



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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European Union: European Parliament agrees to posted workers amendments

The European Parliament has provisionally agreed to reforms to the Posting of Workers Directive. The compromise agreement has been endorsed by the Permanent Representatives Committee (COREPER), but is subject to approval by the expert committee of the European Parliament on March 18th. The final vote in the European Parliament is due to take place in April.

The Parliament proposed a number of provisions which have been included in the Directive. Amongst these was the proposal for the introduction of a single national website, in every Member State, where the applicable terms and conditions of employment will have to be published.

It was agreed that joint and several liability will be introduced in the construction sector and that Member States should have flexibility in choosing how to ensure companies comply with the Directive. Both the European Parliament and Council also agreed that the cross-border

execution of administrative financial fines and penalties for dishonest companies should be introduced and that the exchange of information between Member States would be carried out through IMI, an online application.

France: Penalties for businesses closing plants

France's parliament has now definitively passed a law which imposes penalties on businesses that close plants that are still economically viable. Having been previously rejected by the Senate, the so-called "Florange Law" has finally been passed by the National Assembly and will come into force on April 1st 2014.

The Florange Law makes it obligatory for companies employing more than 1,000 workers to look for a buyer for a site they wish to close, for at least three months before closing it. If companies do not comply, works councils or employees may take the employer to court. The employer could face severe fines: the equivalent of 20 times the minimum wage for each worker affected, or 28,000 euros for each employee made redundant.



The fine, however, cannot be more than 2% of the company's turnover and will take into consideration the financial situation of the business and the efforts made to find a buyer. Employees are entitled to make an acquisition offer.

Italy: Ruling on disciplinary proceedings during sick leave

The Italian Court of Cassation has issued a decision concerning termination for a justifiable reason following a disciplinary procedure that occurred when the employee in question was on sick leave.

The applicable collective agreement stated that dismissal proceedings had to conclude within 120 days. However, Article 2110(2) of the Italian Civil Code states that employers may not unilaterally dismiss the employee until the protected period of illness, as laid down by law or in a collective agreement, has finished.

The Italian Court of Cassation confirmed that a disciplinary letter will only take effect once an employee on sick leave has recovered. Any time limit set for concluding dismissal proceedings will only begin to run from this effective date.
[Judgment no. 1777 of January 28th 2014]

Poland: Amendment to the law on Sunday and public holiday working

Last month, the President of Poland, Bronislaw Komorowski, signed an amendment to the Labour Code, which extends the list of work that may be performed on Sundays or public holidays. The amendment came into force on March 4th 2014.

Employees will now be permitted to work on Sundays or holiday if their role is to provide services — by electronic means or using telecommunications equipment — to customers outside Poland. The day on which work is

completed should be a working day in the state where the recipient of the service is based.

Employers are obliged to give employees who work on a Sunday or public holiday another day off within six calendar days — either before or after the Sunday or public holiday worked. The amendment does not affect the rule that employees working on a Sunday should be assured a Sunday off at least once every four weeks.

Portugal: Amendments to redundancy selection criteria

In order to bring the Labour Code into compliance with a judgment of the Constitutional Court, the Portuguese government has submitted a new amendment to parliament.

Last year, the provisions of the 2012 Labour Reform that allowed employers to determine criteria for redundancy and removed the obligation on employers to offer a redundant employee a suitable alternative position in the company, were judged to be unconstitutional by the Constitutional Court.

Under the new amendment, employers would have to follow a specific set of criteria when selecting people for redundancy. Selection would be based on performance reviews, academic and professional qualifications, the employment relationship, experience and seniority — mitigating the adverse effects of the “last in first out” rule. The amendment also reintroduces the condition that there must be no other job role corresponding to the professional capability of the worker available in the company before an employee's employment may be terminated with good cause.

The Bill will now face public examination by employers' associations and trade unions before being voted on by the Portuguese parliament.



Given the sensitive nature of the Bill there is no estimate on when it may enter into force: approval has already been postponed twice before.

