



FedEE
Federation of European Employers
Fédération des Employeurs Européens

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Latest News from the Federation of European Employers (FedEE)

Inside this Issue:

Finland: Limit on successive fixed-term contracts

Germany: New provisions on agency workers

France: Dismissal for failure to remove veil

EU: Figures on female part-time working

Germany: National minimum wage proposal

Spain: Authorities to work with private agencies

Belgium: New Claeys formula for dismissal compensation

A new Belgian Claeys formula has just been introduced. Since 1974, the Claeys formula has been the normal tool for employers and employees to determine the notice period, or indemnity in lieu of notice, in cases involving the dismissal of an employee earning more than 30,535 euros a year (2011 threshold).

The new formula is as follows:

- For white collar employees with an annual gross remuneration of under 120,000 euros a months' notice shall be: $(0.87 \times \text{length of service}) + (0.055 \times \text{age}) + (0.038 \times \text{annual gross remuneration}/1000) - 1.95$
- For white collar employees with an annual gross remuneration exceeding 120,000 euros the months' notice shall be: $(0.87 \times \text{length of service}) + (0.055 \times \text{age}) - (0.0029 \times \text{annual gross remuneration}/1000) + 2.96$

Denmark: Discrimination even though condition cured

The Eastern Division of the Danish High Court has held that a hearing impairment can constitute a disability under the Danish Discrimination Act, even if it turns out to be curable.

In the case in question, the employee suffered from a hearing impairment which was originally thought to be permanent. Following deterioration in her condition it was felt by her employer she could no longer perform her duties and her appointment was terminated on health grounds. However, she subsequently received treatment to rectify her problem.

The Court determined that the hearing impediment constituted a disability which should have triggered the employer's duty to make adjustments to the workplace to enable the employee to work on an equal footing with her colleagues. The subsequent discovery that the impairment was curable was irrelevant to the assessment, as the parties at the time of the dismissal believed it to be chronic. The employee was awarded compensation equivalent to five months' salary.



EU: Rise in order books highest in Eastern Europe

Although several governments in the European Union (EU27) are struggling with large spending deficits in most EU member states private sector companies are significantly improving their order books.

Over the year to August 2011 industrial new orders in the EU27 increased by 6.5%. If the sometimes volatile sectors (ships, railway and aerospace equipment) are excluded then order books rose by an average of 5.2% during the year. The highest annual increases were registered in Estonia (+41.1%), Bulgaria (+25.3%), Lithuania (+19.3%) and Latvia (+15.8%), and the largest decreases in Denmark (-9.1%) and the Czech Republic (-5.5%). Improvements have taken place in all industrial sectors except durable consumer goods - where there has been an 8.4% drop across the EU27 in the last year.

France: Dismissal for wearing face covering not unlawful

The French Court of Appeal in Versailles has recently upheld an employer's decision to dismiss a woman for gross misconduct when she refused to work without a veil (October 27th 2011, 10/05642).

This is one of the first cases to be brought under the law on face covering in a public place (*Loi interdisant la dissimulation du visage dans l'espace public*) that came into force in April this year. This prohibition does not generally apply to workplaces because company premises are regarded as private places, except when they are freely open to the public. In the case in question the employee worked in a state-owned childrens' nursery and was therefore subject to the law.

French law does not oblige employers to take steps to accommodate an employee's religious

beliefs. In fact, an employer may restrict the exercising of religious freedom at work on two grounds: the abuse of freedom of expression (notably insulting remarks about another person's beliefs) or objective and justified criteria relating to health and safety.

Finland: Limit for successive fixed-term contracts

The Finnish Supreme Court has recently issued a judgment concerning the use of 11 successive fixed-term contracts during the employment of a research assistant over a period of seven years.

In Finland, the conclusion of fixed-term contracts requires objectively justified grounds - such as the seasonal nature of the work. In the case in question, at issue was whether the project-like nature of the work and uncertainty over external funding justified the successive fixed-term agreements. The Court held that the risks involved did not differ significantly from those inherent in many permanent positions, especially in the face of normal economic fluctuations. This led to the conclusion that there was a permanent need for work and therefore no justification for successive fixed-term arrangements.

France: Trade unions battle over works elections

The French Supreme Court has dismissed an appeal by the CFDT trade union against the election of a works committee member. This case arose because an employee who gained more than 10% of the votes in the first round of elections to a works committee did so when he was a member of the CFDT. However, he was later appointed as a union representative by the SNBC union.

