



Dernières nouvelles

Latest news | Neueste Nachrichten | Ultime notizie | Últimas noticias | 最新消息

October 22nd 2015

Inside this Issue:

UK: EAT case examines the role of HR in disciplinary proceedings

Australia: Reversal of 2013 changes to Queensland's workers compensation law

European Union: EIOPA consults on pan-European pension product

Italy: Amendment of rules on remote monitoring of employees

USA: Generous paid leave provisions proposed in Washington DC

Netherlands: Draft law to encourage the employment of retirement-age workers

Mexico: Geographical differentiation of minimum wage removed

Kenya: Employment Bill extended to all unemployed persons

Editorial: How significant are labour clauses in trade agreements?

Details of the Trans-Pacific Partnership (TPP) trade agreement between the US, Japan and 10 other Pacific Rim nations have yet to be revealed, but one certain element in it will be a commitment to follow the ILO 1998 Declaration on Fundamental Principles and Rights at Work. Since 2007, the US has been required, under its own domestic legislation, to include discussions of labour standards in its trade negotiations. The ILO declaration, which covers child and forced labour, discrimination, the protection of migrant workers and the right to unionise, is invariably the basis for such discussions.

Yet, like all trade agreements, the strength of participants' commitments to comply with ancillary matters is questionable. Although we already know that the TPP includes a disputes clause and a mechanism involving a panel of three international trade and subject matter experts to review the compliance problem, the record of previous trade agreements reveals a great reluctance to trigger international

disputes over labour matters. In only one previous case — between the US and Guatemala — has a dispute been pursued to even bilateral talks and the matter remains unresolved after seven years of dispute settlement discussions.

Governments frequently act as though they are responsible for the generation of international trade when, of course, they are the bodies erecting barriers to it. They impose tariffs and a wide range of regulatory impediments to restrict imports and manipulate their exchange rates to favour their domestic economies. All that trade agreements do is take apart the barriers that the governments initially imposed.

The true purpose of TPP is, of course, to limit the hegemony of China — particularly across Asia — and, as such, represents the first trade agreement ever concluded between the USA and Japan. It may have an impact on international employers by, for instance, putting pressure on the Vietnamese government to allow free trade unions to operate and, probably, by relaxing rules on intra-company transfers and recruitment across national borders. However, it is also

likely to pressure the Chinese government to drive their huge domestic companies to become multinational. This would be a major challenge for major western brands — and particularly jobs in the largest US corporates.

Australia: Reversal of 2013 changes to Queensland's workers compensation law

In Queensland, Australia, a law which amends the Workers Compensation and Rehabilitation Act 2003 has come into force. This effectively reverses the changes that were introduced in October 2013.

The amending law has removed the requirement for a worker to meet a 5% degree of permanent impairment before they are entitled to claim common law damages against their employer. This provision has retroactive effect, meaning that employees injured after January 31st 2015 and suffering less than a 5% permanent impairment will not face restrictions on claiming damages — provided they have not already accepted a lump sum offer. Injuries that occurred after October 15th 2013 and before January 31st 2015 will remain subject to the previous rules, although some workers may be able to claim additional compensation.

In addition, the law now provides that employers may not apply to the regulator to obtain a copy of a prospective employee's claims history.

European Union: EIOPA consults on pan-European pension product

The European Insurance and Occupational Pensions Authority (EIOPA) has drawn up a new type of model pan-European pension format that could remove an important barrier to employee mobility within the European Union. The standardised Pan-European

Personal Pension Product (PEPP) would have a wide range of safeguards to ensure companies offering the product could meet long-term commitments. It would have a streamlined way to register the product and allow it to be marketed online without 'advice'.

By means of consultation, EIOPA is currently reviewing how far current controls on personal pensions could be adapted to fit the new product and if Pan-European Regulations would be necessary to back it up. It will report to the European Commission early next year and the new product could be available as early as 2018.

European Union: Healthcare directive only fully effective in Denmark

A review by the European Commission into the operation of the Cross-border Healthcare Directive (2011/24/EU) has found that it has been only effectively implemented by Denmark. The Directive aims to allow patients from one EU country to seek treatment in another and gain reimbursement from their home country. To do this they must gain prior authorisation for treatment if it involves overnight hospital accommodation or if it 'requires use of highly specialised and cost-intensive medical infrastructure or medical equipment'.

