



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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The Belgian government has published the minimum annual remuneration levels that will apply under the Act of July 3rd 1978 on employment contracts from January 1st 2014. The new thresholds are:

32.886 euros (up from 32.254 euros)
39.422 euros (up from 38.665 euros)
65.671 euros (up from 64.508 euros)

These remuneration thresholds determine the legality of a number of contractual terms including probationary periods of different lengths, non-compete clauses, terms of termination etc. By way of example, a non-competition clause will be null and void if the yearly wage does not exceed the first threshold (€32.286) but may be valid (under certain conditions) if it does exceed this amount. A probationary period cannot exceed 6 months if the employee's yearly salary is below the second threshold (€39.422) but can last up to 12 months if it does exceed this annual wage.

Bulgaria/Romania: Schengen accession under debate

Subject to a unanimous vote from the European Council, Bulgaria and Romania could join the border-free Schengen area on January 1st 2014. Currently, however, the vote is being delayed as certain member states remain opposed.

On their accession to the EU in 2007, a period of 7 years, was granted to other EU member states to apply restrictions to the free movement of Bulgarian and Romanian workers. Bulgarian and Romanian citizens still currently require a work permit in countries such as France, the United Kingdom, Germany and the Netherlands.

Europe: Age-related pension contributions not discriminatory

The European Court of Justice (ECJ) has ruled that a pension system based on age-related contributions does not necessarily breach laws against age discrimination.



According to the Court, an employer may be permitted to make pension scheme contributions at different rates according to the age of the employee, provided this can be objectively justified.

In the case in question a Danish organisation made contributions to its pension scheme at a rate of 6% for under 35s, 8% for employees between the ages of 35 and 44 and 10% for employees aged 45 and over. The ECJ considered the age-related contributions to be justified on the basis that they allow older workers to build up their retirement savings more quickly. [ECJ C-476/11]

France: Designation clause removed

A new Bill has been presented by the French government to reform the proposal on the funding of social security.

The Bill amends article L912-2 of the Social Security Code which formerly obliged companies subject to risk-pooling provisions under an applicable sectoral collective agreement to affiliate themselves with a particular insurance company or companies, as stated in the agreement. The Constitutional Court ruled the article unconstitutional in June (Decision 2013-672 DC) for disproportionately interfering with the freedom to contract.

Under the amended article collective agreements will no longer designate an insurance company but will instead only make recommendations. Companies will be allowed to use an insurance company that has not been recommended provided that they pay higher employer contributions (20% instead of 8%, or 8% instead of no charge for companies with fewer than 10 employees).

France: Sunday working limitations to be reviewed

The French government is due to reconsider the rules on Sunday working. This follows significant protests against recent court decisions which have forced stores to close on Sundays due to breach of working time laws.

Under French law, Sunday trading is prohibited except in certain circumstances. Exemptions apply to designated tourist zones, decided upon by the Préfet (prefect) and local mayor, and in industries where continuous work is required for production or economic reasons if a collective agreement so provides. In certain major cities retailers are able to apply for relief from Sunday working prohibitions and in other locations retailers may apply to the local mayor for permission to open for up to five Sundays per year.

DIY stores and railway retailers are amongst the groups eager to be allowed to trade on Sundays. A report on Sunday working is due to be published in November and this will be used by the government to decide whether or not to introduce further exemptions to the limitations on Sunday working. A decision is expected by the end of 2013.

Germany/Spain: No claim for sex discrimination

The Federal Labour Court of Germany has recently denied a claim for compensation for sex discrimination after a pregnant employee was dismissed during her trial period.

A week following her termination, the employee in question returned with a medical certificate evidencing her pregnancy. This was later confirmed by the company doctor. The employee asked for her dismissal notice to be withdrawn



and when this was refused, made a claim for compensation.

The Federal Court, however, confirmed that, as the employer was not aware of the employee's pregnancy at the time of dismissal, discrimination on the basis of sex could be deemed as having occurred. Compensation was therefore not due.

The Constitutional Court in Spain recently reached a similar conclusion on a comparable case. [Federal Labour Court 8 AZR 742/12; Constitutional Court, S 10/10/2013, rec. 3773/2011]

Irish Republic: No more "stateless" companies

Further to the Republic of Ireland's Budget 2014, legislation has now been published that will ensure Irish registered companies cannot be "stateless" as regards their place of tax residence.

