



**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: Inter-sectoral collective bargaining agreement on the reasons for dismissals**

Following its adoption in February 2014, inter-sectoral collective bargaining agreement (CBA No. 109) on the statement of reasons for dismissal, will enter into force in Belgium on April 1st 2014. As a result, Article 63 of the Employment Contracts Act 1978 (on arbitrary dismissal of blue-collar workers on an indefinite contract of employment) will cease to apply — except in relation to certain categories of employee, for whom Article 63 will continue to apply until December 31st 2015. The agreement is another step towards the equal treatment of blue- and white-collar employees.

The main principle under CBA No. 109 is that employees are entitled to be informed of the specific reasons for their dismissal. A worker may request the reasons for their dismissal from their employer via a registered letter within two months from the date of dismissal. The employer must respond to the request within two months or risk a

fine. Exemptions to the duty to give reasons for dismissal apply during the first six months of employment, to employees under a temporary or student contract, to employees over the age of 65, and to employees made collectively redundant.

The agreement also defines unfair dismissal. The dismissal of an employee engaged on an indefinite-term contract will be considered unfair if it is based on reasons that are not related to the suitability or conduct of the employee, that are not related to the necessary operation of the company, or that would not lead a “normal and reasonable” employer to dismiss the employee. If one of these conditions applies, the employee may take the case to court. If the dismissal is found to be unfair, the employer may have to pay compensation of between three and seventeen weeks' salary. In cases of dispute, the burden of proof is divided between employers and employees.

To access the collective agreement, please see: [http://www.cnt-nar.be/CCT-ORIG/cct-109-\(12-02-2014\).pdf](http://www.cnt-nar.be/CCT-ORIG/cct-109-(12-02-2014).pdf) (in French).



## **EU: Working mothers using a surrogate have no right to maternity leave**

The European Court of Justice (ECJ) has confirmed that European Union law does not give mothers who have used a surrogate to have a baby a right to paid maternity leave or its equivalent.

The ECJ pointed out that the EU Pregnant Workers Directive seeks to protect workers who are pregnant or have recently given birth. As a result, it does not give a mother who has used a surrogate to have a child a right to paid maternity leave. EU member states are, however, entitled to apply more favourable rules to the benefit of commissioning mothers.

The Court decided that refusing to allow maternity leave to mothers using a surrogate was not a form of sex discrimination under the Equal Treatment Directive. This is because a father using a surrogate does not have the right to paid leave either, so female employees are not at a disadvantage compared to male employees. The Court also confirmed that the Equal Treatment Directive does not grant such parents the right to adoption leave — it is up to individual member states to decide whether or not to grant adoption leave.

Finally, the Court ruled that the inability to bear a child does not constitute a disability within the scope of the Employment Equality framework Directive, thus mothers having a child by surrogate have no rights to paid maternity leave under this law either.

## **France: Termination may not be automatic**

In a recent decision, France's Supreme Court has reaffirmed that "automatic termination" clauses in contracts of employment do not permit an

employer to dismiss an employee without evidence of real and serious cause.

The Court held that a contractual clause alone may not decide the circumstances which permit dismissal — the employer must indicate the justification for the dismissal and failure to do this will show a lack of real and serious cause. Even when an employee needs a company vehicle to perform their job duties, the employment contract cannot provide for them to be automatically dismissed if their license is suspended or revoked. [Case n°12-11.554]

## **Irish Republic: Proposal to allow fathers to share maternity leave**

The Irish government is currently considering proposals to allow mothers to share their statutory maternity leave with their child's father. The Minister for Health, Kathleen Lynch, has announced that concrete proposals should be established before the end of 2014. In the meantime the government will be talking to employers and women's groups for their views.

Paternity leave is not officially recognised in Irish employment law. A father may take annual leave following the birth of their child, but it is up to the employer's discretion whether or not it is granted at that precise time. Under the current proposal, mothers would be able to give two of their 26 weeks' paid maternity leave to the father. The government is also considering letting parents "step in and out" of maternity leave to ensure both parents are spending equal amounts of time with their children.

## **Italy: New law on fixed-term and apprenticeship contracts**

Law Decree no. 34/2014, known as the Jobs Act, came into force in Italy on March 21st 2014. The Decree has significantly altered the rules relating



to fixed-term contracts and apprenticeship contracts.

