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Canada: New employee information requirements in Ontario

Following amendments to the Employment Standards Act, employers in Ontario, Canada are now required to provide a personal copy of the Ministry of Labour's Employment Standards Poster to each of their employees.

A copy of the poster must be provided to current employees (as at May 20th 2015) by June 19th 2015. Employees hired after May 20th 2015 must receive a copy of the poster within 30 days of commencing their employment.

The copy of the poster may be provided to employees in printed form or it may be sent to the employee via email attachment or via a link to the document online. It is important, however, that if sent electronically the employee has reasonable access to the internet, a computer and a printer.

If requested by the employee, the poster must be provided in a language other than English. Translated

versions of the poster may be obtained from the Ministry of Labour.

The poster, which provides key information on working time, minimum wage and leave rights, must also continue to be posted in a conspicuous place in every workplace.

France: Employee burnout to be recognised as occupational disease

The French National Assembly has approved an amendment to the draft law on social dialogue, which would ensure psychological illnesses could be recognised as an occupational disease. This would mean that employee burnout could be recognised as an occupational disease in the same way as other work-related illnesses.

Despite this amendment, psychological illnesses are not to be included in the list of occupational diseases used by doctors to recognise work-related diseases. Instead, psychological illnesses will be addressed through a complementary system of recognition of

occupational diseases. In this way, such illnesses would be subject to special treatment by the primary sickness insurance fund and the regional committees for recognition of occupational diseases. The exact way these illnesses will be dealt with will be specified in a decree.

The draft law on social dialogue is currently making its way through the legislative process.

Germany: Application of minimum wage challenged

The European Commission has commenced legal action against Germany in relation to the application of its minimum wage legislation.

The legislation, which introduced a minimum wage rate of 8.50 euros per hour on January 1st 2015, applies to all companies outside of Germany that provide services within German borders. This means that foreign truck drivers passing through the country on their way to another destination must be paid 8.50 euros per hour once they cross the German border until they leave the country. This not only increases costs for foreign haulage companies from countries with a significantly lower national minimum wage than that of Germany, but also increases the administrative burden on these companies.

Germany is the only country in Europe to include transit workers in its minimum wage legislation and the Commission believes that doing so disproportionately infringes the fundamental EU principles of freedom to provide services and the free movement of goods.

At the end of January 2015, Germany decided to suspend the law's application to foreign drivers following a barrage of complaints from foreign companies. Germany now has two months to respond

to the European Commission. If the issue cannot be resolved, the case may be settled in court.

Global: Company maternity leave policy trends

Multinational companies are currently displaying a trend to offer their employees maternity leave rights that significantly exceed minimum requirements set under statute.

Earlier this year, Accenture, the multinational management consulting, technology services and outsourcing company, doubled its maternity leave benefits in the US so that their full-time and part-time employees are now entitled to up to 16 weeks of paid leave. In the US, qualifying female employees are only guaranteed 12 weeks of unpaid maternity leave under the Family and Medical Leave Act.

On May 1st 2015 the company increased the amount of paid maternity leave granted to full-time and part-time employees in India to 22 weeks. This is considerably beyond the current minimum statutory requirement of 12 weeks. Under the company maternity leave policy, employees also receive additional rights — such as the right to four weeks of paid leave when they suffer from an illness directly related to their pregnancy.

Most recently the company announced that full-time and part-time employees in Argentina will be entitled to five months of paid maternity leave. Under Argentinian law, employees are entitled to a minimum of three months' paid maternity leave.

The multinational telecommunications company Vodafone recently became the first multinational company to offer a global harmonised maternity policy to cover its employees in Africa, the Middle East, Asia-Pacific, Europe and the US — regardless of local

statutory requirements, which differ considerably around the world. Under the policy, female employees are entitled to at least 16 weeks of fully-paid maternity leave and, furthermore, will be paid a full-time wage for working 30-hours per week during the first six months after their return to work.

For more information about minimum statutory maternity leave requirements around the world, please see our [comparative guide](#) on the topic in our HR Knowledgebase.

Irish Republic: Reform of employment dispute resolution system

The Workplace Relations Act has now been signed into law in the Republic of Ireland. The Act, which is expected to come into force on July 1st 2015, will substantially reform the way in which employment and equality disputes are resolved in Ireland.