Formerly, a company incorporated in Ireland and managed and controlled in a country with which Ireland has a double taxation treaty might not have been considered a tax resident in either country if tax residency in the other country is determined by incorporation. Under the new legislation a company in such a situation would now be treated as an Irish tax resident.

The new legislation will affect newly incorporated companies immediately and companies incorporated before October 24th 2013 from January 1st 2014.

Italy: Dismissal for poor performance justified

In a recent case, the Supreme Court of Italy has confirmed that a slow pace of work and insubordination can justify dismissal.

In this case, the employee frequently refused to undertake tasks assigned by his superiors, was frequently unavailable, refused to use a computer on health grounds, worked slowly and inefficiently, was uncooperative and ignored disciplinary sanctions received. The Court ruled that this behaviour undermined the relationship of trust between the parties and was a justified reason for dismissal.

When it comes to dismissal for poor performance legality is sometimes unclear as determining the reasons for low productivity is not always straightforward. According to a Supreme Court Ruling in 2003, the shortcomings of an employee must be demonstrated by comparing the actual performance of the employee to the performance the employer may reasonably require. This may be done — as it was in the case above — by analysing the performance of other workers performing the same functions. [Corte di Cassazione judgment n. 23172 of October 11th 2013; Corte di Cassazione judgment n. 6747 of March 5th 2003]

UK: Guarantee payments due for decreased working time

A UK employer has recently been held liable by the Court of Appeal for failing to make guarantee payments to employees who had agreed to a decreased working time schedule.

The agreement provided for a shorter working week (just 34 hours) and "workless" Fridays whilst the employer was experiencing financial difficulties. During the period the agreement was in effect, the employer did not award any of the employees guarantee payments, as can be required by s28 of the Employment Rights Act 1996. A total of 330 employees claimed that they were entitled to such payments as a result of the diminution of their requirement to work.



The Court of Appeal had to assess whether a request for the employees to work on a Friday would be considered normal or if the agreement had changed the circumstances such that it would be considered abnormal. Given the short notice period for termination of the agreement and the fact that overtime payment only commenced after 39 hours had been worked, the Court concluded that it was still considered normal to require an employee to work on a Friday. As a result the employer was held liable under s34 of the Employment Rights Act 1996 for failing to make guarantee payments, as well as under the general jurisdiction of making unlawful deductions from wages. [EWCA Civ 1148 2013]

Pay, Tax and Benefit Trends

BELARUS: The President of Belarus, Alexander Lukashenko, has signed a decree increasing the minimum pensions contribution period. As from January 1st 2014 the minimum period that a citizen must have worked — and during that time contributed to the social security system — in order to receive a state pension is being increased from 5 to 10 years. The increase will not apply to parents of disabled children, mothers of servicemen killed in duty, war invalids or other socially vulnerable categories of citizens who have the right to an early retirement pension.

BULGARIA/SWITZERLAND: A new double tax treaty between Bulgaria and Switzerland is due to come into force on January 1st 2014. The treaty replaces the agreement that has been in force since 1991 and brings a number of changes including a new mechanism for information exchange to facilitate the enforcement of tax legislation in both countries.

EUROPEAN UNION: According to data provided by the European Commission's statistics agency, Eurostat, business profit share increased in both the EU 27 and the euro area between Q1 and Q2 2013. In the euro area the business profit share

increased by +0.5%, as value added increased faster (+0.9%) than compensation of employees (wages and social contributions) plus taxes less subsidies on production (+0.2%). In the EU 27 the increase was +0.3%. During Q2 2013 the business investment rate increased to 19.2% in the euro area and 18.9% in the EU 27.

POLAND: The President of Poland has signed the Bill on special solutions for the protection of jobs, which offers support for businesses suffering during the economic downturn. The law is intended to help protect jobs by providing non-repayable financial assistance to companies to help compensate employees for economic downtime and reduction of working time. Only businesses that have recorded at least a 15% decline in turnover over six consecutive months during the preceding twelve months will be eligible to apply for the support.

SWITZERLAND: A proposal to exempt professional training allowances from tax has been rejected by the Swiss Federal Council. Currently the allowance is counted as wage income and therefore fully subject to taxation in Switzerland. The Council stated in support of its decision that such a tax exemption would disproportionately favour individuals with higher incomes. The proposal will face a national referendum on November 24th and if a majority is in favour of the proposal the measure will be introduced despite the Council's decision.

