



**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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### Belgium: Cross-border employment contracts may be in another language

In Belgium, the Flemish Parliament has amended the Flemish Decree regarding use of languages in employment relationships. This is in response to a judgment by the European Court of Justice in April 2013 in which it was held that the requirement to draft cross-border employment contracts exclusively in Dutch was not proportionate to its aims and breached the principle of free movement of workers. The amendments entered into force on May 2nd 2014.

The Decree still requires employment documents to be written in Dutch, but in the case of cross-border employment an authentic version of the employment contract may also be drafted in a language known by all of the parties. Where there is a difference between the Dutch version and the second-language version of the employment contract, the Dutch version will prevail.

This "second-language rule" only applies to employment contracts — it does not apply to any other employment document. In addition,

employment contracts of non cross-border employees working in Flanders continue to be subject to the "Dutch-only rule".

### Europe: Holiday pay should take into account commission

The European Court of Justice has issued its judgment in the case of Lock v British Gas Trading Limited, clarifying the calculation of holiday pay with regards to employees who usually earn commission. The Court highlighted that holiday pay is intended to ensure that the employee is in the same position financially as he would have been had he worked. As a result, if the employee would have earned commission during this period it must be accounted for in the holiday pay.

The employee in question received a base salary, supplemented by a commission determined by the number of the employer's products he sold. The payment for this commission was frequently made in arrears owing to the need to finalise contracts with the new customers.



The Court differentiated between the commission the employee would have been paid whilst on annual leave and the commission he would have earned. It stated that the employer must also account for the commission that the employee would have earned. Where this was not done, it noted, the adverse effect on the following month's wages may discourage the employee from taking further annual leave, contradicting an objective of the Working Time Directive.

When calculating what must be included in holiday pay, the Court referred domestic courts to the earlier case of Williams, which asserts that holiday pay should include any "aspect which is intrinsically linked to the performance of the tasks which the worker is required to carry out". The Court held that the commission was directly linked to the tasks required by the employee and hence should be included in his holiday pay. [Case C 539/12]

## Europe: Directive on supplementary pension rights

On May 20th 2014, Directive 2014/50/EU "on minimum requirements for enhancing worker mobility between member states by improving the acquisition and preservation of supplementary pension rights" came into force. Member states have until May 21st 2018 to implement the Directive into their national legislation.

The Directive does not cover the "portability" of supplementary pension schemes linked to an employment relationship, but it does safeguard the supplementary pension rights of employed and self-employed persons moving within the EU.

Under the Directive, vesting periods and/or waiting periods are limited to a total maximum of three years and the minimum age for starting the vesting of pension rights may not be higher than 21 years. When an individual's employment is terminated before they achieve vested pension

rights, the supplementary pension scheme will have to reimburse the contributions paid by, or on behalf of, the employee.

Individuals also have a right to information on how termination of employment would affect their supplementary pension rights, but this need not be provided more than once a year.

Although the Directive does not provide for the transfer of vested supplementary pension rights, it does state that member states should endeavour to improve transferability of vested pension rights.

## Europe: Labour Force Survey published

The European Union's statistical office, Eurostat, has published the results of the 2014 Labour Market and Labour Force Survey Statistics providing indicators for part-time employment, working time and limited duration contracts during 2013.

In 2013, 20.4% of employees worked part-time in the EU representing an increase of 0.5% from 2012. The highest proportions of employees in part-time employment were in the Netherlands (52.4%), Germany (27.6%), Austria (26.5%), the UK and Denmark (both 26.4%) and Sweden (26.3%). However, the lowest proportions were found in Romania (0.7%), Bulgaria (2.2%), Slovakia (5.1%) and the Czech Republic (6.1%). Part-time workers typically worked 20.2 hours per week. Part-time employees in Romania and Belgium worked the longest hours (24.3 hours each week) while part-time workers who worked the shortest weeks were in Portugal (18.0 hours), Germany (18.4 hours) and Denmark (18.4 hours).

