



**FedEE**  
Federation of European Employers  
Fédération des Employeurs Européens

# Mettre à jour

## Latest News from the Federation of European Employers (FedEE)

### Inside this Issue:

**Belgium:** New decree on fire prevention

**Irish Republic:** Reform of work permits system

**Netherlands:** New collective agreement for temporary workers

**Estonia:** Employee register coming into force in July

**Europe:** Survey on working conditions

**Poland:** Changes to work and residence permits

**Luxembourg:** Employer justified in reading employee's private emails

**UK:** Court upholds enforceability of non-compete restriction

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### **Belgium:** New decree on fire prevention

On May 3rd 2014 a new Royal Decree on the prevention of fire in the workplace came into force in Belgium.

The decree obliges employers to carry out a fire risk analysis and, based on the results of this analysis, take a number of fire prevention and safety measures. Employers will be required to establish appropriate procedures for evacuation and use of protective equipment, amongst other things, and to keep a file on the prevention of fire risks.

In addition, companies of all sizes will have to establish a fire prevention team (service de lutte contre l'incendie or 'SLCI'). The composition and resources of this will be determined by a number of factors, including the nature of the company's activities, the number of people employed by the company and the specific fire risks in the workplace.

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### **Estonia:** Employee register coming into force in July

The parliament of Estonia has passed an amendment to the Taxation Act that establishes a 'working person's register'. The new register will begin to operate on July 1st 2014.

Employers will be required to register their employees at the latest on the first day of employment. All types of employee will be subject to registration and the information to be registered will include the employee's name, personal identification code, employer identification number, start date of employment, work activity, termination date and any periods of suspension of employment (e.g. for maternity leave).

Although the register will be managed by the Taxation and Customs Board, its information will be available to the health insurance fund, social security institutions, the unemployment insurance fund, police and border control. The register will be used to determine health insurance and unemployment assistance and ensure tax compliance. It will also provide employees with



the opportunity to check whether their work is registered and that their pay has been declared and taxes paid.

## Europe: Survey on working conditions

A survey on working conditions in Europe has just been published by Eurobarometer. The survey reveals that 53% of respondents in Europe consider their working conditions to be satisfactory. However, 57% of all respondents believed that working conditions have deteriorated in past five years.

The highest rates of satisfaction with working conditions were recorded in Denmark (87%), Luxembourg (86%), Finland (84%), the Netherlands (82%) and Ireland (80%). Contrastingly, however, less than one-fifth of respondents considered their working conditions to be good in Greece (16%), Croatia (18%) and Spain (20%).

The principal reason for dissatisfaction with working conditions was found to be excessive working hours (48%). Other reasons included shift work constraints (28%) or not being able to influence work schedules (28%).

According to the survey, at least 70% of the working population in all EU states apart from Greece are happy with health and safety in their current job. Satisfaction is most prevalent in Austria, the Netherlands, Belgium and the UK (each with a 92% satisfaction rate).

## Irish Republic: Reform of work permits system

In order to make it easier for skilled workers from abroad to work in the Republic of Ireland, the Irish government has published a Bill to reform the country's work permit system.

The Employment Permits (Amendment) Bill 2014 will create nine different categories of permits including: "critical skills" permits, internship permits, permits for the sports and culture sectors, permits to allow spouses and other dependents of those with "critical skills" to get jobs, and permits permitting transfers within international companies with Irish operations.

The legislation, which is expected to be enacted by the Summer, will also reduce the processing time of work permits, improve the process of appeal and expand the list of high-skilled eligible occupations.

## Luxembourg: Employer justified in reading employee's private emails

A court in Luxembourg has recently acquitted an employer and two managers of breach of privacy laws after they read three private emails intended for a recently-dismissed employee.

The first of the emails concerned had no heading, the second was entitled "Private New Years Drink", and the third had the heading "Private and confidential". All three emails were sent by individuals with whom the employer had a professional relationship.

