14, who would be entitled to three months' notice.

The government also approved amendments to introduce more types of employment contracts, such training contracts, apprenticeships contracts and job-sharing contracts.

Under the draft law, employers and employees would also be free to agree on individual daily working time, rather than having to stick to rigid daily working hours. Forty hours per week would remain the norm, but flexibility would allow for the employer to adapt working time to company needs and for the employee to deal with family responsibilities.

Sweden: More parental leave for fathers

In an attempt to further boost gender equality, the Swedish government has announced plans to increase the proportion of parental leave reserved for fathers to three months as of 2016.

In Sweden, employees have the right to 16 months of paid parental leave, two months of which are currently reserved for the father only. Under the proposed new rules, new mothers and fathers would have to take a minimum of three months of leave each — mothers would not be entitled to use the three months reserved for fathers. The remaining 10 months of leave may be divided between the parents as they consider most appropriate and convenient.

Sweden's policy of 'use leave or lose leave' acts as an incentive for fathers to take time off work to care for their child. The country first reserved one month specifically for fathers in 1995 and added a second month in 2002.

UK: Dress requirement found not to unfairly discriminate against Muslim women

In a recent case, the UK Employment Appeals Tribunal (EAT) held that an employer did not indirectly discriminate against a job candidate by not allowing her

to wear clothes that were considered to be a tripping hazard.

In this case the claimant, a Sunni Muslim, applied for a job at a nursery, but rejected the job offer after she was told that her floor length jilbab could amount to a hazard to both herself and to the children. She was told that she could wear the jilbab but it could not cover her shoes or touch the floor. She brought a claim before the court, claiming that this measure constituted discrimination on the basis of religion or belief.

The EAT, upholding the decision of the employment tribunal, found that the rule regarding clothing applied to all members of staff no matter their religion, and no particular group or individual was put at a disadvantage — Muslim women could wear a jilbab as long as it did not constitute a health and safety risk.

Most importantly, the EAT held that even if the rule put Muslim women at a particular disadvantage, any indirect discrimination was justified because it is a proportionate way to achieve the legitimate aim of protecting the safety of both workers and the children under the nursery's care. [Begum v Pedagogy Auras UK Ltd [2015] UKEAT 0309_13_2205]

Pay, Tax and Benefit Trends

AUSTRALIA: The Fair Work Commission has announced that the national minimum wage in Australia will increase by 2.5% to 656.90 Australian dollars (431 US dollars) per week or 17.29 Australian dollars (13.40 US dollars) per hour as of July 1st 2015. This will affect nearly 1.9 million workers.

AUSTRALIA: The government of Australia is currently consulting with the business community regarding the introduction of the Single Touch Payroll system. Under this system, employers' accounting software will automatically report payroll data to the Australian

Taxation Office when employees are paid their wages. Employers would not be required to report employee-related Pay As You Go Withholding in their regular activity statements or in their end-of-year employee payment summaries. The government originally aimed for the Single Touch Payroll system to be available from July 2016, but the feedback has been that this may not be feasible for all businesses. The government is consulting on the scope, timing and viability of initiating pilot schemes from July 2016.

CZECH REPUBLIC: According to the Czech Statistical Office, the median wage in the Czech Republic rose by 2.1% between Q1 2014 and Q1 2015 to stand at 21,143 koruna (870 US dollars). In Q1 2015, men earned a median wage of 23,035 koruna (948 US dollars) and women earned a median wage of 18,998 koruna (782 US dollars).

FINLAND: Labour costs in the private sector in Finland rose by 1.9% in Q1 2015 when compared to Q1 2014, according to data provided by Statistics Finland. Excluding non-regular pay elements such as performance bonuses, labour costs increased by 1.4% compared with the same period a year earlier.

FRANCE: Figures produced by the Ministry of Labour have demonstrated that when an employee's employment is terminated by mutual agreement, they receive, on average, a severance payment equivalent to approximately a month and a half's salary per year of service.

IRISH REPUBLIC: The Central Statistics Office of the Republic of Ireland estimates that average weekly earnings in the country in Q1 2015 stood at 696.03 euros (approximately 784 US dollars). This is 0.5% higher than the average weekly earnings in Q1 2014. Average hourly total labour costs are estimated to have been 25.71 euros (29 US dollars) in Q1 2015 — 0.9% higher than in Q1 2014.

THAILAND: Despite recent media reports, the government of Thailand has denied reports that there are immediate plans to abolish the national minimum wage and revert back to a system where wages are based on the cost of living and reflect conditions in each province. They did confirm, however, that each province will be asked to propose a minimum wage rate to be considered at a national wage committee meeting in October 2015.

SINGAPORE: Singapore's Ministry of Manpower has published the National Wages Council (NWC) Guidelines for 2015-2016. The NWC recommends that employers should provide wage increases to employees taking into consideration the company's business performance, prospects and sustainability. They also recommend that workers earning 1,100 Singaporean dollars (819 US dollars) or less should receive a pay increase of at least 60 Singaporean dollars. The guidelines can be accessed [here](#).