Those working in full-time employment worked approximately 40.4 hours a week. Employees in the UK and Austria worked the longest hours each week with an average of 42.4 and 41.6 hours respectively. However, employees worked less than 39 hours a week in Denmark, Italy, the



Netherlands and Ireland.

13.8% of workers in the EU are on limited duration contracts. The countries with the highest proportions of employees on limited duration contracts were Poland (26.9 %), Spain (23.4 %), and Portugal (21.5 %). However, the figures were much lower in Romania (1.5 %), Lithuania (2.7 %), Estonia (3.5 %) and Latvia (4.4 %).

## **Irish Republic: Duty to provide a safe place of work**

A recent High Court decision in Ireland demonstrates the importance of having clear safety policies in the workplace.

Mr Usai was employed by Nethercross after being dismissed from his previous employment for assaulting another employee. His current general manager knew of this incident but did not notify the managing director during the recruitment process. Whilst employed by Nethercross, Mr Usai assaulted a colleague during a meeting, giving him a black eye, cuts, contusions, swelling and bruising as well as causing him post-traumatic stress. The employee claimed that his employer, Nethercross, was both vicariously liable for the attack and in breach of his duty to provide a safe place of work.

The High Court found that the required close connection between the employment and the tortious act could not be established and to hold otherwise would amount to imposing absolute liability on an employer. Therefore, the employer was not found to be vicarious liable for the attack.

As regards the claim that the employer had failed to provide a safe place of work, however, the Court agreed, holding Nethercross and Mr Usai jointly liable. The Court considered that, having been aware of the previous assault, the general manager knew or ought to have known that there was a very real risk that Mr Usai could become

violent. It was therefore reasonably foreseeable that Mr Usai could be a danger to other employees. Nethercross failed to take steps to protect against the danger of another assault — in particular the Court highlighted the fact that there was no policy that identified what conduct would not be accepted. The company had also failed to write to Mr Usai to notify him that physical violence would not be tolerated in the workplace and would result in dismissal on the grounds of misconduct. [Elmontem v Nethercross Ltd t/a Roganstown Golf and Country Club and Max Usai [2014] IEHC 91]

## **Italy: Ruling on transfer of part of a business**

The Supreme Court of Italy has recently ruled on the concept of a company in the context of a transfer of part of a business. The issue addressed by the Court was whether the transfer that took place amounted to a transfer of an undertaking or a mere transfer of employees.

The Court ruled that a company cannot be deemed to exist when it is made up solely of intangible assets — it is necessary for there to also be tangible assets, however minimal they may be. This is crucial under the definition of a company under Article 2555 of the Italian Civil Code.

A part of a business needs to be understood as an independent function of an organised economic activity at the time of transfer. The following might indicate this: tangible resources assigned to the department; managerial personnel in charge of the activity of the department and department resources; a separate budget for the department; separate offices and the exclusive provision of capital goods. As the transferor in question was not able to provide evidence of such things, it could not be said that any more than a transfer of a service and a number of employees had taken place. The relationship between the



transferor and its employees therefore remained unchanged by the sale. [Case number 8756].

## **UK: Harsher penalties for hiring illegal workers**

The maximum penalty for employers in the UK who do not comply with the law on illegal working has just been doubled. Repeat offenders who continue to recruit illegal employees will now have to pay fines of up to £20,000 (24,582 euros) per employee.

In addition, measures have been introduced to simplify the process of checking the immigration status of potential employees. These measures include reducing the list of documents for right to work checks as well as limiting the frequency of follow-up checks for workers that have limited permission to stay in the UK. The grace period for carrying out right-to-work checks on employees acquired as a result of a transfer of undertakings has also been doubled — to 60 days. Records must now be kept of the date on which a check was conducted.