Fixed-term contracts may now be entered into for up to 36 months without the need for justified reasons. They may also be renewed up to eight times — provided that the 36-month maximum limit is not exceeded and that each new contract is for the same work activity as the original contract. It will still be necessary to allow a grace period to elapse between two consecutive fixed-term contracts.

Under the law, employers are limited to hiring no more than 20% of their total staff on these new fixed-term contracts — although national collective agreements may derogate from this limit. Other previously-existing exceptions to this limit will also continue to apply, for example in the case of substitutions, seasonal activities, start-up companies and employees over the age of 55.

Regarding apprenticeship contracts, individual training programmes no longer have to be stipulated in writing, although the contract and provision of a trial period must still be made in writing. The law has removed the requirement for 50% of previous apprentices to have been hired as permanent employees before new apprentices may be engaged and also reduced the minimum salary for apprentices, as regards working hours spent on training, to 35% of the normal wage. For more information please contact Uberto Percivalle on [uberto.percivalle@bakermckenzie.com](mailto:uberto.percivalle@bakermckenzie.com)

## **Turkey: New immigration law coming into force**

The Foreigners and International Protection Code (No. 6458), adopted in Turkey last April, will come into force on April 11th 2014. The law makes significant changes to the rules on residence permits.

Residence permits will only be required for foreigners staying in Turkey for 90 days or more (rather than the current 30 days or more). A number of new residence permit categories will also be created, including a long-term residence permit and residence permits for establishing a business or commercial connection. In addition, individuals who have already been granted a work permit will no longer have to obtain a separate residence permit.

Upon the law's entry into force, a new Directorate of Migration will take over the handling of residence applications in Turkey. Harsher penalties for individuals not abiding by the terms of their stay will also be introduced — including deportation and a ban on re-entry for up to five years.

## **UK: Discrimination based on immigration status is not discrimination based on nationality**

In two recent cases, the UK Court of Appeal has held that the ill-treatment of employees due to their immigration status was not direct discrimination.

In *Onu v Akwiwu and another* and *Taiwo v Olaiye and another*, two Nigerian women, who came to the UK on migrant domestic worker visas to work as domestic servants, were denied a number of important employment rights — they were not paid the national minimum wage, were not provided with appropriate accommodation and were denied rest breaks. Both workers brought separate employment tribunal claims for, among other complaints, race discrimination.

The Court of Appeal found that the employees were ill-treated because of their vulnerable status as migrant workers. However, this discrimination based on their immigration status could not be



equated to discrimination based on their nationality and as a result they did not fall under the protection of the Race Relations Act 1976 or the Equality Act 2010. [EWCA Civ 279 (2014)].

## Pay, Tax and Benefit Trends

**CZECH REPUBLIC:** According to statistics released by the Czech Republic's State Labour Inspection Office, companies had to pay CZK 57 million (2,082,000 euros) in 2013 for violating labour laws. This is significantly higher than the value of fines in 2012 (CZK 43.3 million/1,578,000 euros) and 2011 (CZK 37 million/1,348,000 euros). The highest five fines ranged from CZK 355,000 (12,000 euros) to CZK 550,000 (20,000 euros). These were imposed for violations regarding unpaid or delayed payment of wages, non-payment of severance pay, not keeping records of working time, failure to ensure equal treatment and a failure to provide meal allowances for business trips.

**DENMARK:** February 2014 saw a round of collective bargaining in Denmark. In general, higher wage increases were agreed than during the last collective bargaining round and a greater emphasis was put on training and education. Under the agreement concluded between the Confederation of Danish Industry and the Central Organisation of Industrial Employees — an agreement affecting approximately 240,000 blue- and white-collar workers in Denmark — wages were increased on March 1st 2014 by 1.50 DKK (0.20 euro) per hour. Wages will increase again by 1.65 DKK (0.22 euro) on March 1st 2015 and by 1.80 DKK (0.24 euro) per hour on March 1st 2016. A three-year agreement was also concluded between the Danish Construction Association and the United Federation of Danish Workers for the construction sector, and between the Confederation of Danish Industry and 3F's Transport Group for the transport sector.

**DENMARK:** Denmark's Employer Minister, Mette Frederiksen, has reached agreement with the Socialist People's Party and Red-Green Alliance on the amendment of the flexi-job bonus scheme. The scheme offers private sector employers a bonus as an incentive to recruit employees into so-called "short-term flexi-jobs". Under the new agreement, employees will have to be employed for nine months instead of six months before the company may obtain the bonus. The bonus amount will also be reduced from 25,000 krona to 20,000 krona (approx. 3,348 euros to 2,679 euros). The scheme was temporarily stopped in January 2014 but is expected to recommence under the new rules on May 1st 2014.