Under the Act, a new body called the Workplace Relations Commission will be established. This Commission will merge the services currently provided by the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal, the Employment Appeals Tribunal and the Labour Court. The Workplace Relations Commission will deal with any disputes at first instance whilst the Labour Court will deal with cases on appeal. This simplified system will eradicate the current problem of employers having to defend a single claim in a number of different forums and should allow disputes to be resolved more quickly for all parties concerned.

The Act also provides for the standardisation of the limitation periods for the referral of a dispute under any employment or equality law will. The limitation period will be six months — extendable to 12 months where 'reasonable cause' can be demonstrated.

Additionally, as part of the reforms, employers may face fines of up to 50,000 euros and even imprisonment for non-compliance with employment and non-discrimination laws.

Singapore: Employee and former employee found in breach of duty of confidentiality

In a recent case, Singapore's High Court found both a current and former employee of a company to have breached their duties of good faith, fidelity and confidence towards the company.

In this case, an employee of the company Tempcool Engineering was discovered to have sent documents containing information about Tempcool's business to a former employee who, after leaving Tempcool, had joined one of its direct competitors. The documents contained copies of technical drawings, details of pricing information and filing labels, all of which was considered by Tempcool to be confidential information.

For a successful action in breach of confidence, the information must be confidential, the information must have been imparted (or received) in circumstances such as to import an obligation of confidentiality, and there must be unauthorised use of the information and detriment.

Based on the analysis of the facts, the Court considered that the drawings and pricing information were confidential but that the filing labels were not. It was found that the drawings and pricing information had been used by the employee and former employee without authorisation and to the detriment of Tempcool.

As regards the obligation of confidentiality, this was found to exist in relation to both the employee and former employee. Although the employee did not have a formal employment contract with Tempcool, the

Court held that even without an express term in an employment contract there will be a duty against the use or disclosure of confidential information imposed on employees. By sending the drawing and other information to a third party, the employee had violated this duty.

As the former employee was no longer an employee of Tempcool he did not owe a duty of fidelity to the company. However, the Court held that he was a third-party who had acquired this confidential information knowing that such data had been acquired in breach of confidence and therefore was subject to an equitable duty of confidence.

The decision is being appealed in the Court of Appeal. [Tempcool Engineering (S) Pte Ltd v Chong Vincent and others [2015] SGHC 100]

UK: No employer liability for unforeseen illness caused by work-related stress

A recent decision of the High Court of England and Wales has demonstrated that employees will have to overcome very high hurdles if they wish to establish that their employer should have foreseen their work-related injury.

In this case, an employee was suffering from depression. He had been absent from work for five months and was receiving treatment for his condition. Just a few days after the start of his staged return to work, he was deemed to be unfit to work. The employee claimed that his depression was a result of occupational stress — he was working excessive hours and workplace changes were causing severe disruption. He claimed that his employer had breached their duties in respect to their management of his return to work and claimed damages for psychiatric illness and consequential loss caused by work-related stress.

The Court took note of a variety of factors including the fact that the employee had had a long career managing large retail stores and no history of psychiatric or psychological illnesses. He also did not raise his concerns to his employer in such a way that the employer should have known there was a risk of him suffering from excessive stress. Therefore, the Court found that his illness was not foreseeable and held that the employer had not breached their duty of care to the employee.

According to the Court, in the absence of being made aware of any specific issues, an employer has the right to assume that the employee can cope with the normal pressures of their employment. Employers are under no general duty to make invasive enquiries and can take what the employee tells them at face value. [Easton v B&Q Plc (2015) EWHC 880]

USA: Actual knowledge not necessary for successful religious discrimination claim

The Supreme Court of the United States has issued an important ruling stating that an employer may not take an individual's religious practice into consideration when making any type of employment decision. This is the case whether or not the religious practice has been confirmed by the individual in question.

In the case brought before the court, a Muslim woman applied for a sales job at the clothing store Abercrombie & Fitch. At her interview she wore a headscarf, but she did not ask the employer to make a religious accommodation so that she could wear her headscarf at work, nor did she inform them that this would be necessary. She was not given the job because her headscarf was in breach of the company's strict dress code which did not allow employees to wear black items or head wear.

The Equal Employment Opportunity Commission commenced legal action on the job candidate's behalf, claiming that the employer had infringed provisions contained in the 1964 Civil Rights Act. The Civil Rights Act bans a prospective employer from refusing to hire a candidate on the basis of their religious practice when the practice could be accommodated without excessive hardship.