The judgment suggests that an employer may be entitled to access the private correspondence of its employees — even when it is specifically marked "private" — if it comes from an employee of a company with which the employer has a business relationship. The existence of doubt, no matter how small, that the email is confidential is also required to justify such action, and reading it must be considered to be in the interests of the business.

It is not yet known if the former employee will appeal the decision.



## **Netherlands:** New collective agreement for temporary workers

The Dutch Association of Mediation and Employment Agencies (NBBU) and the National Employee Interest Association (LBV) have agreed on a new collective agreement for temporary workers in the Netherlands. It will come into effect on June 1st 2014 and remain in operation for five years.

The NBBU system requires temporary workers to go through three phases before they become temporary agency workers. The new agreement makes changes to each of these phases.

As of January 1st 2016, temporary workers may not work more than 78 weeks in total during both phase one and phase two. Phase one and phase two will remain separate but phase two will be shortened from 104 weeks to 52 weeks in 2016. In addition, from January 1st 2015, it will no longer be possible for temporary workers to be put on a zero hour contract in phase two — they must be paid for at least three hours per contract.

From July 1st 2015, temporary workers will have to work for four years or at least six contracts in phase three before they can become temporary agency workers employed by a temporary work agency under an indefinite contract of employment. Currently they may become temporary agency workers after one year or four contracts.

The Federation of Dutch Labour Movements, the Christian Trade Union Federation and Unie have not accepted the terms of the new collective agreement.

## **Poland:** Changes to work and residence permits

A new law on immigration entered into force in Poland on May 1st 2014, making the Polish labour market more accessible to non-nationals.

Previously, non-nationals had to apply for a work permit and a residence permit separately, however the new law provides for a single permit. An application to work and reside will therefore be processed in the same procedure.

In addition, the law extends the duration of a temporary residence permit from two to three years. It also removes the requirement for non-nationals to apply for renewal of a temporary residence permit at least 45 days before the expiry of their visa or current permit; they may now request to extend their stay up to the last day of legal residence in Poland.

Furthermore, graduates of Polish universities may now apply for a temporary residence permit for one year, and during this time they may look for employment.

## **UK:** Court upholds enforceability of non-compete restriction

In a recent case, the UK High Court granted an injunction to enforce a 12-month non-compete restriction despite the fact that, when read literally, it did not provide the employer with any protection.

The non-compete clause prevented the employee from being engaged or employed in connection with any products he was involved with during his employment with his current employer. However, as no competitor would ever be selling the employer's products, the clause on its face, did not afford any protection to the employer.

The High Court held that there had been a drafting error — they considered the issue from



what a reasonable person would have understood from the language used and found that by adding “or similar thereto” to the end of the clause, the clause would be commercially sensible. The High Court upheld the re-written clause as there was a legitimate business interest to protect and the non-solicitation and non-dealing clauses were not sufficient to provide protection on their own. [Prophet plc v Huggett [2014] EWHC 615 (Ch)]

## Pay, Tax and Benefit Trends

**BELGIUM:** From January 1st 2016, paper meal vouchers will be abolished in Belgium and replaced with electronic vouchers. The decision, which involved employers, employees and trade unions, was approved by the Council of Ministers by royal decree. From October 1st 2015, only electronic vouchers will be issued, but paper meal vouchers will continue to be valid as a method of payment until the end of 2015.

**CZECH REPUBLIC:** The government of the Czech Republic has announced that it plans to increase the national monthly minimum wage in January 2015 by 500 koruna (approximately 18 euros). Thereafter, the minimum wage would rise on an annual basis. Currently, the national monthly minimum wage is 8,500 koruna (approximately 310 euros).