Sweden: Lack of accessibility for disabled workers to be grounds for discrimination

The Swedish government has drafted a Bill which proposes introducing lack of accessibility for workers with disabilities as a new ground for discrimination in the Discrimination Act.

Under the proposal, employers would have to take reasonable steps to ensure that people with disabilities who cannot participate in the workplace because of poorly designed work premises are in a comparable situation to people who do not have any disabilities. This must not, however, impose an unfair burden on employers. What is reasonable in each case will depend on accessibility requirements laid down by law, and all the economic and practical factors. There will also be certain exemptions — in the case of the supply of goods and services, it is proposed that the ban will not apply to companies with fewer than ten employees. It is hoped that the law will come into force on January 1st 2015..

UK: Ex-employees protected from victimisation

The UK Court of Appeal has ruled that the Equality Act 2010 should be interpreted as prohibiting post-termination victimisation. This is despite the fact that Section 108(7) of the Act appears to expressly exclude post-employment victimisation from being a prohibited behaviour.

The Court considered that it could not have been the drafter's intention to specifically exclude victimisation of former employees from the legislation given that ex-employees were protected from victimisation at the time the Act was being drafted. In addition, EU law protects ex-

employees from victimisation. The wording of the law was, therefore, put down to a drafting error.

This decision means that once again employers could be liable to pay compensation where post-employment victimisation is found to have occurred. Such claims are most likely to arise in the context of references. Employers must not give a former employee a poor reference because they brought discrimination claims against them, as this will amount to victimisation. [Jessemey –v– Rowstock Limited [2014] EWCA Civ 18]

UK: Delays to changes to flexible working rules

From June 30th 2014, all employees in the UK with a minimum of 26 weeks continuous service will be entitled to request flexible working. Currently, only those employees who have children under the age of 17 (18 if their child has a disability) or who care for adults are entitled to make this request.

This provision, which forms part of the Children and Families Bill, was originally due to come into force on April 6th 2014; however, delays have caused the date to be put back. It is expected that the Bill will receive Royal Assent in March.

The Advisory, Conciliation and Arbitration Service (ACAS) has released draft guidelines for employers on the new regulations. It is advised that employers establish a policy for handling flexible working requests in consultation with employees and their representatives.

Pay, Tax and Benefit Trends

EUROPEAN UNION: The statistical office of the European Union, Eurostat, has published figures that show that the gender pay gap is still high in European states. On average, women earned 16.4% less than men in the European Union and



16.7% less in the Eurozone in 2012. The countries with the smallest gap in salaries were Slovenia (2.5%), Malta (6.1%) and Poland (6.4%). The countries that had the largest gender pay gap were in Estonia (30%) and Austria (23.4%). The salary gap between men and women differs greatly according to occupational activity.

IRISH REPUBLIC: The judiciary in Ireland has just issued its fourth decision under the Protection of Employees (Temporary Agency Work) Act 2012 and awarded its highest compensation award (20,000 euros). The case concerned an agency worker making a claim for the same pay as a directly hired employee. The claimant argued that he was being paid less than if he had been employed directly. The labour court agreed, stating that employees being paid vastly different pay rates for performing the same job could result in a serious industrial relations dispute. Employers must be able to justify any difference in pay. Failure to do this may result in expensive compensation awards. [Team Obair Ltd v Robert Costello Determination number: AWD134]

NETHERLANDS: The Dutch Cabinet has agreed to a proposal that would require companies with more than 50 employees to declare the difference in pay rates between top executives and ordinary workers to the Works Council for assessment. The government is hoping that the European Commission will soon make proposals on how to make remuneration policy more transparent and open.

LATVIA: According to the Latvian Central Statistical Bureau, average salaries and wages increased in Latvia last year for the third consecutive year. In comparison with 2012, average monthly wages increased by 4.7% in the private sector in 2013 — rising from 685 euros to 716 euros. The highest average wages in 2013 were in the finance and insurance, information and communication, and energy sectors. The

lowest average wages were in the services, real estate and trade sectors.