CFDT argued that trade unions representing employees within a company may not appoint as a union representative an employee whose



candidacy in the works elections received votes when on a list of candidates put forward by another trade union. However, the Court reasoned that votes in such elections are cast on a personal basis and that therefore the candidate may rely on votes gained under one union organisation to count towards their appointment by another union. (Cass. Soc. 28 September 2011, no.10-26762)

Germany: Tighter controls on provision of agency workers

The German law on the hiring of agency workers is due to change from December 2011.

Currently, the hiring of temporary workers in Germany requires the agency to hold an employee leasing licence. This requirement also applies to the cross-border provision of agency labour from or into Germany. There were a number of exceptions to this rule, but these are set to be abolished with effect from next month.

The major changes are:

- * The provision of agency labour will now require an operating licence in all cases. This includes not only commercial agencies, but also non-profit making bodies,
- * An employer that dismisses an employee and then utilises their services as an agency worker within six months of their dismissal must give the agency worker the same pay and conditions as they enjoyed as an employee,
- * The federal government has reserved the right to introduce a minimum wage for agency workers at a future date,
- * If an agency worker is utilised for more than six months their position will turn into a permanent appointment.

It should also be noted that intra-group company transfers and secondments which have not been subject to the new licensing requirement will remain excluded, providing the group company supplying the workers does not have the primary purpose of operating as an agency.

Germany: Proposal for national minimum wage

Germany's largest political party and senior coalition partner the Christian Democratic Union (CDU) has drawn up plans to introduce a minimum wage for jobs that do not fall under an existing wage agreement. This is despite the party's previous rejection of a blanket minimum wage.

The proposal states that the rate could be set at the lowest hourly rate for temporary workers - currently 6.89 euros in the eastern Lander and 7.79 euros in the western Lander. It is now likely that talks will follow with interested parties to determine how the minimum wage could be introduced and applied.

Germany: Social security deal to aid Indian workers

A comprehensive social security agreement has been signed between India and Germany providing for the following benefits to Indian nationals working in Germany:

- * For contracts up to a five-year duration, no social security will be payable in Germany - providing contributions continue to be made under the social security scheme in India. This will be the case even when an Indian employer sends its employees to Germany from a third country,
- * The period of contribution in one country will be added to the period of contribution in the other country for determining the eligibility for social security benefits. This means that Indian workers



will be given credit for ongoing social security contributions made under the German system if they return to India after the completion of their service in Germany. This will also apply to self-employed workers.

Germany/ECJ: Unequal treatment under corporation tax rules

The European Court of Justice has held that the current German withholding tax regime in relation to dividends violates the principle of the free movement of capital. Currently, there is a difference in treatment between German tax resident companies and companies resident in other EU member states.

German law provides for a 26.375% withholding tax on dividend payments - and this applies irrespective of whether the dividend is paid to a German tax resident company or a company resident elsewhere. However, German tax resident companies may obtain an almost full refund under German corporation tax rules, whereas non-German EU tax resident companies can only claim a refund if the requirements of the "Parent Subsidiary Directive" are met.

Netherlands: Low take-up of work costs schemes

Only one in ten Dutch companies have adopted the unified work costs scheme (WKR) for dealing with benefits and work-related expenses.

The scheme was introduced at the beginning of this year to replace the former 29 separate schemes. Until 2014 companies have the option of applying either the new or the old scheme.

Under WKR companies may provide tax-free benefits up to 1.5% of an employee's average salary, but benefits that exceed that level are taxed at 80%. A number of benefits and expenses - such as relocation allowances, workwear,

professional magazine subscriptions and training courses - are excluded from the scheme. In fact, the low take up by companies is largely because its many exemptions and special provisions make WKR even more complex than the old scheme.

UK: Liability for victimisation

The UK Court of Appeal has held that the Employment Appeals Tribunal (EAT) was wrong to hold an employer vicariously liable for the victimisation of a whistleblower by its employees.

In the case in question, the claimant had maintained that her employer's failure to prevent victimisation (following her reporting a colleague for not having the qualifications that they claimed) breached her right under section 47B of the Employment Rights Act 1996. This right provides that an employee should not be subjected to any detriment on the ground of having made a protected disclosure (NHS Manchester v Fecitt and Ors).

