



FedEE
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Fédération des Employeurs Européens

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Latest News from the Federation of European Employers (FedEE)

Inside this Issue:

France: Performance appraisal under the spotlight

Latvia: Will Latvia join the eurozone?

Global: Unions plan for trade talks

France: Last straw for French investors

Poland: Extended leave rights for working parents

Turkey: Launch of new severance fund

UK: New rules for criminal record checks

Europe: Sharp cut in car fleet emission levels

France: Performance appraisal under the spotlight

The French Supreme Court recently raised more doubts over the lawfulness of performance-based ranking of employees according to quotas (forced ranking).

The case in question was brought to appeal against Hewlett Packard. Although the Court finally found in the company's favour — because they were able to demonstrate that the quotas set for ranking purposes were only to be used as a guide and not to be strictly applied — the cause of action came very close to being found against them.

For an appraisal system to be valid under the French Labour Code the information collected should be solely intended for assessing the employee's skills and have a direct and necessary link with the assessment of their abilities (Article L. 1222-2), the methods and techniques must be pertinent to the objective sought (Article L. 1222-3), and the criteria used must be objective (French Supreme Court April 9 2002, no.99-44.534).

Moreover, an employer must gain prior approval from its Health and Safety Committee and Works Council before introducing any performance appraisal system and inform employees about evaluation methods before they become subject to appraisal (Article L. 1222-3).

France: Last straw for French investors

An amendment to the draft banking law being debated this week by the French National Assembly will, if approved, extend country-by-country reporting requirements to all major international companies.

France's socialist government wants to prevent companies from being able to minimise their tax liabilities in France by using an offshore tax haven to concentrate their profits. If the amendment is approved, companies will be obliged to report annually on staffing, revenues and taxes paid in other countries, and inform French tax authorities about the income of foreign taxpayers.

Such a move would not only further reduce future investments in France, but any attempt by the French tax authorities to impose additional tax



liabilities would require the renouncement of many existing double taxation treaties with other countries.

Germany: Job candidate has no right to information about appointee

The German Federal Labour Court (Bundesarbeitsgericht, "BAG") has held that an employer does not have to provide detailed information about the selection outcome of a recruitment process to an unsuccessful candidate who merely suspects they may have been a victim of discrimination.

The case in question, which was finally dismissed by the BAG last month, involved an unsuccessful job candidate who believed she met all the stated requirements for the job that had been advertised. The hiring company refused to supply information on the candidate chosen for the position when requested to do so by the unsuccessful candidate.

According to the European Court of Justice (ECJ), job applicants do not have a right to this information, however refusal on the part of the hiring company to provide it may be taken into account when establishing whether or not direct or indirect discrimination has taken place.

In the circumstances, the BAG decided that the company's refusal to respond to the information request could not be used against them as the Appellant had failed to present any prima facie evidence of discrimination. [BAG, April 25, 2013 – 8 AZR 287/08] [ECJ, April 19, 2012 – C-415/10]

Global: Unions plan for trade talks

A meeting took place in Paris last week between the President of the US trade union body AFL-CIO and the General Secretary of the European Trade Union Congress (ETUC) Bernadette Ségol.

The focus for their discussion was the social dimension of the forthcoming talks between the EU and the USA on a transatlantic trade

agreement. Both bodies agreed to press for a voice in the negotiations and to urge the parties to avoid any austerity and deregulation elements in the agreement. Instead, both union leaders want to put full employment and rising standards of working/living conditions at the top of the agenda.

Meanwhile, talks are nearing conclusion between the EU and Canada on a separate trade deal (CETA) which is expected to cut the cost of imported consumer goods and food products by an average of 5%. An announcement about the final terms of the agreement is expected ahead of the G8 leaders' meeting on June 17th.

Latvia: Will Latvia join the eurozone?

The European Commission has confirmed that Latvia meets all the criteria to join the eurozone. Its budget deficit is just 1.2% — well below the required 3% — and public spending only amounts to around 40% of GDP. Moreover, a €7.5 billion IMF loan gained during the depths of the recession has now been paid back.

However, Latvia has achieved this outcome at a price. The government slashed state employment by a third and heavily reduced pay for those that remained. It also resisted the temptation to float its exchange rate and held its nerve as its economy shrank by 20%. Now the European Commission wants Latvia's government to adopt the euro in order to silence those who still doubt the wisdom of the single currency.

Poland: Extended leave rights for working parents

The Polish Parliament has adopted an amendment to the Labour Code extending leave entitlements for working parents.

From June 17th 2013 the parents of children born after December 31st 2012 will be entitled to 20 weeks maternity leave (of which 14 weeks must be taken by the mother - the remaining six weeks can be taken by either parent), an additional six



weeks maternity leave (to be taken by either parent) and 26 weeks parental leave.