The deadline for implementation was in October 2013, but it was necessary for the Commission to begin infringement proceedings against 26 member states to force through its adoption. As a consequence, last year 78% of all treatment claims were made by Danish citizens. Other countries have still generally either failed to implement the measure, placed barriers in the way of claims or not communicated the facility to their populations.

Italy: Amendment of rules on remote monitoring of employees

On September 24th 2015 the final four decrees of Italy's Jobs Act came into force. Among these decrees is one which has amended the rules on distance monitoring of employees.

Before the new law came into force, Article 4 of Italy's Workers' Statute prohibited the use of audio-visual devices and other equipment for the purpose of monitoring employees remotely. However, an exception to this Article provided that equipment required for organisational and production purposes or for safety reasons, which also allowed for the remote monitoring of employees, could be installed with the prior agreement of the company trade union representatives. Despite the law, the courts had shown some flexibility in the monitoring of employees in certain circumstances, and recently the Italian privacy authority had allowed the location of employees to be tracked through mobile devices.

In order to adapt the law to technological developments — as well as recent jurisprudence of the courts — Article 4 of the Worker's statute was amended so that remote monitoring of employees is now also possible, with the agreement of trade union representatives, for the purpose of protecting business assets. The new law also states that the agreement of trade union representatives is not required in relation to equipment that is used by employees in order to carry out their job functions — for example mobile phones, laptops, tablets, access badges and GPS connected to a business network. Information collected through such devices may be used for business purposes provided this information is collected and used according to the Privacy Code and employees are given adequate information on how the devices will be used for monitoring and how the collected data will be dealt with.

Kenya: Employment Bill extended to all unemployed persons

Prior to approval by Kenya's National Assembly, the National Youth Employment Bill has been modified to extend its scope from young unemployed workers to all unemployed people.

The draft law, now renamed the National Employment Bill, establishes a new central employment authority. This authority will have employment centres in each of the 47 counties charged with providing employment counselling, gathering job data and advertising job vacancies through the internet and social media. The Bill also puts public bodies at the forefront of job creation — with all public entities being required to offer internships and other job opportunities.

Recent job data for Kenya is not available, although the World Bank estimates that youth unemployment in Kenya in 2013 was just 17.1%. This, however, is likely to be a gross underestimate, with some sources suggesting total youth unemployment has now reached 70%. However, the economy continues to expand rapidly, with the IMF recently forecasting GDP growth of 6.6% this year and 6.8% in 2016.

Netherlands: Draft law to encourage the employment of retirement-age workers

The Dutch Senate has approved a Bill that would make the continued employment of workers beyond the statutory retirement age more attractive to employers.

Under the draft law, employees who have reached the statutory retirement age would be entitled to a maximum of 13 weeks' paid sick leave instead of two years. This could even be reduced to just six weeks from 2018. Employers would also not be required to

honour requests from such employees to either increase or decrease their hours.

Furthermore, employees over the retirement age would not be entitled to a permanent contract until they had been employed under six fixed-term employment contracts over a period of more than four years. Retirement-age employees would also be entitled to a maximum termination notice period of one month, instead of notice of between one month and four months depending on length of service. The Work and Security Act has already made it possible for retirement-age employees to have their employment contract terminated without needing permission from the UWV or a court.

It is expected that the law will come into force in January 2016. Certain transitional measures will, however, apply.

UK: EAT case examines the role of HR in disciplinary proceedings

In a recent judgement the UK's Employment Appeal Tribunal (EAT) considered the extent to which Human Resources may be involved in disciplinary proceedings.

The case involved an employee who was dismissed for gross misconduct for misuse of expenses and hire cars. Evidence showed that, initially, the manager who was appointed to conduct the investigation and act as disciplinary officer had recommended that the employee be found guilty of misconduct and sanctioned with a final written warning. After taking advice from the HR department, however, the manager changed his position and recommended summary dismissal for gross misconduct.