Pay, Tax and Benefit Trends

CYPRUS: Negotiations will soon be underway between the ailing Cyprus Airways and the Synika trade union. Last year the union agreed to a 9% pay cut and an extension of the existing agreement until February 2012. Although the company received a 20m euro bailout from the state this year it remains on the brink of insolvency and further concessions by employees will be necessary when both sides meet again next month. The changes tabled by the airline include reduced benefits, overtime premia and holiday entitlements; increased working hours; unpaid sick leave and the removal of commuting time from working hours.

GERMANY: A collective agreement has been concluded between Deutsche post and the services trade union Ver.di. The four-year deal cuts entry level hourly wage rates from 11.13 euros to 10.70 euros and allows the company to



reduce in-house mail delivery drivers from 3,600 to 2,600 by 2015. In return, the company has guaranteed not to make any other employees redundant and to introduce a partial retirement scheme that will make it possible for employees to continue working until age 67.

LUXEMBOURG: The European Commission has informed Luxembourg that it must end its practice of denying unemployment benefits to those receiving a pension from another member state. According to the Commission, this prevents workers from exercising their full right to free movement between member states. Luxembourg now has two months to inform the Commission of the measures taken to align its legislation with EU law.

POLAND: The Polish social insurance board (ZUS) has announced a major deficit in its central pensions account. According to ZUS, raising the retirement age would yield savings by the year 2020 equivalent to 1.3% of GDP - which represents 30% of the amount required to bridge the gap in pension payments.

SWEDEN: Sweden's imminent wage round is surrounded by uncertainty following disunity among the industry-sector unions affiliated to the Swedish Trade Union Confederation (LO). Disagreement centres on whether a 'gender equality fund' supported by the LO is the right way to attempt to improve pay equality. Consequently, the LO bargained national industry agreement may not continue to act as a common reference point when the bargaining round begins.

UK: According to the UK publication IDS Report median private sector pay settlements concluded during the three months to August 2011 amounted to 2.6%. This is somewhat higher than the increase in average earnings over the year to August 2011 reported by the Office for National statistics (ONS). The ONS found that average earnings grew by 2.1% in the private sector and

2.3% in the public sector. Over the same period consumer prices (HICP) in the UK rose by 4.5%.

Other European HR news in brief

EU: The European Commission has recently sent Italy, Malta and Portugal a reasoned opinion requiring them to take steps to implement the blue card immigration Directive. This is because the deadline for implementation expired on June 19th 2011. The Directive establishes a fast-track admission procedure for highly qualified foreign workers from outside the European Union. Each country government must now take steps to comply with the Commission's instructions within the next two months or face a possible European Court of Justice action.

EU: The number of women working part-time in many eastern European states is substantially below that in many western European states. In 2010, the proportion of female employees working part-time was 2% in Bulgaria, 4% in Slovakia, 8% in Lithuania and 10% in Estonia. This compares with 72% in the Netherlands, 63% in Switzerland and 46% in Germany.

EU: Although most Europeans changed their clocks back to winter time on October 30th the governments of Belarus, the Russian Federation and Ukraine have decided that daylight savings time (DST) will operate throughout the year. The only other European country that did not change its clocks is Iceland where DST is not in operation during the summer months.

NETHERLANDS: The Dutch social insurance authority (UWV) that now incorporates the former 'Centre for Work and Incomes' anticipates that redundancy requests made by companies will be 16% higher than they had anticipated earlier this year. The UWV had assumed at the beginning of 2011 that redundancy applications would gradually fall back close to the pre-crisis level of 2,000 a month, but they have only fallen from



5,000 a month in mid 2009 to 3,000 a month this year.

SPAIN: The Spanish Ministry of Work and Employment has amended regulations to allow leading private employment agencies to work with the public sector employment service. Some 50

private agencies will now work in the same way as government job centres (SEPE) in order to find jobs for unemployed workers. However, temporary employment agencies are excluded from the scheme - unless they form a new independent entity specifically to allow for such a collaboration.

FedEE news:

'WITHOUT PREJUDICE'

FedEE Media's first training film '**Without Prejudice**' will be available for sale or hire from November 16th. The training pack consists of the 26-minute film about workplace racial discrimination, a 14-minute filmed discussion about the film involving leading experts from ACAS, the TUC and Baker & McKenzie and a full set of trainer's notes.

A trailer for '**Without Prejudice**' may be viewed at <http://www.fedee.com/trailer.php>

FedEE member companies may view both films on approval. Just complete the online order form provided below the trailer window and insert into the order number or comments section the words "Seven-day approval please." If you return the film within seven working days there will be no charge. If you retain it beyond that period we shall invoice you at the reduced member sale price.

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