SPAIN: Further to our report in the last edition of the Newswire, the Spanish parliament has now passed the Royal Decree introducing a flat-rate employer social security contribution for new permanent employees. Employers will be liable to pay just 100 euros a month per new employee for the first 24 months of employment. For part-time workers this will be reduced to 50 or 75 euros — depending on the number of hours worked in comparison to a full-time worker. This measure will apply to all new contracts entered into from February 25th (the date the Prime Minister Mariano Rajoy announced the measure) until December 31st 2014.

SWITZERLAND: The Swiss government and Federal Council have rejected proposals by trade unions to introduce a national minimum wage fixed by the state. They are warning that it would have negative effects on Switzerland's competitiveness and make it harder for low-skilled and young people to access the job market. They argue that a legal national minimum wage would limit the input of employers and trade unions in negotiations and undermine social partnerships that currently work well overall. In a popular vote on May 18th, Swiss voters will have the power to decide whether or not to introduce a legal minimum wage of 22 Swiss francs per hour (4,000 Swiss francs or 3,291 euros a month). If introduced, this would be the highest national minimum wage in the world.

UK: Under Regulations that came into force on March 7th 2014, employers in the UK now face higher penalties for not paying the national minimum wage. Employers underpaying their employees will be liable to pay a fine of 100% of the total underpayment, up to a maximum of £20,000 (23,900 euros). Previously the fine was 50% of the underpayment, up to a maximum of



£5,000 (5,900 euros). Another set of Regulations, however, which came into force at the same time, has exempted workers undertaking one of the Government's new 'traineeships' from the right to the national minimum wage. The government intends to raise the national minimum wage for over 21s from the current £6.31 an hour to £6.50 an hour in October 2014.

UK: Legislation allowing same-sex marriages to occur will come into force in England and Wales from March 29th 2014, potentially affecting pension schemes. Generally, pension schemes do not need to be amended to provide same-sex spouses with the minimum survivor's benefit as the legislation will be overriding in this way. However, this is not the case for contracted-out pension schemes. Furthermore, if, when civil partnerships were introduced, an employer amended their scheme to pay more than the minimum benefit to civil partners, these schemes would now have to be amended to ensure consistency of treatment between individuals in civil partnerships and those in same-sex marriages. In addition to any relevant amendments, employers should update appropriate handbooks and inform pension scheme members of the rules and decisions made in relation to benefits for same-sex spouses. Ideally, amendments should be implemented before March 29th.

Other European HR News in Brief

BULGARIA: New regulations governing the activity, composition, structure and functions of the General Labour Inspectorate have been adopted by the Council of Ministers in Bulgaria. The regulations significantly alter the structure of the body. The previous regulations, adopted in 2008, have been repealed.

DENMARK: The Minister of Employment for Denmark, Mette Frederiksen, has presented a Bill

to parliament that clarifies the reforms to early retirement and flexible working introduced under Act No.1380 of December 23rd 2012. The Bill reinforces the fact that fleksløntilskuddet (flexible wage subsidies) should be paid by the employer in addition to the salary of the employee and introduces additional rules on the refund of overpaid flexible wages. The Bill also proposes that powers be given to the Minister of Employment to establish rules on how resources should be distributed (for example, performance pay), how fleksløntilskuddet should be calculated and in what cases income should be deducted. The first reading of the Bill will take place on March 13th 2014.