The EAT considered that the HR department had clearly influenced the manager in relation to the

employee's culpability and credibility, thus causing him to change his recommendation. According to the EAT, investigating officers are entitled to seek advice from HR, but HR must limit their advice to questions of law and procedure and process, and avoid straying into areas of culpability and appropriate sanction. The case has been sent back to the Employment Tribunal for reconsideration, but it does raise a number of important questions about the role of HR in dismissal decisions which probably exceeds the court's powers of determination. [Ramphal v Department for Transport UKEAT/0352/14]

USA: Generous paid leave provisions proposed in Washington DC

Washington DC's city council is currently considering a Bill that would entitle employees in the city to up to 16 weeks of paid family and medical leave each year, funded by employers. This would be the most generous paid leave entitlement of its kind in the US.

Eligible employees would be able to take this paid leave in the event of the birth of their child or the placement of a child with them through adoption, guardianship or foster care. It would also be available if they needed to take care of a family member with a serious health condition or if they themselves were unable to work because of a serious health condition.

All employers with at least 20 employees would be required to pay into a new Family and Medical Leave Fund 0.5-1% of employees' wages each year. This fund would then be used to pay employees during their leave period. Employees would be paid 100% of their average weekly wages for the first 1,000 US dollars per week, plus 50% of their weekly wages exceeding 1,000 US dollars, up to a maximum of 3,000 US dollars. A five-day waiting period would apply in most cases.

Pay, Tax and Benefit Trends

BELGIUM: A law has been passed in Belgium that will increase the legal pension age from the current 65 years to 66 years in 2025 and 67 years in 2030. The age at which workers may take an early retirement pension will also be increased, to 62.5 years in 2017 and 63 years in 2018. Certain transitional measures will, however, apply.

CANADA: According to a recent decision by the Ontario Superior Court of Justice, changing a long-serving employee's employment contract at their request can lawfully remove their service entitlements. In *Riskie v Sony of Canada Ltd* it was found that an employer was not liable to pay dismissal compensation to an employee for non-renewal of their fixed-term contract, despite the fact that the employee had worked for the company for 25 years. The employee in question had been transferred to a fixed-term contract following a request to continue working from another city on a telecommuting basis and this had caused them to lose their service entitlements.

CHINA: Following recent amendments to the law in China, employers and employees are now permitted to enter into individual agreements on how non-patented employee inventions will be remunerated. As an alternative, employers may establish a company policy stating how such inventions will be remunerated. Under previous rules employers were required to pay employee inventors of non-patented inventions according to a minimum statutory standard. This minimum standard — which has been increased from 20% to 50% of the net profits generated from the invention — will now only apply where there is no company policy or individual agreement in place. The amount of remuneration agreed between the parties may be lower than the statutory standard, but in the case of dispute courts are likely to adjust the

remuneration agreed if it is considered unreasonably low.

FRANCE: In its draft Finance Bill for 2016, the French government has revealed plans to reduce corporation taxes and change the method of collecting personal income tax. It is proposed that from 2018 income tax will be collected at source instead of declared and paid by individuals directly. The exact details of such a system will be discussed during 2016. As regards corporation taxes, it is proposed that corporate income tax (*impôt sur les sociétés*) will be decreased from 33.33% to 28% by 2020 and the corporate social solidarity contribution (*contribution sociale de solidarité des sociétés*) will be repealed by 2017. Furthermore, the temporary surcharge on corporation income tax (*contribution exceptionnelle sur l'impôt sur les sociétés*), which applies to companies with a turnover of more than 250 million euros (approximately 285 million US dollars), will be repealed by the end of 2016.

INDIA: Minimum wage rates for non-agricultural jobs in the Indian state of Uttar Pradesh rose on October 1st 2015 to 6,814.81 rupees (104.71 US dollars) per month for unskilled workers, 7,496.30 rupees (115.19 US dollars) for semi-skilled workers and 8,397.04 rupees (129.03 US dollars) per month for skilled workers. New minimum rates also apply at a national level for certain industrial, mining, cleaning and construction workers — ranging from 236 rupees (3.62 US dollars) per day for unskilled workers to 467 rupees (7.17 US dollars) per day for 'highly skilled' workers.

LITHUANIA/MOLDOVA: Lithuania and Moldova recently entered into a bilateral social security agreement which came into force on October 4th 2015. Under the agreement, workers from Lithuania or Moldova who work in the other country are required to pay social security contributions in their country of employment. If they work in both countries they are required to pay contributions in their country of

permanent residence. The agreement also provides that time spent working in either country will count towards the right to a pension in either country.