The additional maternity leave may be divided into two parts, each lasting a minimum of two weeks. Parental leave may be divided into three parts, each lasting a minimum of eight weeks. Both parents will be able to take parental leave at the same time and may combine leave with part-time work — but the total combined leave may not exceed 26 weeks. Maternity leave will be paid at 100% salary and parental leave at 60%.

Turkey: Launch of new severance fund

The Turkish system concerning severance pay is set to change significantly.

Under the current system severance is generally not paid when an employee resigns — except in a limited number of specific circumstances. There is also a requirement for an employee to have been employed by the same employer for at least one year in order to be entitled to severance pay, and any severance costs that apply must be met by the employer.

Under a proposed amendment to the Labour Code (Law 4857) employers will have to make fixed, monthly contributions to a new fund that will meet future severance costs. The new law will remove entitlement to severance in the case of resignations due to marriage, military service and when an employee qualifies for a lump-sum social security payment. However a new right to severance pay upon resignation will be introduced for employee's for whom contributions have been paid into the fund for at least 10 years, should they request it. In addition the general requirement to have been with the same employer for one year to qualify for severance pay will be abolished.

Pay, Tax and Benefit Trends

ANDORRA: The Andorran parliament will debate a Bill on June 30th which proposes the introduction of income tax. There is currently no income or corporation tax in this small country located high in the Pyrénées between France and Spain. However, France shares the country's alternating presidency and is one of the main forces behind an EU initiative to exchange all types of income data, particularly with tax havens, in order to combat tax evasion.

EUROPE: The IT services and printing technology company, Ricoh, has just carried out a substantial overhaul of its European company car policy in order to reduce carbon emissions and control fuel costs. The company has reduced the suppliers list for its 7,000-strong fleet to four manufacturers and set an emissions cap at 134g/km. In future the vast majority of the leased cars it will offer employees will be in the 114-119g/km range. This will help the company towards its long-term goal of reducing its life-cycle ecological impact by 87.5%.

FRANCE: The French government has dropped its plans to cap Director's remuneration in the private sector. Finance Minister Pierre Moscovici has told the business daily Les Echos that the focus will remain on the introduction of a new 75% marginal tax rate on salaries in excess of 1 million euros.

GERMANY: The automaker Volkswagen has concluded a new 20-month collective agreement for its 102,000 strong German workforce which increases basic rates by 3.4% from September and a further 2.2% from July 2014. All employees will additionally receive a one-off payment of 300 euros into their company pension fund and apprentices will be paid an additional 27 euros a month to help them meet their pension fund contributions.



POLAND: Opposition is growing against the plans by Poland's Prime Minister Donald Tusk to increase flexible working hours and cut overtime payments. Support for Tusk's Civic Platform is falling and the three principal trade union bodies Solidarity, OPZZ and the Trade Unions Forum are uniting behind a campaign that also seeks to prevent the raising of the retirement age and substantially increase the national minimum wage. Strike action has already taken place in Silesia and could be followed by a general strike this Autumn.

UK: The European Commission is taking the UK to the European Court of Justice over its benefits system, which the Commission claims infringes EU free movement of people rules. Under the UK system, EU nationals from outside the UK must pass strict tests in order to be granted the 'right to reside' and qualify for certain 'means tested' social security benefits. Under EU law, however, the only requirement for EU non-nationals to qualify for social security benefits in another member state is one of 'habitual residence'. The UK government contends that it is not infringing EU treaty requirements and, together with the German, Austrian and Dutch governments, wants to have the freedom to control welfare benefits to foreign nationals.

Other European HR news in brief

DENMARK: The Danish government has finally adopted a Bill implementing EU Directive 2008/104/EC on temporary agency work — almost two years after the original EU deadline. The law offers greater protection to temporary agency workers and recognises temporary work agencies as employers — whilst introducing the principle of equal treatment between temporary and permanent workers. The new law will enter into force on July 1st 2013.

EUROPE: The results of the 2012 OECD study into international literacy and numeracy standards

will not be published until the end of this year. On past trends, these are likely to show that one in five of the EU population continues to lack basic literacy skills. Small improvements are likely to be recorded in Denmark, Germany, Hungary, Latvia, Poland, Portugal and Romania - but to have deteriorated elsewhere. Finland is almost certain to remain the only country where low literacy levels affect less than 10% of the population.

EUROPE: The annual rate of consumer price inflation (HICP) in the eurozone fell to 1.2% in April from 1.7% in March. Prices continue to fall in Greece (-0.6%) and prices are virtually stable in Cyprus (0.1%), Portugal (0.4%) and the Irish Republic (0.5%). Outside the eurozone prices are also falling in Latvia (-0.4%), Switzerland (-0.4%) and are stable in Sweden (0.0%) and Denmark (0.4%).