**EUROPEAN UNION:** A survey carried out by Eurobarometer has revealed that undeclared work is a widespread problem across the European Union. Of all respondents, 4% admitted to have received undeclared payment for work, although the extent of the problem varies from country to country. In April, the European Commission is due to propose the creation of a European Platform to help in the prevention and deterrence of undeclared work. This would bring together national labour inspectorates, social security bodies, tax and migration authorities and other stakeholders from across the EU's Member States in an attempt to minimise this practice which undermines national tax and social security systems.

**GERMANY:** The German Federal Labour Court (BAG) has ruled that employers do not have to inform their employees of their legal right to ask their employer to pay part of their future earnings (up to 4%) into an occupation pension scheme. Employers have no legal obligation or specific duty of care to inform their employees of this right and, according to the BAG, employees should be responsible for acquiring information about their own personal life planning (Case AZR 807/11).



**LATVIA:** According to data provided by the Central Statistical Bureau, hourly labour costs in Latvia rose by 5.9% in Q4 2013 in comparison with the same period in 2012. This was a 34 cents rise bringing the cost of labour to 6.16 euros per hour by the end of 2013. The most significant increases in hourly labour costs were seen in mining and quarrying, (19.9%), arts and entertainment (15.6%), construction (7.7%) and real estate (7.1%).

**POLAND:** Poland's contentious second-pillar pension reform, which took effect in February this year, is being challenged before the Constitutional Tribunal by the country's biggest private-sector employers' organisation. The main point of contention is over the transfer of 51.1% of second-pillar pension fund assets to the Social Insurance Institution (ZUS). It is considered that this amounts to expropriation of private property and is therefore unconstitutional. The legality of the law is also being questioned on the basis of the speed at which it was passed — the lower house (Sejm) spent only four days debating the law and taking a final vote, and the upper house (Senate) spent even less time reviewing it.

**UK:** The Bank of England has proposed an extension of the Remuneration Code to allow all firms regulated by the Prudential Regulation Authority (PRA) to claw back bonuses. Under the proposal, all PRA-authorised firms would be required to amend employment contracts to ensure vested variable remuneration could be clawed back if there was evidence of employee misbehaviour or material error, if the firm or business unit was suffering a decline in financial performance, or if there had been a material failure of risk management within the firm or business unit. If agreed upon, the new rules are likely to become effective on January 1st 2015. Claw back would be permitted on bonuses vesting after this date up to a six-year time limit. The proposals are now subject to consultation until May 13th 2014.

**UK:** After a long period of discussions between O2 UK and the Communication Workers Union (CWU), O2 employees have agreed to a 2.6% pay rise, effective from the beginning of April. This will affect over 1,000 employees working in call centres in Preston Brook, Bury and Leeds and all the operator's CWU engineers. The deal does not, however, apply to employees working in Telefonica's directly managed O2 shops.

## Other European HR News in Brief

**BELGIUM:** The European Court of Justice (ECJ) has made an important ruling concerning compensation for dismissal during part-time parental leave. The case concerned the payment of a fixed-sum protective award, due under Belgian legislation when an employer terminates employment without a compelling or sufficient reason. The ECJ decided that, in the event that the employee in question is taking part-time parental leave, the fixed-sum protective award must be calculated on the basis of the employee's normal full-time salary — as if they had not reduced their hours. Basing the compensation amount on the employee's reduced-hours wage would render the protective award ineffective in its aims and breach one of the key objectives of the European Framework Agreement on parental leave. [Case C 588/12 (Lyreco Belgium v Rogiers)]

**FRANCE:** The French Supreme Court has recently confirmed the right of a part-time employee to have their contract converted into a full-time contract if they work beyond the legal working week. According to the Court, part-time employees may claim this right if they have worked for more than 35 hours in a week — even if it was only for a short length of time and occurred just once. The employee may also be entitled to retrospectively claim full-time pay from the date they first worked more than 35 hours in a week. [Cass. Soc. March 12th 2014, n°12-15014]