LUXEMBOURG: The Luxembourg Central bank has predicted that a wage indexation payment of 2.5% will be triggered for all workers in the country by the first quarter of 2016. This is slightly later than predicted by the Economy Minister in August. The last national indexation payment was in October 2013.

MALAWI: The statutory minimum wage has been increased in the African state of Malawi from 551 kwacha (just 1 US dollar) per day to 687.70 kwacha (1.24 US dollar) per day, effective October 1st 2015. The Ministry of Labour, Youth and Manpower Development has asked employers 'to go beyond this set minimum in order to improve the welfare of workers'.

MEXICO: As of October 1st 2015 only one general minimum wage rate applies in Mexico. Previously there were two different general minimum wage rates — one which applied in locations categorised as 'geographical area A' and one which applied in locations falling under the category of 'geographical area B'. These rates would then vary according to occupation. The general minimum wage is now 70.10 Mexican pesos (4.26 US dollars) per day in both areas A and B. The minimum wage rate still varies according to occupation but professional rates are no longer split into two rates depending on geographical location.

SLOVAK REPUBLIC: Under a scheme recently announced by the Ministry of Labour, Social Affairs and Family, employers in Slovakia that create jobs for unemployed young workers may be entitled to apply for financial assistance. Funding is available to eligible employers when they hire, for a minimum period of nine months, jobseekers under the age of 25 years who have been unemployed for at least three months, or jobseekers under the age of 29 who have been

unemployed for at least six months. Employers will receive 95% of the total labour costs associated with employing an eligible worker during the period of nine months, plus a contribution to the costs of mentoring that worker.

TAIWAN: According to the National Statistical Bureau, monthly average earnings in Taiwan, including regular and irregular earnings, equalled 51,454 New Taiwan dollars (1,590 US dollars) between January and July 2015. This is 3.53% higher than the average monthly earnings during the same period a year earlier. Average regular earnings between January and July 2015 were 38,591 New Taiwan dollars (1,193 US dollars) and average irregular earnings were 12,863 New Taiwan dollars (397 US dollars). Irregular earnings include year-end bonuses, performance bonuses and overtime pay.

Other Global HR News in Brief

ANGOLA: A new General Labour Act (7/15) entered into force in Angola on September 13th 2015. One of the principal changes introduced by the Act concerns fixed-term contracts. Previously, such contracts were restricted to certain prescribed purposes and could not last for longer than three years. No justification is now required and contracts can operate for up to five years (ten years for SMEs). It is also no longer necessary to gain the approval of the labour inspectorate to claim exemptions under working time restrictions or make contractual deductions from an employee's remuneration.

CROATIA: A number of new health and safety-related regulations have recently been adopted by the Ministry of Labour and Pensions in Croatia. The regulations establish the jobs which should under no circumstances be performed by pregnant workers, those who have recently given birth and those who are breastfeeding. Regulations on the jobs that must not be

performed by minors have also been adopted — as have regulations which set out employers' obligations in respect of the occupational health and safety of workers working with carcinogens and/or mutagens.

EUROPEAN UNION: The European Commission has announced that the European Union will be providing an as yet undisclosed level of financial support for the G7's 'Vision Zero Fund'. This new fund will support initiatives in poorer supply-chain countries aimed at improving working conditions, tightening up workplace inspections and reducing health and safety risks. It will be managed by the International Labour Organisation (ILO).

IRISH REPUBLIC: The Republic of Ireland's Workplace Relations Act came into force on October 1st, simplifying and standardising the national employment dispute resolution system. All employment disputes in Ireland will now be referred initially to the newly-created Workplace Relations Commission. On appeal, cases will be heard by the Labour Court. The time limit for bringing an employment claim is now six months, although this may be extended to twelve months where there is reasonable cause.

JAPAN: An amendment to Japan's Holiday Act will introduce a new annual public holiday next year. The first 'Mountain Day' on August 11th will fall on a Thursday and be Japan's 16th Public Holiday — but the only one to fall in August. Japan's working population are notorious for not taking their individual annual leave days, with average take-up of only half their statutory entitlement each year. This is why the government has been so receptive to calls for additional public holidays.

