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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: Social security exemptions abolished

A Royal Decree adopted in Belgium on September 24th has increased labour costs for employers by removing social security exemptions attached to the termination of employment contracts in certain circumstances.

As from October 1st, any compensation paid by an employer to a former employee in compensation for a non-compete or non-solicitation agreement will be considered to be a salary payment and therefore be subject to social security contributions. Equally, clientele indemnity payments made to sales representatives will now be subject to social security.

The social security exemption for collective redundancy indemnity payments remains unaffected by the changes.

### Belgium: Language restriction removed

The Flemish government is amending its Decree on the Use of Languages ('the Decree') to bring it into line with EU law. According to the new legislation, employment contracts in the Dutch-speaking region of Belgium that are drafted in a language other than Dutch may now be valid.

The change is being made following a judgment of the European Court of Justice in which it was held that a contract of employment must be written in a language that both parties understand in order to respect the freedom of movement for workers within the EU. [Case C-202/11]

The basic principle remains that contracts will be written in Dutch — as the Decree provides that relations between employers in Flanders and their workers must be conducted in Dutch — but authentic employment contracts may, in future, also be concluded in another official language of the European Union that is understood by all parties to the contract.

### France: Stores in breach of working time laws

A leading store in Paris, France has been ordered to close at 9.00 pm. This follows a decision by the Paris Court of Appeal against the group LVMH, which owns the Sephora store. A fine of 80, 000 euros per day would have applied in the case of non-respect of the ruling.

According to the French Labour Code night work is any work between 9.00 pm and 6.00 am (art. 3122-29). Night work is only justified where it is necessary to maintain the economic activity of the company or for reasons of social utility. Night work can also be allowed if a Collective Agreement is in force.

The French chain of supermarkets Monoprix has also now agreed to close at 9.00 pm following pressure from the CGT Trade Union.

## France: Airline found in breach of labour laws

A French criminal court has ordered Ryanair to pay over 8 million euros in damages for breach of labour laws. The airline had employed its staff under Irish contracts despite the employees concerned being stationed in Marseille. Although this is allowed under the Rome Convention, France still claims that such employees are entitled to statutory rights if they work within its territory.

As a result of employing staff on Irish contracts Ryanair sought to avoid payment of French social security and pension contributions amounting to 7.5 million euros, as well as 450,000 euros of unemployment charges. The airline must now repay these amounts, plus a 200,000 euro fine. Ryanair are expected to appeal against the judgment.

## France: Pension Reform Bill published

The proposed law on the reform of the pensions system in France has now been published and is shortly expected to be discussed by the National Assembly.

The Pension Reform Bill provides for an increase in both employer and employee pension contributions. This increase will occur progressively — by 0.15% in 2014 and then 0.05% over the next three years to reach 0.3% by 2017.

The Bill also plans to create by January 1st 2015 a fund called the “Compte personnel de prévention de la pénibilité” which will allow employees who are subject to adverse working conditions to retire at an earlier age. The fund will be entirely financed by employers and all companies will have to contribute to it. The level of contribution will range from a minimum of 0.2% of remuneration up to a maximum of 0.8%, depending on previous working conditions.

## France: New corporate tax scrapped

On September 25th 2013 the French Finance Bill for 2014 was published and sent to the National Assembly.

The Bill provided for the creation of a contribution on gross operation profits (EBE) to replace the tax on turnover (IFA). This was to consist of a 1% tax on Gross Operation Profits exceeding 50 million euros.

Since publication of the Bill however, the French government has been forced to abandon this new corporate tax following strong criticism from business leaders. The government intends to engage in consultations before finalising the new tax plans.

## Germany: Employee may be obliged to use electronic signature

In its judgment of September 26th 2013, the German Federal Labour Court ruled that employers may require an employee to apply for an electronic signature or an electronic signature card, if necessary for the performance of their work — even if it requires the submission of passport data.