UK: A recent case brought before the UK Employment Appeals Tribunal (EAT) has shown how criteria in employers' discretionary bonus schemes may violate disability discrimination law. In this case, five employees brought claims of disability discrimination after they were denied bonuses due to sickness absences linked to their disabilities. The EAT held that practice was contrary to the Equality Act as they were treated unfavourably because of something arising in consequence of their disability. The EAT recognised that the scheme had a legitimate aim in recognising worker's contributions and encouraging good performance and attendance, however the means of achieving this aim was considered disproportionate. [Houghton v Land Registry (2015) UKEAT 0149_14_1202]

UK: The UK Government has increased the penalties imposed on employers that underpay their workers in violation of national minimum wage legislation. As of

May 26th 2015, the maximum penalty for not paying the national minimum wage is 20,000 pounds (31,028 US dollars) in respect to each underpaid worker. Previously, the penalty applied per employer.

Other Global HR News in Brief

CHINA/GERMANY: Chinese nationals travelling to Germany on business can now benefit from an express visa processing service. Under the express service, applications for business Schengen visas (Type C — short stay) will be processed in just 48 hours. Previously, the processing time for a business visa was 10 business days. The express processing service is offered free of charge.

COLOMBIA/PERU: Colombia and Peru have now signed an agreement with the European Union that will allow Colombian and Peruvian nationals to travel to Schengen countries without a visa. Such travellers will be permitted to stay in Schengen countries for stays of up to 90 days in a 180-day period. However, the agreement is not final — it must still be translated into each EU country's language and must be individually ratified by the parliaments of each of the Schengen countries. Travellers will also need to obtain biometric passports. It is expected that the agreement will come into force by the end of year.

EUROPE: According to the latest statistics provided by the European Union's statistical office, Eurostat, there were 3,515 fatal occupational accidents in the EU in 2012. Malta had the highest incidence of fatal accidents (8.81 deaths per 100,000 persons employed) whilst the Netherlands, Greece, Sweden, the United Kingdom, Germany and Finland had the lowest incidences of fatal accidents (less than 2.00 fatal accidents at work per 100,000 persons employed). In 2012, just less than 2.5 million non-fatal occupational accidents in the EU resulted in the employee being absent from work for at least four days.

FRANCE: The number of terminations in France concluded by mutual agreement (*ruptures conventionnelles*) increased by 3.2% between April 2014 and April 2015, according to figures provided by the Ministry of Labour. Since the law regulating terminations by mutual agreement was introduced in 2008, 1.8 million mutual terminations have been approved.

FRANCE: The French National Assembly has passed, on first reading, a Bill which will remove the mandatory nature of the law regarding anonymous CVs. The law that obliges employers with more than 50 employees to recruit using anonymous CVs was passed in 2006, however its implementation decree was never published. In July 2014, the French Council of State ordered the government to implement the law, but an implementing law was never signed. If this new Bill becomes law, the requirement to use anonymous CVs will become optional, rather than obligatory.

IRISH REPUBLIC: Ireland's Minister for Jobs, Enterprise and Innovation, Richard Bruton, has announced that the Workplace Relations Act will come into force on October 1st 2015. The Act, which will reform the way in which employment and equality disputes are resolved in Ireland, was originally expected to come into effect on July 1st 2015.

ITALY: The Supreme Court of Italy has held that employers who use social networking websites to monitor their employees' activities during working time are not violating the law. This is the case even if the

employer creates and uses a fake social networking account in order to determine if an employee is committing an act of misconduct. The Supreme Court also held that it is permissible for employers to monitor employees' use of Facebook from their mobile phones. [Corte di Cassazione, Sentenza n. 10955 – 2015]

PARAGUAY: A draft law amending parental leave provisions has been approved by the Chamber of Deputies in Paraguay. Under the draft law, employees would be entitled to 18 weeks of maternity leave and two weeks of paternity leave. At present, employees have the right to twelve weeks of maternity leave and three days of paternity leave. The draft law has been sent to the Senate for their approval.

SLOVAK REPUBLIC: Employers in Slovakia are reminded that they must fulfil the obligations established in the Whistleblowing Protection Act by June 30th 2015. The law provides that all employers with more than 50 employees must adopt internal regulations, specifying the reporting system for whistleblowing. Employers must also appoint a person or an organisation to receive and analyse any reports of serious misconduct. Failure to comply with the Act may result in a fine of up to 20,000 euros (22,584 US dollars).

UAE: It has been announced that workers in the private sector in the UAE will have their working time reduced by two hours per day during Ramadan. This will not affect employees' wages.

Dates for your diary:

June 19th 2015: Employers in Ontario, **Canada** are required to provide a copy of the Ministry of Labour's Employment Standards Poster to employees by this date.