The employer argued that they could not be found to have treated the candidate unfairly as they did not have 'actual knowledge' of the candidate's need for religious accommodation. However, the majority of the Supreme Court disagreed with this argument, stating that actual knowledge was not necessary — simply showing that need for a religious accommodation was a motivating factor in the employer's decision not to hire the candidate is sufficient to demonstrate a breach of the Civil Rights Act. [Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, No. 14–86. June 1st 2015]

Pay, Tax and Benefit Trends

AUSTRALIA: Wage growth has reached a record low in Australia. According to the country's Bureau of Statistics, seasonally adjusted wages increased by 2.3% from March 2014 to March 2015, which is the lowest rate of year-on-year wage growth since records began in 1998. Private sector wage growth (2.2%) was a little lower than the growth in the public sector (2.4%).

CHINA: The Chinese government has announced that they will be offering tax breaks to companies that employ individuals who have been unemployed for a period exceeding six months. Previously, tax breaks were only offered if an individual had been jobless for at least one year. Companies that generate a considerable number of jobs will also have priority in bids for large-scale projects.

DOMINICAN REPUBLIC: On June 1st 2015 minimum wage rates in the Dominican Republic increased by 14%. In the Dominican Republic there are three main minimum wages for the private sector, which depend on the size of the company. Workers employed in large companies must now receive a minimum of 12,873 Dominican pesos (288 US dollars) per month whilst workers in medium-sized companies must receive at least 8,850 Dominican pesos (197 US dollars) per month and workers in small companies must receive at least 7,483 Dominican pesos (167 US dollars) per month. Other special minimum wage rates exist — for example for agricultural workers who work 10 hours per day and security guards.

FRANCE: The French Council of State has issued an interesting decision on the taxation of extra compensation received by employees for work performed abroad (the so-called 'expatriate bonus'). Employees who are French tax residents receive a partial exemption of personal income tax on this expatriate bonus, but only if a number of conditions are fulfilled. One of these conditions is that the tax exemption must not be more than 40% of the employee's annual gross salary. The Tax Authorities believed that this tax exemption should be evaluated on the basis of daily compensation. However, the Council of State had held that this 40% threshold should actually apply to the whole amount of compensation for the tax period — the threshold should not be evaluated on the basis of the days spent working outside of France alone [Conseil d'État n° 365851].

INDIA: The government of Odisha in India has agreed to raise minimum wage rates in the state in accordance with the recommendations of the state advisory committee. Trade unions, workers and the public still have an opportunity to object to the measure, however. Based on the recommendations, the minimum wage for unskilled workers will increase from 150 rupees (2.35 US dollars) per day to 200 rupees (3.13 US dollars) per

day; the minimum wage for semi-skilled workers will rise from 170 rupees (2.66 US dollars) per day to 220 rupees (3.45 US dollars) per day; the minimum wage for skilled workers will increase from 190 rupees (2.98 US dollars) to 240 rupees per day (3.76 US dollars); and the minimum wage for highly skilled workers will rise from 205 rupees (3.21 US dollars) to 260 rupees (4.07 US dollars) per day.

LATVIA: According to Latvia's Central Statistical Bureau, the average gross monthly wage for a worker in the private sector was 773 euros in Q1 2015. In Q1 2014 the average gross monthly wage was 723 euros and in Q4 2014 it was 755 euros. When comparing rates with neighbouring countries, the highest average gross monthly wage in Q1 2015 was found in Estonia (1,010 euros) and the lowest average gross monthly wage was recorded in Lithuania (700 euros).

ROMANIA: A draft law to encourage the employment of young workers is currently being considered in Romania. Under the draft law, employers who provide a person aged between 16 and 29 years with their first job would receive a bonus payment equal to the monthly gross minimum wage. This would be payable for each young employee hired under the scheme. In addition, the employer would be exempted from paying social security contributions in relation to that young person for a period of 18 months. In order to be eligible for the scheme the employer must hire the young person on a full-time basis and for an indefinite term. The employer must also maintain the employment relationship for at least 36 months. If approved, the law will enter into force on January 1st 2016.

SWITZERLAND: Employers and trade unions in Switzerland have reached agreement on the terms of a new collective bargaining agreement for the temporary work sector. The new agreement will take effect from April 2016 and last until the end of 2018. The agreement includes a gradual increase in the minimum

wage, flexible working time and an increase in the daily working day from nine hours to nine and a half hours.

UK: The new UK government has announced plans to implement a tax freeze. The National Insurance Contributions and Finance Bill will ensure that tax rates will not rise over the next five years. This includes VAT, income tax and employers' and employees' national insurance contribution rates.