PHILIPPINES: New rules on the issuing of Alien Employment Permits (AEPs) recently came into effect in the Philippines. These change the publication requirements of AEP applications. AEP application details must now be published in a general circulation

newspaper and on the Department of Labour and Employment's website for 30 days, and the details that will be published now include the foreign national's name, their position, the employer and the employer's address, a brief description of the functions to be performed, qualifications, salary and other benefits. In addition, the rules require employers to train two Filipino employees for every foreign worker employed in a non-managerial position in order that skills will be transferred to the local labour force. The list of categories of foreign nationals that are exempt or excluded from the requirement to obtain an AEP has also been extended under the new rules.

QATAR: Employers of foreign labour in Qatar are coming under increased pressure to ensure that they comply with Law 15 of 2010 prohibiting workers' camps in residential areas. The Ministry of Municipality and Urban Planning has just published a map showing where such housing may be located in Doha and companies are being reminded that they face fines of 50,000 Qatari riyal (13,730 US dollars) for failure to comply with the law, or up to 100,000 riyal (27,450 US dollars) for repeat offences. The restrictions apply to all foreign workers not living with their family. Although it is not strictly applicable to male white-collar workers they are generally being advised to keep a 'low profile' in the districts where they live.

SWEDEN: An increasing number of workplaces in Sweden are adopting, or trialling, a six-hour work day. Public sector establishments as well as private-sector companies are amongst those who have cut the working day, whilst retaining salary levels, in an attempt to reduce stress and increase productivity. One reason why Swedish companies can contemplate lower working hours is because, according to the latest EU statistics, all regions of Sweden have per capita GDP levels above the EU average. Sweden has one of the highest concentrations of high growth companies. In addition, Swedes are amongst the most satisfied people in the EU with regards to the use of their time

and a low proportion declare their health as 'bad' or 'very bad'. For that reason this experiment in re-engineering the work-life balance is unlikely to work in other EU countries.

UK: A recent judgment by the UK's Employment Appeal Tribunal (EAT) has supported an earlier decision on the meaning of 'in the public interest' in respect of whistleblowing protection. The disclosure on which the employee in this case sought to rely on for whistleblowing protection concerned a complaint of unfairly allocated overtime affecting a number of employees in the organisation. The decision of the

earlier case of *Chesterton Global Ltd and anor v Nurmohamed* (reported in our April 23rd 2015 edition of the newswire) was confirmed — the whistleblowing provisions of the Employment Rights Act 1996 can protect an employee who raises a contractual matter affecting a group of employees.

UK: The UK government's Department for Business, Innovation and Skills has issued new guidance for employers on zero-hours contracts. The guidance covers appropriate and inappropriate use of zero-hours contracts, best practice and alternatives to zero-hours contracts. The full guidance can be seen [here](#).

Dates for your diary:

November 2nd 2015: Implementation of new wage protection system in [Qatar](#).

November 27th 2015: FedEE Global's Fellowship meeting takes place in London, [UK](#).

November 30th 2015: First of a new annual non-working public holiday in [UAE](#) for Martyrs Day.

Latest news for business travellers:

There remains significant disruption to rail and road transport around the borders of a number of countries in [Europe](#) as a result of an influx of asylum seekers seeking transit to other European countries. Travellers should monitor local media and check with transport service providers for updates.

Irish Rail train drivers are due to strike in [Ireland](#) between 6am and 9am on Friday, October 23rd and Friday, November 6th 2015 unless an agreement can be reached between the parties to the industrial dispute. The work stoppage will affect the Commuter, Dart and Inter-City lines during these hours although disruption is likely to also affect services later in the day.

Violence is possible in [Ukraine](#) in the run up to local elections on October 25th 2015. Travellers should take extra care during this time and avoid large public gatherings.

A general election has been scheduled to take place on November 8th 2015 in [Myanmar](#). Travellers may experience disruptions due to demonstrations or political events and are urged to exercise caution during the electoral period.

Hurricane Patricia is expected to cause hazardous sea and weather conditions in parts of the west coast of [Mexico](#) around October 23rd 2015.

The US Department of State is urging its citizens to carefully consider the risks of traveling to [Saudi Arabia](#) given the continued threat of attacks on US citizens and Western expatriates.