The case involved an administrative assistant working for the Water and Shipping Authority, Cuxhaven. Her duties involved the publication of tenders in procurement procedures — which have required an electronic signature since January 1st 2010. She decided not to apply as the electronic signature — only granted for natural persons (Provisions of the Digital Signature Act) — requires the submission of personal details contained in an ID document. Her reasons were that it violated her right to data-protection and that she had no assurance that the data would not be misused.

The Court justified its decision by pointing out that the protection of personal data was ensured by statute (§ 14 Data Protection of the Electronic Signature Act as modified in 2005). [10 AZR 270/12]

## Poland: Parental leave laws amended

A number of changes to the laws on parental leave in Poland came into force on October 1st.

Parental leave is now defined more precisely as a period of 36 months (rather than three years), one month of which will be reserved for the exclusive use of the second parent. Parents may now take parental leave at the same time as their partner for four months rather than three, and parental leave may be divided into five parts rather than four.

There will also no longer be a proportional decrease in the right to annual leave based on the amount of parental leave taken in a calendar year, and any time spent on parental leave will no longer count towards the limited time in which annual leave claims may be made.

## Sweden: More flexible parental leave rights proposed

A draft law has been submitted to the Swedish parliament that would raise age limits and increase flexibility in the use of parental leave.

Under the proposed law the maximum number of days of parental leave that could be taken after the child's fourth birthday would be limited to 96. However, the proposals would also raise the maximum age of a child for which a parent may take parental leave — from eight years to twelve years. The Bill also provides for parental benefits to be shared equally between parents who have joint custody of their child.

If the law is passed, these provisions are likely to come into force on January 1st 2014.

## Spain: Reforms for more sustainable pensions

A draft law on pension reforms has been approved by the Spanish Cabinet.

If the law is passed by parliament in the next few months then, from 2014, pension payments will no longer be linked to annual inflation. Instead, factors such as the number of pensioners, the financial state of the social security system or the level of pension payments over a number of years will be used to calculate yearly pension rises.

The government has proposed that pension payments will rise by a minimum of 0.25% every year up to a maximum of the inflation rate, plus 0.25%.

The Spanish government also intends to introduce what is known as the "sustainability factor" earlier than planned under previous reforms. From 2019 pension rises will be limited by linking the pensions to increasing life expectancy.

The statutory retirement age is not being affected by these reforms.

## Pay, Tax and Benefit Trends

**BELGIUM:** A law requiring employees who are off work due to illness to remain at home for a daily medical check-up has been approved by the

Council of Ministers in Belgium. Under the proposed law employers would be able to include in their workplace policies a requirement that workers stay at home during a 4-hour window between 7.00 am and 8.00 pm each day for a doctor to visit to confirm their illness. Employees found in violation of the rules could lose their sick pay for that day.

**FINLAND:** From 2014 employers could receive financial incentives to train staff under a new law proposed by the Finnish government. The incentive (a proposed 50% business tax deduction on the wage costs for training days) would apply to three training days per year, per employee. In order to benefit from the tax deduction the employer would have to prepare a training plan — including an assessment of the professional competence of the entire staff as well as the employer's needs.

**GLOBAL:** The latest OECD report has revealed how the distribution of wage returns according to skills proficiency differs between countries. The data shows a narrower distribution of wages across different skill levels in the Czech Republic, Estonia, Poland, the Slovak Republic and Sweden compared with a much wider distribution in countries such as the United States, Ireland and Germany.

**LATVIA:** On January 1st 2014 Latvia will become the 18th member of the eurozone. Although one of the European countries worst affected by the recession in 2008, the country is now the fastest growing economy in the EU 28.

**NETHERLANDS:** A joint report from the Dutch employers' organisations VNO-NCW and MKB claims that by 2017 it will cost an employer 300 euros in additional labour costs to give an employee earning 70,000 euros a year a 100 euro pay increase. This is an increase of 50 euros per hundred euros compared to the current year.

