



**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: Collective wage agreements valid until a new one is agreed**

The European Court of Justice (ECJ)'s Advocate General, Cruz Villalon, has stated that old collective wage agreements should remain in force when operations are transferred to a new company and should remain valid until they expire or are replaced by a new agreement.

The opinion was given in relation to a case brought to the ECJ by Austria's Supreme Court. The Court has asked the ECJ to rule whether Austrian Airlines, owned by Lufthansa, were entitled to unilaterally cancel a previous agreement when it transferred its operations to its Tyrolean Airways subsidiary.

The dispute over wages has been on-going for many years. Tyrolean employees are paid according to their previous pay deals, while Austrian Airlines' pay has been frozen. Austrian Airlines have halted talks with its work council after the works council rejected a wage offer. The works council is insistent on basing negotiations on the old Austrian Airlines collective wage

agreements, but the company wants to negotiate on the basis of Tyrolean contracts which are less favourable for employees.

Although the opinion of the Advocate General is not binding, it is followed in most cases. As yet, no date has been set for the ruling of this case but generally, ECJ judgments follow three to six months after the opinion of the Advocate General.

### **Irish Republic: Use of social media at work not gross misconduct**

Ireland's Employment Appeals Tribunal has awarded 7,000 euros to an employee whose dismissal for the use of social media websites during working time was held to be unfair.

The employee in question was dismissed without notice for using social media sites at work. The employer claimed that the employee's actions constituted gross misconduct as she was wasting company time and resources.

The employee, however, claimed that she had fulfilled all her duties and her requests for more



work were ignored, leaving her without sufficient tasks to occupy all her working time. She stated that most of the time she spent on the internet was related to work and if it was not she acted openly and only as a result of boredom. In addition, she had never been provided with contract of employment, payslip or copy of the company's disciplinary procedures. The employer did not have a formal internet use or social media policy and as a result she did not believe she was doing wrong. She was also given no warnings prior to the dismissal.

The Tribunal held that there were no valid grounds for dismissal and there was no gross misconduct on the part of the employee. There was no procedural fairness as no investigation was undertaken or disciplinary procedure followed. [Jane Loughran v Mullingar Electrical Wholesale Ltd – UD 1098/2012]

## **Netherlands: Labour market reform approved**

On June 10th the Dutch Senate approved the draft Work and Security Act by a large majority. As a result, employment law in the Netherlands will change significantly in the coming years.

From July 1st 2015 employers will no longer be able to choose the route through which termination takes place. In the case of dismissal for economic reasons or prolonged incapacity to work, employers will have to gain approval through the UWV. Dismissal for all other reasons will be handled by the magistrate's court. Employees will be able to appeal a decision to dismiss in both cases. In addition, after entering into a settlement agreement or submitting their resignation an employee will have two weeks to change their mind.

Employees who have worked for their employer for at least two years will be entitled to a 'transition fee' upon dismissal from July 1st 2015. This will

be calculated based on the employee's salary and length of service. The fee will be capped at 75,000 euros — or one year's salary for those earning more than 75,000 euros per year. Small businesses forced to make redundancies due to a poor financial situation will be subject to lower severance payments until 2020.

The rules on temporary contracts will also change from July 1st 2015. Successive temporary contracts may become permanent after two years instead of three and a contract will be considered successive if entered into within six months of a previous contract terminating, rather than three. From January 1st 2015 probationary periods may only be included in contracts that are at least six months in length and employers will be obliged to give temporary employees at least one month's notice before the end of their contracts if it is not going to be renewed.

## **Norway: Proposed changes to the Work Environment Act**

The government of Norway has released further details on its proposed changes to the Work Environment Act. The changes concern temporary employment, working time, and the rules on age.

In the area of working time, the government has proposed increasing the maximum limits on overtime from 10 to 15 hours per week and from 25 to 30 hours per month. They have not, however, proposed a change to the current yearly limit on overtime. The government would also like to see the maximum daily working time that may be agreed in individual contracts increased from nine to 10 hours and the maximum daily working time that may be agreed with local representatives increased from 10 to 12 hours.