**GERMANY:** In a recent case, the German Federal Labour Court has ruled that a bonus clause that ties payment of the bonus to the condition of continued employment on a particular date is invalid if the bonus has the character of remuneration that has already been earned. If this is the case, even if employment is terminated before the end of the bonus period, the employee will still have a pro-rata entitlement to the bonus. If a bonus is not linked to the employee's performance and its aim is to retain the employee in the business, an employer may pay the bonus on the condition of continued employment. [10 AZR 848/12]

**MALTA:** As part of the country's new national employment policy, the government of Malta has proposed that maternity leave in the private sector become entirely state-funded. In return, however, private employers would have to pay higher social security contributions for all of their employees. It is not yet known by how much the employer's rate will rise, but Prime Minister Joseph Muscat has said that the increase will be minimal.

**RUSSIAN FEDERATION:** New amendments to the Labour Code recently came into force in the Russian Federation. The amendments impose limits on severance benefits and termination compensation for certain categories of employees including CEOs, their deputies, chief accountants and members of the collective executive bodies. Under the new law, the aggregate amount of all payments made to these individuals in relation to dismissal may not exceed three months' salary. If the employment relationship has been terminated by mutual agreement, no compensation may be paid. In addition, no compensation may be paid to any category of employee where employment has terminated as a consequence of misconduct or disciplinary sanctions.

**SPAIN:** The Supreme Court of Spain has established that the poor economic situation of a company does not justify continued delays in the payment of wages. In the case in question, the employees of a company had agreed to a number of measures to respond to the poor financial situation of the company, including early retirement and voluntary redundancy. There was, however, no agreement relating to a delayed payment of wages. The Court ruled that the on-going, persistent and significant delays in paying wages amounted to a serious breach of the duty to pay wages on time.

**SPAIN:** The Ministry of Employment and Social Security has revealed that Spain spent more than 420.5 million euros paying maternity and paternity benefits in the first quarter of 2014. During this



time, the Spanish National Institute of Social Security processed 70,508 claims for maternity (6.42% less than the previous year) and 65,522 claims for paternity (4.59% less than last year). There were also 7,834 requests of leave for family care reasons - 9.2% more than during the same period last year.

**SWITZERLAND:** According to preliminary data from the Swiss Federal Statistical Office, the average gross wage for the private sector rose in 2012 to 6,118 francs (5,100 euros) — this represents a 3.2% rise since 2010. Between 2002 and 2012, average wages for the private sector increased by 13.4% in nominal terms. 10% of the highest paid employees saw their salary increase by 22.5%, whereas for the less well-off employees, the increase was 9.5%. In 2012, more than one third of employees in the private sector received a bonus. These statistics come just a few weeks before the Swiss vote in a national referendum on May 18th on whether to establish a national minimum wage.

## Other European HR News in Brief

**AUSTRIA:** Austria's Supreme Court has made an important ruling on the legitimacy of "try-out clauses". In this case, a contract entered into between a professional ice-hockey player and an ice-hockey club contained a "try-out clause", under which the club could unilaterally terminate the contract for any reason during the first two months of the agreement without having to give notice. The clause did not allow the player to terminate the contract so easily, however. The Court held that, as the clause was more favourable to the employer it was not legally enforceable. In addition, the try-out period exceeded the maximum one-month limit on trial periods under Austrian employment law (OGH 29.1.2014, 9 ObA 118/13p).

**BELGIUM:** Two new laws and a royal decree regarding the prevention of psychosocial risks at

work have been passed in Belgium. Under the new laws, employers will have to consider prevention of psychosocial risks in the workplace as a priority alongside prevention of violence and sexual and moral harassment — particularly it must be included in the company's risk prevention policy. In addition, the new legislation develops mechanisms to promote the prevention of psychosocial risks on a collective level and provides broader definitions of both psychosocial risks at work and moral harassment. The new legislation will replace the current laws from September 1st 2014.