**UK:** On October 1st new national minimum wage rates were introduced in the UK. Workers aged 21 years and over are now entitled to £6.31 per hour, workers aged 18 to 20 years are entitled to £5.03 per hour and those aged 16 to 17 years must receive a minimum of £3.72 per hour. Apprentices under the age of 19 or in their first year of apprenticeship are entitled to a minimum of £2.68 per hour.

## Other European HR News in Brief

**FINLAND:** A new law relating to the rescheduling of annual leave due to sickness has come into force in Finland. When an employee falls ill during a period of annual leave they may now rearrange this leave as of the first day of illness rather than having to wait until the seventh day. The change follows a European Court of Justice ruling which found Finland's seven-day waiting period to be contrary to EU law.

**FINLAND:** The Ministry of Employment and the Economy in Finland has taken note of employers' wishes to control smartphone use in the workplace. A wave of Finnish employers across several industries have blocked smartphone use on the job on the grounds that its excessive use has an impact on work safety, productivity, and ultimately competitiveness of the enterprise. According to the Ministry, employers must establish clear rules for mobile device usage at work, whilst keeping in mind that some jobs do require it, and that parents of small children may need to stay in touch with family members during working hours.

**GREECE:** Following a reported 38.4% increase in undeclared work in Greece during the first half of 2013, the Greek Ministry of Labour has decided to impose a much stricter system of fines to combat the problem. Employers found by the Labour Inspectorate not to have declared workers will face on-the-spot fines of 10,550 euros per employee.

**SPAIN:** Spain is making it easier for foreign workers to obtain a visa. The law for the support of entrepreneurs and internationalisation (Ley 14/2013), passed on September 27th 2013, enables workers being transferred to a branch based in Spain to obtain work and residence permits if they meet four simple requirements: they must have a genuine mission in the branch in Spain, they must have a high-level qualification or at least three years of experience, they must have worked continuously for at least three months with the company before being transferred to the branch in Spain and they must have a document from their company justifying the transfer. The law came into force, with exceptions, on 29th September 2013.

**UK:** Since October 1st, UK businesses no longer have to obtain the approval of the Health and Safety Executive in respect of their first-aid training and qualification provisions. This amendment marks the latest deregulation in the government's wider 'Red Tape Challenge'.

**UK:** The UK health and safety claim procedure has been revised with the effect that employees can now only bring claims against their employer for specific breaches of health and safety legislation. The amendment, introduced by s69 of the Enterprise and Regulatory Reform Act 2013, specifies that only breaches stated in the Health and Safety at Work Act 1974 are actionable and these are limited to the extent that each is defined in the act.

**UK:** The UK's Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) were amended on October 1st. As a result, the range of employee injuries a UK employer must report has been reduced. This was achieved by a reclassification of 'major injuries' into fewer 'specified injuries' and a decrease in reportable 'dangerous occurrences'. Eight categories of work-related illness were also introduced to replace the former 47 industrial diseases.

**UK:** The UK Department for Business, Innovation and Skills (BIS) has been granted permission to appeal against the Employment Appeals Tribunal (EAT) decision in the Woolworths case. This decision changed collective redundancy law by removing the condition that collective redundancies should relate only to an individual establishment rather than s group of establishments. If the EAT decision is overturned the law would revert back to how it stood before the Woolworths judgment.

**UKRAINE:** The Ukrainian government has approved a draft EU Association Agreement (EUAA). This is an important milestone which could eventually lead to Ukraine joining the EU. If signed by the European Union, the agreement would open up free trade with the EU and result in a number of changes in order to bring national legislation in line with EU laws. To secure agreement, however, Ukraine will have to demonstrate its commitment to wide-ranging structural reforms.

## FedEE news:

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To refer a colleague contact Niall Jones, FedEE Development Secretary, with their contact details on niall.jones@fedee.com or +44 (0)7739 545045.

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