June 30th 2015: Employers in **Slovakia** must fulfil the obligations established in the Whistleblowing Protection Act by this date.

June 30th 2015: Employers outside **India** who wish to recruit between 50 and 150 Indian workers must register on the e-Migrate portal before this date.

July 1st 2015: **Australia**'s minimum wage increases to 656.90 Australian dollars per week.

Latest news for business travellers:

Bus controllers are currently striking in Paris, **France** impacting the regularity of bus services. The strike is due to end on Saturday, June 20th at 9am.

The **US** Congress has voted to uphold restrictions on Americans seeking to travel to Cuba. Plans to relax travel restrictions and permit frequent commercial flights to Cuba have been blocked.

In the coming months, **Canada** will be introducing Electronic Travel Authorization (eTA) for certain international travellers. As of March 15th 2016, visa-exempt foreign nationals travelling to Canada by air will be required to obtain an eTA before they board a flight to Canada. eTAs may be applied for online from August 1st 2015.

The **US** State Department has announced they are currently experiencing technical problems with the Consular Consolidated Database (CCD), which is having an impact on the printing of US visas at all consulates and US embassies worldwide. Visa applicants and their employers should expect delays in the processing of their visas.

Official authorities in **Kenya** have issued a public warning that the militant group, al-Shabaab, intend to carry out a number of attacks during Ramadan, therefore travellers should exercise a high degree of caution and be extra vigilant during this period.

Those travelling to the **Maldives** are being advised to exercise a high degree of caution in Malé. There have been many protests in Malé since the arrest of former President Nasheed earlier this year, therefore large public gatherings should be avoided.

The national health authority in **China** has informed the World Health Organisation (WHO) of 15 laboratory-confirmed cases of human infection with avian influenza A (H7N9) virus. Three deaths have also been confirmed. The WHO has provided [advice](#) to travellers.

FedEE news:

FREE LONDON BREAKFAST BRIEFING: We will be holding a breakfast briefing in central London on July 3rd during which Robin Chater, Secretary-General, and Sarah Tibbetts, Head of Legal Research at the Federation of International Employers (FedEE) will talk about recent changes in employment law, labour relations and pay in the principal economies around the world. For more details please see our [website](#). To book your place, please contact Cassandra on cassandra.lu@fedee.com. There will be no charge for attending this event.

WHISTLEBLOWING EVENT: Thank you to all those who attended our live video interview on Whistleblowing and the Law on June 2nd. An interesting discussion was had on the topic of whistleblowing in the UK and Canada. A [recording](#) of this discussion is now available in our Knowledgebase for those who were unable to attend the live event.

UPDATED LAW PROGRAMME PRESENTATIONS: We have now completed the updating of our audio-visual law programme presentations for 2015. Updated presentations are now available for England and Wales, France, Germany, the Netherlands, Poland, Russia, Spain and Sweden. New presentations are also now available for Argentina, Brazil, Mexico, New Zealand, Peru and Venezuela. Our [Law Programmes](#) can be found in the Members' Area.

NETWORK WITH OTHER FEDEE PROFESSIONALS — AND MORE: Don't forget that FedEE's face-to-face networking community (called butN) is now 'live' and available for free to both members and non-members. This is a good opportunity to meet other professionals — particularly during business trips. Join up today at <http://www.but-n.com>.

FOLLOW US: Follow us on [Twitter](#), [Facebook](#) and [LinkedIn](#) for news on upcoming events and discussions on global employment law and HR issues.

Copyright: FedEE Services Ltd 2015

La Federación de Empresarios Internacionales/ The Federation of International Employers (FedEE) is the organisation for international employers operating across Europe. The Federation was founded in 1989 with financial assistance from the European Commission. Our UK postal address is 6th Floor, Broad Quay House, Prince Street, Bristol BS1 4DJ, UK. Tel: 0044 (0)117 975 8611. Web: <http://www.fedee.com>. We utilise virus scan software, but are not responsible for any problems that may arise from the transmission, receipt or use of any material.

In providing the information contained in this communication neither FedEE nor any third party authors are rendering any legal, accounting or other professional advice or opinions on specific facts or matters. Before taking any course of action, you are strongly recommended to seek appropriate professional advice. Where this communication is part of an information society service it shall be subject to our standard terms and conditions. The information transmitted is confidential and intended strictly for the corporate/individual addressee. If you receive this communication in error please notify us as soon as possible and delete it. This message constitutes a commercial communication under Section 7(a) of the Electronic Commerce (EC Directive) Regulations 2002. FedEE's UK Data Protection Notification Number is Z546304X.

The Privacy and Electronic Communications (EC Directive) Regulations 2003: This communication has not been transmitted for direct marketing purposes. However, if you do not wish the address used in this communication to be used again by us for any reason, please inform us by email.