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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Croatia: Overhaul of labour, safety and pension laws

Croatia's Minister for Labour and Pensions, Mirando Mrsic, has announced a number of wide-ranging reforms that the government intends to introduce next year.

Under the reforms, the current rules that require employees who have not been paid on their due date to wait for at least 30 days and the outcome of mediation proceedings before they can take any action, will be repealed. In future, employees will be able to go on strike as soon as remuneration is delayed. Employers will also not be able to impose procedures to regulate the employment relationship; the only legitimate bases for the employment relationship will be an individual's employment contract or an applicable collective agreement.

In addition, the state retirement age will rise progressively to reach 67 by 2030, and the pension system will be split into a basic pension funded by contributions and a system of special pensions funded directly from the state budget. The aim will be to ensure that workers can expect to retire with a total pension income equal to 60-70% of their previous salary.

The final major area of reform will be in the field of workplace safety. A state Institute for Safety at Work will be established that will train professional safety advisors whose practice licences must be renewed every five years. The labour inspectorate will operate on a ‘carrot and stick’ basis, giving employers seven days to rectify any deficiencies before they impose a new range of more severe sanctions.

France: Workplace violence not grounds for dismissal

The French Supreme Administrative Court (Conseil d’Etat) recently held that the dismissal of a protected employee for violent and aggressive behaviour was discriminatory. Article L. 1132-1 of the Labour Code prohibits any form of discrimination based on health or disability and the court established that the employee's conduct was due to their state of health.

Although the dismissal in this case was approved by a labour inspector, that decision was subsequently challenged by an independent expert. In the expert's view, the alleged misconduct was caused by the side effects of prescribed medication and an underlying psychological condition.

The court's decision once again goes against the principle that an employer can only reasonably be expected to take into account facts as known at the time of a dismissal. The Conseil d'Etat left it unclear as to whether the same employee should be excused on such grounds for multiple instances of violent conduct. [CE N° 349496]

France: Online advertising should not be subject to special tax

The latest report from the French Digital Council ("The Council") on the taxation of the digital economy has recommended that the French government avoids the unilateral and immediate implementation of sector-specific taxes, as it would be economically damaging.

Various types of taxation measures directed towards electronic commerce and, in particular, online advertising (which would apply equally to recruitment advertising), were deemed "inefficient and inequitable", as they counter "the principles of stability, fairness and neutrality of tax policy". The Council — an independent advisory committee created in 2011 — has repeatedly called for the withdrawal of government plans to introduce a general tax on online advertising that was first proposed two years ago.

Germany: Rights to transfer as an alternative to redundancy

In a recent case, the German Federal Labour Court ruled that an employer does not need to consider relocating employees to alternative positions abroad when closing an operation in Germany.

In this case, a German textile company decided to close its production facilities and only retain its sales and administrative operations in Germany. All production was moved to a factory in the Czech Republic which, until then, only supplied parts and materials for finishing in Germany. This led to a collective redundancy affecting all their textile workers at their German operations.

As a consequence of this decision, one of the redundant employees sought redress arguing that the employer should have at least allowed their employees to consider moving to the Czech Republic in order to take up the newly created posts there.

Paragraph 1, section 2 of the German Law for Protection from Dismissal requires employers to allow employees to redeploy to suitable alternative positions in order to avoid redundancies. The court ruled that this paragraph is applicable only within German operations, and excludes any operations of the same employer abroad. [Bundesarbeitsgericht judgement of August 29th 2013 2 AZR 809/12]

Italy: Clarification of labour law amendments

A Ministry Circular has been issued in Italy, clarifying the interpretation of the labour law introduced this Summer by Legislative Decree 76/2013 (converted into Law No 99/2013).

The guidelines confirm that "technical, production, organisational or replacement" reasons are no longer required in order to enter into a fixed-term contract (including a fixed-term supply contract) for less than 12 months. It has been clarified that the 12-month maximum term includes any extensions — although collective agreements may extend the statutory 12-month maximum period.

In order to avoid a renewed fixed-term contract being reclassified as permanent, employers must now wait at least 11 days between fixed-terms contracts if the previous contract was for less than six months, or 21 days if the previous contract lasted over six months. This provision does not apply to workers employed in seasonal activities. Employers may also retain workers on intermittent (zero-hours) contracts, provided their working time over any three year period does not exceed 400 days of time actually worked. This limit does not apply to the tourism or entertainment sectors.

The local "Conferenza Stato-Regioni" has been charged with approving new apprenticeship contracts ahead of the September 30th 2013 deadline. If appropriate guidelines are not produced in time the provisions listed in the law will automatically directly apply with effect from October 1st 2013.

Latvia: Backdoor expansion of EU population

The Latvian parliament is currently debating a new law that would give up to 100,000 Russians citizenship of Latvia if they, their parents or grandparents had been forcibly exiled during the communist era. Those with other claims on Latvian ancestry will also be able to apply for citizenship, but they will have to take a language test.