EUROPE: The German and French governments are leading an EU initiative to tackle youth unemployment. The project will involve the injection of 6bn euros to promote education and training for young people and reward companies that create jobs. The funding will come in the form of a loan from the European Investment Bank.

FINLAND: The Finnish government has amended the Occupational Health and Safety Act to underline the importance of working hours as a risk factor. The change will not fundamentally affect company health and safety policies, except to the extent that it will now be a requirement for employers to conduct an on-going assessment and analysis of working hours-related risks and hazards. It will also be necessary to collect data on employee travelling time and work-related activities outside normal working hours — such as the taking of phone calls and the answering of emails.

ITALY: The Italian Government has recently published a national corporate social responsibility (CSR) action plan. This includes incentives for



companies that introduce CSR policies, measures to standardise the reporting of CSR outcomes and new ways to promote CSR initiatives internationally. For further information please contact uberto.percivalle@bakermckenzie.com.

JERSEY: Parliament in the semi-autonomous Channel Island state of Jersey has approved a new law to ban workplace racial discrimination. However, the law is unlikely to come into force until the second half of 2014.

NETHERLANDS: Membership of FNV Bondgenoten — the Netherlands' biggest trade union — has fallen to a new low, according to the union's latest annual report. Membership has been decreasing at an ever quickening pace since 2009. Other Dutch unions have also been experiencing a similar decline.

NETHERLANDS: Following a recent agreement between the Dutch government, employers and trade unions to help people who have an occupational disability into work, the Dutch government has warned private sector employers that it will introduce a disability jobs quota system from 2016 if the existing targets are not met.

NETHERLANDS: Although the total numbers of people in work across the Netherlands has remained surprisingly stable over the last five years, employment in the financial sector has fallen by 18.5%. This is partly due to an exodus of investment banking from Amsterdam to London — a change that has also had an impact on Dutch jobs in accountancy and law firms which provide services to leading banks such as ABN AMRO.

ROMANIA: A bill has been introduced into the Romanian parliament to declare Orthodox Good Friday as a non-working public holiday. In recent years several additional public holidays have been declared such as Whit Monday (Pentecost) and St Andrew (November 30th).

RUSSIA: A ban on smoking in workplaces, public transport and educational institutions has come into force in Russia. Restrictions will be widened even further next year in a country where cigarettes are inexpensive and where there remains one of the highest smoking rates in the world.

SPAIN: In a move that could ultimately also extend to workplaces, Spain's regional government in Asturias has banned the use of the term "Christmas" in schools. The region's socialist-led government wishes to remove all religious references from public life and in future the Christmas break will have to be referred to as the "Winter holiday".

TURKEY: Negotiations have broken down between Bulgarian and Turkish hauliers following protests over the conduct of Turkish customs officers at border controls between the two countries. The Turkish government has responded to increased competition from Bulgarian haulage companies by preventing trucks from crossing the border if they carry over 500 litres of fuel or infringe even minor customs regulations.

UK: Changes have been introduced into the UK system of criminal record checks. An adult conviction will now generally be omitted from a Disclosure and Barring Service (DBS) criminal record certificate if 11 years have passed since the date of the conviction, it is the individual's only offence and there was no custodial sentence. An adult caution will be omitted six years after the date of the caution. In the case of offences committed by under 18s the same conditions will apply, except only five and a half years will need to have passed in the case of a conviction, and two years in the case of a caution. Certain offences such as violent and sex offences will, however, never be omitted.



FedEE news:

PAY IN EUROPE 2013: The 12th edition of Europe's most comprehensive review of remuneration levels has just been published by FedEE. Pay in Europe 2013 provides median pay figures for 32 job positions in 47 different countries and territories ranging from the micro states of Andorra and Liechtenstein to the continent's biggest and most populous economies such as Germany and the Russian Federation. The figures are expressed as gross hourly rates and exclude bonus, commission, 13/14th month payments and benefits in kind.

To download a copy of the report, please go to:

<http://www.fedee.com/fedmembers/resource/payineurope/payindex.html>

GOVERNMENT CONSULTATION: The UK government's Department for Work and Pensions has especially requested the Federation to submit its views on how EU competence in the areas of asylum and immigration and the free movement of persons impacts on companies operating in the UK. Details about the scope of the review and the questions to be addressed may be found at <http://tinyurl.com/bxh6v3r>. Although individual companies are free to submit their own views it will have greater impact if FedEE members pool their submissions. Could you therefore let us have your thoughts on this important area of EU competence by July 15th so that we may draw up a joint response.

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

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

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

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

To activate the FedEE member discount code, simply quote 'fedee12' when booking.



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