As regards temporary employment, the government proposes allowing employers to hire new workers on a temporary employment for nine or 12 months without special justification. The



repeated hiring of temporary workers to perform the same work would not be permitted however, and employers would not be allowed to replace one temporary employee with another temporary employee to perform the same work.

Also under the proposal, the ban on Sunday working would be lifted so that employees may work on Sundays in certain circumstances, subject to the agreement of employee representatives. The Working Environment Act age limit might also be increased from the current 70 years to either 72 or 75 years.

The proposal will be sent out for consultation before it is considered by the parliament later this year.

## **Serbia: Tax relief for employers creating jobs**

Amendments to the Law on Social Security Contributions and the Law on Personal Income Tax were adopted in Serbia on May 30th 2014. The amendments offer tax relief for employers who create new jobs, as of next month.

From July 1st 2014 until June 30th 2016, employers will receive a partial refund of income tax and social security contributions paid on the wages of newly hired employees. The total refund will be 65% if the employer creates one to nine new jobs, 70% if the employer creates 10 to 99 new jobs and 75% if they create 100 or more new jobs.

In order to qualify for this tax relief the employer must have been established before March 31st 2014, the hiring of new employees must result in an increase in the total number of employees, the new employees must be registered for social security purposes and the employee must have been registered as unemployed with the National

Employment Service for at least six months prior to being hired. The employer will not receive the tax incentive if the employee was previously employed by the company or a company related to it, or if they already benefit from another employment incentive scheme.

Under the amendments to the Law on Social Security Contributions, it is envisaged that the mandatory pension insurance rate will be increased from 24% to 26% and the mandatory health insurance rate will be decreased from 12.3% to 10.3%.

## **Spain: Draft laws to tackle absenteeism**

The Spanish government is currently preparing new legislation to combat unjustified absenteeism from work. According to the National Statistics Institute (INE), workers were absent from work on average 3.77 hours a month due to temporary incapacity in the fourth quarter of 2013.

The new legislation includes a draft Royal Decree on temporary incapacity which will incorporate tables specifying the average duration of sick leave depending on the diagnosis, occupation and age of the worker. These will be used to determine the impact of different types of illnesses on work activity.

In addition, the government is preparing modifications to the Law on Social Security with its Bill on mutual insurance companies. The Bill gives more powers to these companies by allowing them to keep track of sick leave from the very first day. They will be entitled to ask the employee to return to work if they consider this appropriate, however, the public health service will have the final say on the matter.

It is expected that both proposed laws will be approved by the Council of Ministers on July 4th 2014.



## **UK: Employees not protected from associative discrimination**

The UK Court of Appeal has held that employers are not under a duty to make reasonable adjustments for an employee associated with a disabled person.

The employee in question had a daughter who suffered from Down's syndrome. She had requested a compassionate transfer to another workplace to enable her daughter to access specialist education facilities. The request was refused and she alleged that the employer had breached their obligation to make reasonable adjustments. As it had already been agreed at the Employment Appeal Tribunal that the Equality Act 2010 did not confer on the employer the duty to make reasonable adjustments for persons associated with the employee, the appellant sought to rely on the Council Directive 2000/78/EC.

The Court held that the relevant Article of the Directive, like the Equality Act, was limited to employees, prospective employees and trainees. To extend the Article to associated persons would be 'hopelessly uncertain' and any attempt to use the Article to protect an associated person would be 'doomed to failure'. The circumstances were distinguished from those in an earlier case that suggested that claims of associative discrimination may be successful, because the claimant in that case had herself been positively discriminated against. [(2014) EWCA Civ 763]

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

**BULGARIA:** According to preliminary data from the National Statistical Institute of Bulgaria, the average monthly wages in the private sector fell by 3.4% between Q4 2013 and Q1 2014 — from 806 lev (410 euros) to 778 lev (396 euros). When compared to Q1 2013, however, average wages in the private sector rose by 0.5% in Q1 2014.