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

**ESTONIA:** The average monthly gross wage in Estonia in Q1 2014 was 966 euros according to the country's statistical bureau. This is an increase of 7.3% when compared to Q1 2013. The average hourly gross wage in Q1 2014 was 6.02 euros — an increase of 6.9% when compared to Q1 2013. The sector that saw the greatest increase in average monthly gross wages was agriculture, forestry and fishing (14.7%). In relation to average hourly gross wages, the largest increase was in the transportation and storage sector (12.6%). Irregular bonuses increased by 11.2% for each employee in Q1 2014 when compared to Q1 2013, influencing the rise in average monthly gross wages by 0.2%.

**FINLAND:** According to data provided by Statistics Finland, nominal wages in the country increased by 1.8% during the period between January and March 2014 when compared to the same period in 2013. Real earnings increased by 0.5% compared to the first quarter of last year.

**GERMANY:** On May 23<sup>rd</sup> 2014, German lawmakers approved a pension reform that will see the age of retirement gradually raised from 65 to 67. It will also permit some workers to receive their full pension at the age of 63 if they have paid pension contributions for 45 years. The reform was passed with 460 votes in favour, 64 against and 60 abstentions.

**GREECE:** In a recent report, the Organisation for Economic Co-operation and Development (OECD) came up with a number of recommendations to reduce the administrative burdens on companies in Greece. Among these was the recommendation to remove the obligation for payslips to include information on the amount of pay the employee would have been entitled to under a collective agreement. The OECD also urged the Greek government to make clear in law that employers are not required to acquire employees' signatures to acknowledge receipt of payslips.

**LATVIA:** In its 2014 Article IV consultation report, the International Monetary Fund (IMF) has again encouraged Latvian authorities to reconsider the scheduled reductions to the flat rate of personal income tax. In 2012, the Latvian government decided to gradually reduce personal income tax from 25% to 20% by 2015. However, following the advice of the IMF the personal income tax rate was cut by only 1% in 2013, to 24%. It remains 24% in 2014. The IMF has recommended that Latvia adjust tax thresholds instead of changing the flat rate of income tax. It has also recommended that the country improve its tax administration.



**NETHERLANDS:** The Dutch Senate has finally approved the government's proposed tax reform of pensions. The reform lowers the maximum accrual rate from 2.25% to 1.875% and caps pensionable income at 100,000 euros net per annum. It is hoped that the reform will save the government around 3 million euros and will contribute to the recovery of the economy as employees will receive higher net incomes as a result. The reform will come into force on January 1st 2015.

**SPAIN:** Spain's Prime Minister, Mariano Rajoy, has announced plans to make cuts to corporation tax. Following advice from the International Monetary Fund, corporation tax rates will be decreased for large companies from 30% to 25%. Rajoy said that the reduction will take place in two phases — the first will apply in 2015. He has also announced plans to enhance the country's competitiveness and to help create employment by investing 6.3 billion euros. Of this, 2.67 billion will go to the private sector.

**UK:** In the UK, a deal has been reached between the Communication Workers Union and retail staff at O2. Under the deal, all non-management retail staff working directly for O2 will receive a pay increase of 14%. Meanwhile, staff at the pharmacists Boots will not be receiving their annual bonus for the first time in 10 years. Instead of a bonus of up to 20% salary, over 60,000 workers will receive a "gesture of gratitude" worth just 1% of salary.

**UK:** The UK coalition government is preparing to reform pensions. Under the proposal, employees would be able to contribute to collective pension funds shared with thousands of other members, instead of paying into an individual retirement scheme. The proposal is based on schemes in operation in the Netherlands and Scandinavia.

## Other European HR News in Brief

**CZECH REPUBLIC:** The Supreme Court of the Czech Republic has confirmed in a recent case that if the company memorandum of association states that two executives act jointly on behalf of the company, both of them must sign the notice of termination. If only one signs the notice, it will be null and void. An exception is allowed in the new Civil Code: the two executives may issue a power of attorney to the one of them for specific legal acts — this would include signing a termination notice.