FedEE news:

PROFESSIONAL DEVELOPMENT: Following requests made by several FedEE Fellows, we have been considering how individuals could be better prepared for the role of International HR practitioner and given appropriate professional recognition. We have had initial talks with a University and recently been in discussions with the Institute of Paralegals (IOP). In the next few weeks we will be forming a working group to explore various options open to us — including the possibility of working with the IOP and/or a continental University. If you would like to join the professional development working group please let us know by contacting us on admin@fedee.com. Meetings will take place in London.

FELLOWSHIP MEETING: The next Fellowship meeting will take place in London on November 27th 2015. If you are a Fellow and have not yet booked your place, contact us now on +44 (0)117 975 8611. For more information about Fellowship and our Fellowship meetings, please contact Cassandra Lu on Cassandra.lu@fedee.com.

NEW COUNTRY COVERAGE: Our Knowledgebase entries for Hong Kong and Kenya are now complete and entries for Canada, Sri Lanka, USA and Taiwan are currently under construction. An entry will also soon be available for New Zealand and Northern Ireland. If there are any countries which we do not currently cover and you would particularly like to see covered in the Knowledgebase, please let us know by writing to us at admin@fedee.com.

LATEST ECONOMIC PROJECTIONS PUBLISHED: Our [2016 projections for prices, salaries and employment prospects](#) have now been published. This data can be found in our HR Knowledgebase under the category of '[Pay, tax and economic data](#)'.

UPDATED LAW PROGRAMME PRESENTATIONS: Earlier this year we updated our audio-visual law programme presentations for 2015. Updated presentations are now available for England and Wales, France, Germany, the Netherlands, Poland, Russia, Spain and Sweden. New presentations are also now available for Argentina, Brazil, Mexico, New Zealand, Peru and Venezuela. Our [Law Programmes](#) can be found in the Members' Area of our website.

NETWORK WITH OTHER FEDEE PROFESSIONALS: Don't forget to sign up to FedEE's face-to-face networking community, butN. Join for free today at <http://www.but-n.com>.

FOLLOW US: Follow us on [Twitter](#), [Facebook](#) and [LinkedIn](#) for news on upcoming events and discussions on global employment law and HR issues.

Copyright: FedEE Services Ltd 2015

The Federation of International Employers (FedEE Global)/La Federación de Empresarios Internacionales/La Fédération des Employeurs Internationaux is one of the world's leading non-sectoral organisations for multinational employers. The Federation was founded in 1988 with financial assistance from the European Commission but today operates as an independent support service with members in over 70 countries worldwide. The Federation's affiliates are FedEE Services Ltd, Focela Ltd (training and events management), butN Ltd (business networking) and 法鼎國際有限公司 (Hong Kong). Our UK postal address is 6th Floor, Broad Quay House, Prince Street, Bristol BS1 4DJ, UK. Tel: 0044 (0)117 975 8611. Web: <http://www.fedee.com>.

We utilise virus scan software, but are not responsible for any problems that may arise from the transmission, receipt or use of any material.

In providing the information contained in this communication neither FedEE nor any third party authors are rendering any legal, accounting or other professional advice or opinions on specific facts or matters. This communication contains information that is derived from a variety of sources. Every effort has been made to verify the data before it is incorporated into news stories, but full verification may not always be possible due to partial, ambiguous or poorly translated source documents, or reproduction in third-party reports. For these reasons the data should not be considered as definitive and should only form the basis of any decisions once verified by appropriate experts in the country or countries to which it refers. Neither the Federation of International Employers nor FedEE Services Limited or their affiliates accept any liability whatsoever for decisions made or action taken or not taken on the basis of this information.

Where this communication is part of an information society service it shall be subject to our standard terms and conditions. The information transmitted is confidential and intended strictly for the corporate/individual addressee. If you receive this communication in error please notify us as soon as possible and delete it. This message constitutes a commercial communication under Section 7(a) of the Electronic Commerce (EC Directive) Regulations 2002. FedEE's UK Data Protection Notification Number is Z546304X.

The Privacy and Electronic Communications (EC Directive) Regulations 2003: This communication has not been transmitted for direct marketing purposes. However, if you do not wish the address used in this communication to be used again by us for any reason, please inform us by email.