**EUROPE:** Following its assessment of eight countries' readiness to join the eurozone, the European Commission has proposed that Lithuania become the 19th country to adopt the euro, on January 1st 2015. The Commission determined that Bulgaria, the Czech Republic, Croatia, Hungary, Poland, Romania and Sweden did not yet fulfill all the criteria to join the eurozone but they will reassess the situation in these countries in two years' time. The Council of Ministers will formally decide in July whether or not to accept Lithuania into the eurozone.

**FRANCE:** Every three-month period of maternity leave taken by an employee in France will now be taken into account for the calculation of the employee's pension. Under the old rules, only one period of three months could be considered — even if the employee took six or more months of maternity leave (in the case of a third child or multiple births). The new law came into force on June 1st 2014. It applies equally to adoption leave but will only concern births and adoptions taking place after January 1st 2014.

**GERMANY:** Hourly labour costs in Germany increased by just 1.1% in Q1 2014 when compared to Q1 2013, according to the Federal Statistical Office. This is the lowest increase since Q3 2010. The cost of gross earnings increased by 2.3% in the first quarter of 2014 in comparison to the same period in 2013, but non-wage labour costs fell by 3%. The low increase in labour costs has been attributed to a low sickness rate — the number of sick days taken by employees in Q1 2014 was 22% lower than in Q1 2013.

**LITHUANIA:** The National Tripartite Council of Lithuania — composed of representatives for employers, trade unions and the government — has decided to postpone discussions on raising the national minimum wage. Talks will now recommence in August. The minimum wage was last increased on January 1st 2013 and currently stands at 1,000 litas (290 euros) per month.



**NETHERLANDS:** The Dutch Cabinet is expected to cut labour taxes after the Summer in an attempt to stimulate employment. The government is currently working on the details of the cuts which will make it easier and cheaper for companies to take on staff. It is likely, however, that the reforms will be less radical than previously suggested.

**POLAND:** The government of Poland has proposed to increase the national minimum wage next year, from the current 1,680 zloty (406.65 euros) per month to 1,750 zloty (423.59 euros) per month. The only exception to the minimum wage in Poland is during the first year of employment when an employee's wage may not be lower than 80% of the national minimum wage. In 2015, this figure would be 1,400 zloty gross per month.

**UK:** The UK government has published a list of 25 employers who have not paid their employees the national minimum wage. It is the largest number of employers publicly named since the scheme was announced last year. Between them, these employers owe their workers more than £43,000 in arrears (approximately 53,027 euros) and must pay fines that total more than £21,000 (approximately 25,889 euros). Twelve of the 25 employers underpaid their workers by four-figure sums.

## Other European HR News in Brief

**CROATIA:** Croatia's Prime Minister, Zoran Milanovic, has announced that Croatia will apply to join the Schengen zone on July 1st 2015. By that date, Milanovic believes that the country will have fulfilled all the necessary criteria and will be ready to undergo a final evaluation. In order to meet Schengen requirements, the government has adopted a regulation regarding safe border control.

**CZECH REPUBLIC:** Green cards are to be abolished in the Czech Republic and replaced by "employee cards". As a result of the changes, from June 24th 2014, any citizen from outside the EU who wishes to work in the Czech Republic will no longer have to submit separate residence and employment permits — instead they can submit one combined application. Employee cards will be issued by the Ministry of the Interior to fill vacancies included in the central register of vacancies and authorised by the Ministry of Labour and Social Affairs. Blue cards — used to employ highly qualified foreigners — will remain in force.

**EUROPE:** The European Commission has published a new Strategic Framework on Health and Safety at Work, which sets out EU objectives for 2014–2020. The Strategic Framework identifies the three main challenges in the area of health and safety as the implementation of rules, the prevention of diseases and the ageing workforce. To address these problems a variety of actions are proposed under seven key strategic objectives. These include, amongst others: simplifying legislation to eliminate excessive administrative burdens, providing support to small businesses to help them better comply with health and safety rules, and tackling existing and new risks such as green technologies and biotechnologies.