**FRANCE:** Under the French Labour Code, employees may now donate all or part of their untaken annual leave or RTT days to another employee working for the same company who has a seriously ill child under the age of 20. The employer's agreement is required and the employee may only give up annual leave days that exceed 24 working days (they must still take a minimum of four weeks). The employee in receipt of the donated days must present their employer with a medical certificate confirming that their presence is necessary for the care of their child and that the care needed is constraining. [Articles L1225-65-1 and L1225-65-2]

**HUNGARY:** The Constitutional Court of Hungary has held that a provision in the labour code that negatively affects the protection of pregnant employees is unconstitutional. The provision states that the prohibition to dismiss pregnant employees should only be enforced if they had informed their employer about their state of pregnancy before they were given notice. The Court ruled that there was no need for employees to give prior notification of their pregnancy and making it obligatory interferes with their rights to privacy.





**IRISH REPUBLIC:** In a recent High Court case in Ireland, an employee claimed that their employer was violating the law by not providing specific rest breaks. The employee worked an eight-hour shift, alone, and was not allowed to leave his place of work with the exception of checking vehicles that entered and left the warehouse. The employee, not the employer, was responsible for scheduling his breaks during quieter periods. However, as a security guard, the employee was exempted from rest period rules and working time restrictions and was entitled to compensatory rest breaks or alternative arrangements instead. The High Court was satisfied that the employer had complied with the law by providing compensatory rest breaks and did not have to provide specific rest breaks (*Stasaitis -v- Noonan Service Group Ltd & Anor*, [2014] IEHC 199 (2014)).

**NORWAY:** The government of Norway has proposed amendments to the Work Environment Act and the National Insurance Act in order to simplify the monitoring of sick leave. The government has proposed that dialogue between the employer and sick employees be reserved mainly for employees on full-time sick leave and that dialogue with those taking partial sick leave be engaged in only when the parties require it. They have also suggested that third parties, such as doctors, should participate in this dialogue only when the parties require it. Finally, the government has proposed repealing the employer's duty to report sickness to the Labour and Welfare Administration once an employee has been absent for nine weeks. It is hoped that these changes would cut down unnecessary administration allowing the employee to focus on recovery and the employer on helping the employee back into work.

**POLAND:** An amendment to the Labour Code has been submitted to the plenary session of the

lower house of the Polish parliament for a first reading. The amendment would prohibit employees working for the same employer under a fixed-term contract for more than 24 months, although collective agreements could extend this period up to 36 months. Failure to comply with the rules would result in the contract of employment becoming one for an indefinite period.

**SPAIN:** The Ministry of Employment and Social Security in Spain has revealed that the number of employees affected by redundancies fell by 54.7% in the first quarter of 2014 in comparison to the same period in 2013. During the first quarter of 2014, 31,886 workers were affected by suspensions of contract (60.1% less than last year) and 12,114 workers saw their working day reduced (52.5% less than in 2013).

**SWITZERLAND:** The Federal Council of Switzerland has decided to extend the temporary restrictions on Bulgarian and Romanian workers by a further two years. The restriction on access to the Swiss labour market will continue to apply to all employees and service providers within certain economic areas — including landscaping, construction and cleaning — until May 31st 2016.

**UK:** The UK Supreme Court has confirmed that members of Limited Liability Partnerships (LLPs) are workers for the purposes of the Employment Rights Act 1996 (ERA). In this case, a member of an LLP had made what she believed to be protected disclosures, but the firm suspended and later expelled her from the LLP. The Court found that a member is eligible to seek the protection of ERA's whistle-blowing provisions. The Court also referred to the Limited Liability Partnership Act, but held that it was not necessary for the member to be considered a worker under this Act to be considered a worker for the purposes of the ERA. [[2014] UKSC 32]



## 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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