USA: The City Council of Los Angeles in the US has initially agreed to increase the city's minimum wage rate to 15 US dollars per hour by July 2020. Starting in 2016 the minimum wage will increase each July 1st. The minimum wage will increase to 10.50 US dollars in 2016, 12.00 US dollars in 2017, 13.25 US dollars in 2018, 14.25 US dollars in 2019 and, finally, 15.00 US dollars in 2020. From 2017 there will be a different minimum wage schedule for companies with 25 employees or fewer. A final vote on the matter still needs to take place before the law will be signed by the mayor, Eric Garcetti, and come into force.

Other Global HR News in Brief

AUSTRALIA: Departing from its normal approach to the termination of expired enterprise agreement, the Australian Fair Work Commission (FWC) recently terminated 12 such agreements. If an enterprise agreement reaches its expiry date, it will continue to run indefinitely until it is either replaced by another enterprise agreement or terminated by the FWC. It is rare, however, for the FWC to terminate an agreement after the expiry date has passed, as two conditions need to be fulfilled: it must not be against public interest and it must be appropriate to terminate given the circumstances. In the case of these agreements the FWC considered both conditions to be satisfied, notably because the negotiations had reached an impasse, there were no proposals to reduce wages and the changes the company wanted to make were

rationality based on modifying inefficient work practices. [(2015) FWCFB 540]

CANADA: As of May 20th 2015, employers in Ontario, Canada may be required to carry out a self-audit on their compliance with the Employment Standards Act and submit a report on their findings. Upon receiving written notice of a self-audit from an Employment Standards Officer, an employer will be required to check the company's compliance with all aspects of the Employment Standards Act, including minimum wage, overtime pay, annual leave pay and rest period provisions. The Officer may oblige the employer to explain what measures are being taken to ensure that the company is fully compliant with the law. If an employer finds that they are violating legal provisions, they will need to demonstrate what measures they have taken, or will take, to resolve the problems.

CHINA: On June 1st, a law prohibiting smoking in public places in China's capital city, Beijing, came into force. The smoking ban includes offices and workplaces. If a company's premises are found to not comply with the new law, they may face a fine of up to 10,000 renminbi (1614 US dollars).

CYPRUS: Cyprus' Federation of Employers and Industrialists has submitted to the country's President and Minister of Labour a draft law restricting the right to strike. The draft law proposes banning strikes in 'essential services' as well as political strikes and spontaneous strikes. The establishment of a Committee of Arbitrators, which would deal with all disputes in essential services after the completion of any other dispute settlement procedures, has also been proposed. The Federation is urging for the law to be adopted and submitted to a vote in parliament. The proposals have drawn strong criticism from trade unions.

HUNGARY: Hungary has published draft legislation to introduce a quota system for non-EEA workers. The

quota system, which is expected to come into force on July 1st 2015, would limit the number of employees in Hungary from outside the EEA to the monthly average reported workplace demand in the previous year. The exact maximum number of foreign workers would be published in the Official Gazette on February 1st of each year. In 2015 the quota would be published on July 1st.

NORWAY: According to the latest report by Statistics Norway, trade unions had 1,780,000 members on December 31st 2014. This is 33,200 more than on the same date in 2013. In contrast, membership of employers' associations in 2014 changed only marginally in comparison to 2013. In Norway, over 90% of trade union members belong to LO, YS, Unio and Akademikarane.

UK: A number of provisions in the Small Business, Enterprise and Employment Act 2015 have now come into effect in the UK. Amongst these provisions is one that makes the use of exclusivity clauses in zero-hour contracts unenforceable. As such, employers who do not offer guaranteed work to their staff are no longer allowed to prohibit these workers from undertaking work for other employers. The new Act also provides a statutory definition of a zero-hour contract.

UK: The UK's Advisory, Conciliation and Arbitration Service (ACAS) recently published its 'top tips' on managing mental health in the workplace. ACAS states that managers should look out for early signs that an employee may be suffering from depression, such as an unexpected loss of motivation, however they should not assume that change in an employee's behaviour necessarily means they have a serious issue. Managers should talk to an employee privately and informally to establish what is wrong and, depending on the cause of the problem, act accordingly to try to remedy the situation. ACAS reminds employers that having an appropriate company policy in place can help create a workplace

culture that encourages employees to disclose any problems they are facing, if they so wish. In addition, the HR department should train managers and employees to ensure mental health issues are handled with care.