**FINLAND:** Amendments to the laws on non-discrimination and equality have been proposed by the government in Finland. If adopted, these amendments would extend the obligation to promote non-discrimination in the workplace to private-sector employers. Currently this obligation only applies to public authorities. Private-sector employers would have to assess non-discrimination in the workplace and develop appropriate business practices to encourage non-discrimination. Companies with 30 or more



employees would also have to draft a separate plan for promoting non-discrimination. Removal of the maximum cap on discrimination compensation payments is also proposed under the amendments.

**FRANCE:** The Supreme Court of France has recently confirmed the consequences of not following the correct dismissal procedures when terminating a fixed-term contract early. The Court ruled that not inviting an employee to a preliminary interview before terminating their contract early on the grounds of serious misconduct did not call into question the validity of the termination. It did, however, constitute a procedural error entitling the employee to compensation. [Cass. Soc. May 14th 2014, no. 13-12071]

**MALTA:** According to a report by Malta's National Statistics Office, 657 employees were involved in non-fatal accidents at work in Q1 2014. One fatal accident was also reported during this time. Almost one-third of these occupational accidents took place at companies that employ over 500 employees and the most common injuries suffered were wounds, superficial injuries, dislocations, strains and sprains. Nearly 25% of the accidents recorded occurred in the manufacturing sector, 16.4% in the construction sector and 13.1% in the transportation and storage sector. The number of accidents rose in all of these sectors when compared to Q1 2013 — there were 31 more accidents in the transportation and storage sector, 29 more in manufacturing and 19 more in construction. However, in the wholesale and retail sector there were 35 fewer accidents.

**NETHERLANDS:** Dutch citizens are now able to initiate legal proceedings using an online magistrate — the eKantonrechter. Provided both parties agree, citizens may use the online magistrate to commence labour dispute

proceedings with an expected value of less than 25,000 euros. A decision will then be received within eight weeks. It is anticipated that this service will be extended to companies after the Summer.

**SPAIN:** A recent decision by the Supreme Court of Spain has broadened the meaning of a commuting accident. The Court ruled that an accident which occurred during the weekend whilst a worker traveled from their family home to their usual residence for employment purposes should be classified as a commuting accident. This was because the main purpose of the employee's trip was to get to work. The increase of labour mobility generated by the economic crisis is one of the reasons why the Court has been willing to extend the definition of commuting accidents.

**UK:** The UK's Department for Business, Innovation & Skills has published its annual report on trade union membership. The data reveals that trade union membership among private-sector employees remained stable between 2012 and 2013 at a level of 14.4%. Between 1995 and 2010, trade union membership in the private sector declined by 27%. Between 2010 and 2013, however, it increased by 7%.

**UK:** In the UK, the Advisory, Conciliation and Arbitration Service (ACAS) has released new guidance with regards to transfers of undertakings, in light of the January amendments to the Transfer of Undertakings (Protection of Employment) Regulations 2006. The guidance can be found at <http://www.acas.org.uk/media/pdf/i/h/Handling-TUPE-Transfers-The-Acas-Guide.pdf>. ACAS has also published advice to assist employers who seek to maintain a harmonious workplace throughout the World Cup (see <http://www.acas.org.uk/index.aspx?articleid=2953>).



## FedEE News

**FEDEE GOING GLOBAL:** FedEE is going global and as such you will notice a number of changes occurring over the next few months. The most significant of these will be the change of our name to the Federation of International Employers. In order to bring you information and support for key jurisdictions around the world we are joining forces with both Baker and McKenzie and the Multilaw network. We will be broadly expanding the geographical coverage of our HR knowledgebase and our law programme will be extended to cover a number of Latin American countries. In addition, we shall soon be offering a range of packages to help you keep up to date with developments in employment law — such as a periodic review of your employment policies to ensure on-going legal compliance. For news of the latest developments, please see announcements on our website and in the newswire.

**TRAINING FILM OFFER:** FedEE's professionally produced training film on workplace racial discrimination is now available on special offer at just £59.94 (+ VAT where applicable, free P&P). To purchase a copy while this offer lasts please follow the following link to our online [eShop](#).

**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](mailto:membershipservices@fedee.com).

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