UK: The British Labour party has announced that if they win the next general election they will give companies tax rebates amounting to an average £445 per year for each worker whose salary is increased to the so-called "living wage". According to the Living Wage Foundation the current "living wage" (the minimum hourly wage that allows individuals to live decently) is £8.80 in London and £7.65 in the rest of the UK. The current national minimum wage for over 21 year olds is £6.31.



Other European HR News in Brief

BELGIUM: The Belgian Workers' Compensation Fund (Fonds des Accidents du Travail) has recorded a decrease in workplace accidents in Belgium. According to its latest report there were 8.6% fewer workplace accidents in the private sector in 2012 as compared to 2011.

EUROPEAN UNION: Despite pressure from MEPs, the European Commission has decided not to introduce EU-wide whistleblower protection laws before the end of the year. The laws proposed by the MEPs were intended to protect individuals in both the public and private sectors who report corruption relating to EU financial interests. Instead, parliamentarians from the Council of Europe have expressed a wish to include a whistleblower protocol in the European Convention of Human Rights, although the procedure could take up to two years.

FRANCE: A draft reform of the labour inspectorate has been presented to the Council of Ministers in France. The proposed reform would extend the powers of the labour inspectors, allowing them to impose fines on companies for breach of labour laws. Currently the powers of labour inspectors only allow them to bring criminal proceedings against companies in violation of the Labour Code — a lengthy and inefficient process. The reform would also give more power to labour inspectors to close down dangerous work sites. The reforms are expected to become operational in Spring 2014.

FRANCE: A new law, which would oblige employees to attempt to find a buyer before closing a site, has been adopted by the French lower house of parliament. The draft law, known as "loi Florange", proposes that companies with more than 1,000 employees should spend three months actively seeking a buyer before being able to close a site. The works council would be able to give an opinion on any offers with the assistance

of an expert. The Bill is due to be considered by the Senate in December 2013.

GERMANY: A draft Bill "to fight the misuse of contracts for work (Werkvertrag) and to prevent evasion of labour law obligations" has been put before the federal government of Germany. The Bill proposes amendments to the Employment Act and the Works Constitution Act which will clarify the existing obligation of employers to inform the works council in a timely manner on the intention to use Werkvertrag and will also increase the rights of works councils in relation to such contracts.

LATVIA: Saeima, the Parliament of Latvia, has accepted at first reading a range of amendments to the Latvian Labour Law. The amendments make substantial changes to employer and employee rights and responsibilities. Amongst the changes are an extension of maximum fixed-term contract terms to five years (formerly three), more flexible provisions in regards to holiday pay and a new time limit on the protection afforded to those who are breastfeeding. Before these amendments are to take legal effect they are subject to a second and third reading by the Parliament.

SPAIN: A Bill which aims to remove the October 25th annual non-working public holiday for the Basque region is currently being debated in Spain's Basque Parliament. It has been speculated that the holiday of October 25th, marking the anniversary of the Statute of Gernika, may be replaced by the date of December 3rd.

TURKEY: Working parents in Turkey could soon benefit from improved maternity and paternity leave rights. The package of measures currently being discussed by the Turkish government reportedly includes such provisions as an increase in paternity leave from 3 days to 10 days for employees in the private sector and an increase in maternity leave from 16 weeks to 18 weeks. Companies may also be allowed to hire



temporary workers to replace staff on maternity leave and mothers may be able to return to work on a part-time basis for up to six months.

SERBIA: Serbia has shown itself to be serious about EU accession in a recent meeting in Luxembourg with the Council for the Implementation of the Stabilization and Association Agreement (SAA). EU accession talks are due to commence at the latest in January

2014 with an aim for Serbia to achieve EU membership by 2020.

TURKEY: Following a three-year break in discussions, the European Union has agreed to resume EU membership negotiations with Turkey. A number of issues including how EU funds should be spent must be discussed before Turkey can join the EU.

FedEE News:

PUBLIC HOLIDAYS 2014: The dates of public holidays in Europe for 2014, as published, are now available in our knowledgebase. The information is available under each individual country section as well as in our ['Comparative data'](#) section. Please note that official dates are subject to change at short notice.

NEWS BY COUNTRY: The news pertinent to each European country is now available in our knowledgebase under the relevant country section. See the sub-section entitled 'Recent news 2013'.

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