UKRAINE: A new draft Labour Code is currently in the final stages of development in Ukraine. During a recent

presentation of a package of legislative reforms, the head of the parliamentary committee on social policy, employment and pensions, Lyudmila Denisova, announced that Parliament should be adopting the new Labour Code by the end of 2015. The current Labour Code, which is the main legislative act governing employment relationships in Ukraine, dates back to 1971.

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.

July 1st 2015: The national minimum wage in the **Netherlands** increases to 1,507.80 euros per month.

July 1st 2015: The Workplace Relations Act is due to come into force in the **Irish Republic**.

July 1st 2015: The minimum hourly wage in **Fiji** increases from 2 Fijian dollars per hour to 2.32 Fijian dollars per hour.

July 1st 2015: Companies in the **UAE** will be able to issue shares as part of an employee share scheme.

July 31st 2015: In Dubai, **UAE** companies with between 100-999 employees must have health insurance cover for their employees from this date.

Latest news for business travellers:

Air traffic controllers in **Spain** are set to strike on June 8th, 10th, 12th and 14th. They will strike for two hours in the morning and two hours in the afternoon.

On June 9th 2015, a nationwide 24-hour transportation strike is due to take place in **Argentina**, which will cause major disruptions to the country's public transport services.

The **Republic of Korea** and **Singapore** have implemented screening arrangements for any travellers arriving from countries affected by Middle East Respiratory Syndrome Coronavirus (MERS-CoV). A number of confirmed MERS-CoV cases have now been reported in the Republic of Korea.

An increase in volcanic activity in Mount Sinabung in **Indonesia** has caused the official alert level to be raised to the highest level.

Following an attempted military coup on May 13th 2015, **Burundi** is experiencing civil unrest and violence. As a result of the precarious security situation, the legislative elections and presidential elections have been postponed. No new dates have been announced.

Baggage handlers working for Ryanair are staging an indefinite strike in Barajas Airport — **Spain's** largest airport in Madrid. Passengers are therefore unable to travel with hold luggage.

Travellers to **Brazil** should be aware that the number of dengue fever cases in the country has increased considerably in 2015, particularly in the south-east and central-west.

On June 18th there will be strike action affecting metro services in Lisbon, **Portugal**. This will be the seventh strike of the year. Various companies in the transport sector will also be striking between June 15th and 19th.

FedEE news:

DRINKS RECEPTION: We will be holding an evening drinks reception in central London for HR and legal professionals at 5pm on Thursday, July 2nd. During the course of the evening an eminent employment QC will be addressing us on trends and developments in employment litigation. If you are interested in attending, please contact Cassandra on cassandra.lu@fedee.com for more details. 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.

Our speakers, Stephen Ratcliffe of Baker & McKenzie, London and Chris Burkett of Baker & McKenzie, Toronto, began by giving an overview of the law on whistleblowing in their respective jurisdictions — the main difference between the two jurisdictions being that no specific whistleblowing legislation exists in Canada to protect employees in the private sector, whilst it does in the UK.

The discussion then moved on to consider the purpose of whistleblowing protection and the negative consequences that can arise from this increased protection. In the UK, for example, the whistleblowing legislation is occasionally used in bad faith — particularly by executive employees — to either delay a dismissal or to negotiate a better termination deal.

Our speakers talked a little about case law in their respective jurisdictions before addressing the issue of company whistleblowing policies. It was agreed by both speakers that whistleblowing policies can benefit employers in a number of ways — not only does having a whistleblowing procedure show an employer's commitment to compliance, it also encourages employees to report wrongdoing internally before taking their complaint outside the company.

Whistleblowing hotlines and the issues of data protection were briefly touched upon before our speakers moved on to deal with the consequences of making a false claim. Stephen Ratcliffe highlighted the fact that under UK law employees do not have to make a correct claim in order for them to be protected,

provided they believe that what they are reporting is accurate. In Canada, the employee's duty of loyalty to their employer is considered very important and so employees who honestly, but mistakenly, make a disclosure of wrongdoing are less likely to be looked upon favourably by their employer.

Finally, the involvement of employee representatives and the scope of whistleblowing legislation — both currently and in the future — was considered, as was the offering of monetary rewards as an incentive to whistleblowing.

NEW COMPARATIVE GUIDES: New country comparisons on the topics of [maternity leave](#) and [whistleblowing](#) are now available in our HR Knowledgebase.

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>.

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