**ITALY:** Agreeing with the decision of the Court of Appeal, Italy's Supreme Court has ruled that the dismissal of an employee for sending numerous confidential business files to his lawyer was unlawful. The decision was based on two fundamental facts. First was the fact that the lawyer was the only recipient of the 200 business files. The lawyer was bound by a duty of confidentiality and the information was not disclosed to any third parties. Second was the fact that the employer could not prove the exact confidential nature of the documents and, therefore, it was not possible to assess the extent of the employee's failure. [Italy's Supreme Court, 5 March 2014, no. 5179]

**JERSEY:** A revised Disciplinary and Grievance Procedure Code of Practice is due to take effect in Jersey on April 1st 2014. This follows extensive consultations on how it could be improved. Although not legally binding, compliance with the Code will be considered by the Jersey Employment Tribunal in any proceedings relating to the handling of disciplinary or grievance issues.

**MALTA:** Malta's Industrial Tribunal has recently ruled on the legitimacy of terminating an employee's contract at the end of their probationary period. The case concerned an employee who had started working on February 6th and was subject to a six-month probationary period. The employer terminated the employee's employment on August 6th 2012. According to the Tribunal the last day of the employee's probationary period was August 5th 2012, meaning that termination on August 6th 2012 fell outside of the probationary period. As the termination did not occur during the probationary period and there was no legitimate legal reason for the termination, the court judged the termination to be unjustified. The employee was awarded 3,000 euros in compensation. [Paul Thomas McKenna v de Vere & Partners Holding Limited (2014)]

**NORWAY:** Levels of sickness absenteeism in Norway are reported to have remained relatively stable between Q3 2013 and Q4 2013 after having fallen for the previous three consecutive quarters. According to data from the statistical office of Norway, Statistisk Sentralbyrå, the rate of sickness absence (adjusted for seasonal and influenza variations) increased by just 1.1%, from 5.3% in Q3 2013 to 6.4% in Q4 2013. Self-certified sickness absences decreased by 0.7% during this period, but doctor-certified absences increased by 1.4%. Over the course of 2013, sickness absences fell by 5.2%. The rate of sickness absence declined in all industries although the information and communications industry experienced the largest decrease (9.2%) and the real estate and technical activities industry saw the smallest decrease (1.9%).

**POLAND:** The Organisation for Economic Co-operation and Development (OECD)'s Economic Survey of Poland 2014 has drawn attention to the need to improve the Polish labour market. The organisation recommend measures to reduce segmentation and liberalise the job market by making all contracts subject to the same tax and social security contributions rules, streamlining the procedure of dismissals and restricting the aggregate duration of temporary employment contracts. The OECD also highlighted the poor female employment rate. Part of the problem is due to inadequate family and pension policies which the OECD says could be alleviated by improving child care and long-term care facilities and by increasing the retirement age more quickly than scheduled. The full survey may be accessed via the following web address: <http://www.oecd.org/eco/surveys/economic-survey-poland.htm>

**UK:** The Employment Appeals Tribunal (EAT) recently found a dismissal for long-term absence caused by post-natal depression not to be discriminatory. The employee claimed she had



suffered both maternity and sex discrimination, however the EAT did not agree. According to the EAT the dismissal did not amount to maternity discrimination as it occurred after the end of the employee's maternity leave, meaning the employee's period of maternity protection had already expired. The EAT also decided that the dismissal did not amount to sex discrimination because, after maternity leave, a female employee's incapacity to work due to illness should be treated in the same way as a male worker's incapacity to work. [Lyons v DWP Jobcentre Plus Appeal No. UKEAT/0348/13/JOJ]

**UK:** According to data released by the UK Ministry of Justice, 79% fewer claims were brought to an employment tribunal between October and December 2013 compared with the same period in 2012. Since July 2013, employees have had to pay a fee to lodge a claim against their employer. Additional fees are also due when the case is heard and if they want to appeal a court decision. An employee must pay GBP 160 (193 euros) to bring a claim concerning wage deductions or refusal to give leave, then further court hearing fees of GBP 230 (278 euros). The fees are considerably more for cases of discrimination and dismissal.

## FedEE News:

**FELLOWSHIP MEETING:** That the Spring 2014 Fellowship Meeting will take place on Friday, May 23rd 2014 at the Novotel London West, Hammersmith. The day will run from 9.30am (Registrations and Coffee/Tea & Pastries) for a 10am start and will finish at around 4.30pm, with refreshment breaks and a buffet lunch. If you are interested in becoming a Fellow please contact Angelika Rivero ([angelika.rivero@fedee.com](mailto: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](mailto: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.

**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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