**FRANCE:** In a recent judgment, the French Supreme Court upheld the validity of an agreement for termination by mutual consent (rupture conventionnelle) despite the fact that the employer had imposed disciplinary sanctions on the employee and criticised the quality of their work before initiating the termination. The Court overturned the decision of the Court of Appeal, stating that the enforceability of a mutual termination agreement is not dependent on the absence of a dispute between the parties at the time of the agreement's conclusion. It is important to note, however, that all cases are judged on their own particular circumstances and employers must always be careful to ensure that employees enter into mutual termination agreements freely and willingly. (Cass soc. Jan. 15, 2014 No. 12-23942)

**ITALY:** A recent ruling from the Italian Supreme Court has confirmed the need for an employee to prove a direct causal link between their working environment and their health complaints when bringing a claim for compensation against their employer. In this case, the employee claimed his heart attack was caused by a combination of overwork, harassment by his employer and subjection to criminal proceedings linked to his work activity. The Supreme Court, like the lower courts before it, dismissed the case stressing that before an employer should have to prove that it





took all necessary measures to prevent any harmful effect arising, the employee bringing the claim for compensation must first demonstrate that their health problems are connected to the harmful working environment. [Case 8804/14]

**RUSSIAN FEDERATION:** As of January 1st 2015, all migrants wishing to live and work in Russia will, by law, have to demonstrate their knowledge of the Russian language, history and basic legislation. Foreigners wishing to acquire a residence and work permit must provide a certificate verifying that they have passed Russian language examinations in their home state or provide a document confirming they received education in the former Soviet Union before September 1st 1991. Only highly qualified professionals will be exempt from this new rule.

**SWITZERLAND:** The Swiss government has announced that it will grant workers from Croatia access to its labour market. This is despite the recent referendum that approved reintroducing limits on immigration and subsequently led to a refusal to extend its agreement on the free movement of persons to citizens of Croatia. The government has now said it will treat Croatian citizens in the same way as citizens from other EU countries. From July 1st 2014, Switzerland will put in place a quota system for Croatian workers. It will also recognise Croatian vocational education and training diplomas that fall within the scope of the federal government's competence, including diplomas in the education, healthcare and construction fields.

**SWITZERLAND:** According to the 2013 Swiss Labour Force Survey conducted by the Federal Statistical Office, between 2003 and 2013 the number of part-time workers in Switzerland rose by 24.5%. During the same period the number of full-time workers grew by 7.1%. The growth of

part-time workers was higher among men (43.7%) than among women (19.9%). In Switzerland, 61.1% of women and 15.5% of men work part-time work. The EU country with the highest proportion of part-time workers is the Netherlands, where 77.2% of women and 27.9% of men work part-time.

**UK:** The early conciliation scheme, under which parties to an employment dispute in the UK must attempt to resolve their dispute through the Advisory, Conciliation and Arbitration Service (ACAS) before making a claim to an Employment Tribunal, is now mandatory. The scheme was launched on April 6th 2014 on a voluntary basis for a transitional month. Following a review of its first month of operation, ACAS has revealed that approximately 4,000 individuals contacted them about the scheme during the month. Of these individuals 98% were willing to try early conciliation. ACAS has also stated that its first early conciliation case was settled within 24 hours.

**UK:** The UK Office for National Statistics (ONS) has published the results of its survey on zero-hours contracts. The survey of 5,000 businesses has shown that, in January to February 2014 there were around 1.4 million employee contracts in the UK that did not guarantee a minimum number of hours but did provide work during this period. This figure is much higher than the recent Labour Force Survey which estimated that 583,000 people were employed on zero-hours contracts during the period October to December 2013. The survey also revealed that there were an additional 1.3 million contracts that did not guarantee a minimum number of hours and did not provide any work during January to February 2014. The ONS has stated that more research needs to be carried out and they will report on their findings later this year.



## 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.

**FELLOWSHIP MEETING:** The Spring 2014 Fellowship Meeting will take place on Friday, May 23rd 2014 at the Novotel London West, Hammersmith. 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](#).

**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 [memberships@fedee.com](mailto:memberships@fedee.com).

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