EUROPEAN UNION: The European Court of Justice has ruled that the automatic exclusion of a female employee from a training course, which was due to take place during her mandatory maternity leave, was contrary to EU law. Directive 2006/54 clearly establishes that the principles of equal opportunities and equal treatment between men and women apply in relation to access to employment (including promotion and vocational training) as well as to working conditions (including pay). As the employee in question could not benefit from the training in the same way as her colleagues, and therefore missed an opportunity for a promotion, the Court considered this to be unfavourable treatment. [Case C-595/12]

EUROPEAN UNION: On 10th March 2014, the EU Council of Ministers adopted the Council Recommendation on a Quality Framework to improve the quality of traineeships. The Quality Framework will allow trainees in European Union Member States to gain work experience under safe and fair conditions preventing them from being exploited by employers. According to the guidelines, traineeships must be based on written agreements including details on the educational aims of the traineeship, the trainee's supervision, duration of the traineeship, working hours and



whether or not the trainee will receive remuneration or compensation. The rules do not cover all traineeships, however. Those that are part of university courses or are obligatory in order to fulfil a specific profession are not included.

EUROPEAN UNION: According to the latest research carried out by the European Vacancy Monitor, there is a broadening gap in employment opportunities between northern European states and southern European states. Between Q2 2012 and Q2 2013, recruitment in the EU fell by 4%. The ratio of unemployed to hirings increased from 2.5 to 2.7, demonstrating that job prospects are getting worse overall. Croatia and Greece recorded the highest growth in recruitment (27% each), followed by Malta (24%) and Hungary (19%). Hirings fell in Germany, Italy, Poland, Spain and the UK.

FRANCE: Since our last Newswire, the French draft law on vocational training, employment and social democracy (formation professionnelle, emploi et démocratie sociale) has been approved by the Senate. From January 1st 2015, personal training accounts, credited with 20 hours of vocational training time per year, will be created for every worker.

GERMANY: The Federal Labour Court of Germany (BAG) has recently made rulings on two issues concerning employees' rights to privacy. The BAG held that footage captured by secret video surveillance may not be used as evidence to prove an employee's criminal behaviour or breach of duty, unless the employee's behaviour is serious enough to warrant a breach of their rights to privacy. Even in such cases, secret video surveillance must only be used as a last resort when no other evidence is available. In a separate case, the BAG held that evidence acquired by searching an employee's work locker — in the employee's absence and without their consent — may only be used in evidence if the employer's

interest in providing evidence outweighs the employee's right to privacy. [2 AZR 797/11; 2 AZR 546/12]

IRISH REPUBLIC: The Republic of Ireland's Protected Disclosures Bill has now passed through all stages of the Senate and is at the second stage in the Dáil Éireann. It is expected that the law will be enacted by June 2014 and replace the existing 2005 Act. The Bill establishes a comprehensive legal framework that will protect all employees who report concerns regarding wrongdoing in the workplace in all industries and sectors in Ireland. It also provides a number of disclosure mechanisms for whistleblowers. Under the Bill, whistleblowers who suffer penalties imposed by their employers because they raise concerns of wrongdoing may be able to claim up to five years' gross remuneration in compensation.

SLOVENIA: Slovenia's National Assembly has adopted an amended Act on labour inspection. The Act passes the power to control illegal employment to the Slovenian Customs Administration authority, although labour inspectors will still be able to issue injunctions if they encounter violations in this area. Inspectors will also be able to impose fines within a certain range for any minor offences, taking into account the gravity and circumstances of the case. In addition, the Act allows for greater involvement of employers and employees in labour inspection, with representatives of these two groups joining government representatives on the tripartite Council of the labour inspectorate.

TURKEY: According to the International Monetary Fund and Turkish Statistical Institute, the Turkish workforce rose by 4.7 million people from 2008 to November 2013. This is a 22.7% increase in five years making it the highest ranked state among 32 developed and developing states that have increased its workforce since the crisis hit.



FedEE News:

FELLOWSHIP MEETING: The Spring 2014 Fellowship meeting will take place on Friday, 23rd May in London. If you are interested in Fellowship please contact Angelika Rivero (angelika.rivero@fedee.com) for details.

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](#).

FEDEE GEOGRAPHICAL EXPANSION: FedEE is expanding its coverage beyond Europe and we want to know which countries our Members would most like us to cover. Please email us on membershipservices@fedee.com with the names of the countries outside Europe you are most concerned with and would like to see covered in our HR knowledgebase and other resources.

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