Other Baltic states are likely to follow Latvia in establishing similar citizenship rights, thus effectively giving hundreds of thousands of Russians an entitlement to work anywhere in the EU without a work permit. Similar concessions have long been made to Moldovan nationals who can claim Romanian ancestry. This has led to an influx of around 400,000 people into Romania since 1991.

Poland: Benefit must be based on individual circumstances

The Lomza District Court in Poland has ruled that an employer may only issue vouchers through its social fund if it does so on the basis of an employee's individual circumstance, such as income and the size of their family.

Under Polish labour law an employer may establish a social fund that allows them to provide tax-free employee benefits — usually in the form of subsidised holidays and Christmas vouchers. However, since 2009 the fund may also be used to provide workplace childcare places or subsidised childcare in external facilities.

Portugal: Change to severance pay entitlements

Amendments have been made to the Portuguese Labour Code altering employee severance pay entitlements upon termination of employment (Law number 69/2013).

Employees on indefinite contracts are now entitled to an award equivalent to 18 days of their basic salary — plus any seniority premiums — for each of the first three years of service and 12 days' salary for each year thereafter. Fixed-term employees are now entitled to the equivalent of 18 days' salary per year of service. The maximum monthly salary limits and 12-month cap are unaffected by the changes.

Slovenia: Plans to remove public holidays on hold

The Slovenian government has been considering the removal of two public holidays and the introduction of a new rule whereby any holiday falling mid-week would automatically revert to a Friday.

The two holidays targeted are September 1st (Constitution Day) and September 15th (Feast of the Virgin Mary). Strong opposition has, however, come from the Catholic Church in respect to the latter change, and both nonworking days remain unchanged in the government's recent announcement of public holidays in 2014.

Next year most of the rest days fall on a Monday or a Friday, whilst May 1st and 8th both fall on a Thursday — which will encourage many employees to take the intervening Friday as annual leave.

Pay, Tax and Benefit Trends

AUSTRIA: Short-term assignees posted to Austria may now avoid the imposition of double taxation (in their home and host countries) on salaries earnt whilst they are a posted worker. The Supreme Administrative Court has ruled that tax should be applied using the "economic employer approach", provided the employee is in Austria for fewer than 183 days (in aggregate) in a given year, they are paid by a foreign employer and their labour costs are not recharged to the local employer.

BOSNIA-HERZEGOVINA: Monthly gross earnings in Bosnia-Herzegovina during June 2013 averaged 1,283 KM (655.99 euros). This remained unchanged from its level in June 2012. The biggest rises over the last year were in finance and insurance (+3.7%) and administrative and support services (+3.0%). However, average earnings fell in most other sectors such as construction (-3.1%) and professional, scientific and technical services (-2%).

CZECH REPUBLIC: According to the Czech Statistical Office, over the last two years the fastest average pay growth in the Czech Republic has been amongst managers (+7.9%). However, the earnings of managers currently vary widely — with the top 10% earning more than CZK 104,795 (4,061.23 euros) a month and the bottom 10% earning less than CZK 19,484 (755.04 euros) a month.

FINLAND: The Finnish government has reached agreement with opposition parties on a far-reaching programme of structural reforms. These include a rise in the average age of retirement from 60.9 to 62.4 years, tightening up the rules for "job alternation leave", and the removal of full-time daycare for children if one of their parents is at home due to maternity, parental or care leave. The state homecare subsidy will, in future, be split between both parents and if one parent does not take the required leave they will lose the allowance.

FRANCE: A clever manoeuvre by the French government has allowed them to retain the support of the trade unions — by keeping the current normal state retirement age of 62 whilst requiring employees to work longer than present in order to receive their full pension. There will also be a 0.3% increase in the level of contribution by employers and employees phased in over the period to 2017. A new hardship pension fund will be introduced in 2015 — which will give higher pension rights for an estimated 20% of the population who experience arduous working conditions, or work at night.

IRISH REPUBLIC: A report into the future of Pay Related Social Insurance (PRSI) in the Irish Republic has recommended that the contribution rate for self-employed workers should rise from 4% to 5.5%. The proposal by the "Advisory Group on Tax and Social Welfare" is justified by the need to fund an extension of social insurance cover to include long-term sickness and disability benefits.

Other European HR News in Brief

DENMARK: Denmark's dysfunctional labour relations legislation has been illustrated by the recent walkout of 130 employees at Carlsberg's Fredericia plant. The dispute is not between the trade union and the company, but between the local union for brewery workers and a new non-union employee. Employers in Denmark are not permitted to ask if a potential recruit is a member of a trade union or to dismiss an employee for not holding union membership. The Labour Court has intervened to fine workers for every hour they remain on strike — but this has not prevented disruptions from continuing at the plant.

EUROPE: A date to avoid air travel in Europe will be October 10th. This is the day chosen by a coordinating group of air traffic control unions to hold a strike throughout the European Union. The unions are opposed to an EU Directive designed to create a "Single European Sky". This would give more powers to Eurocontrol, the body that monitors European air-traffic control. They also fear that the associated deregulation of air traffic control services at a national level (and privatisation in some cases) would adversely affect working conditions.

GERMANY: Germany's employment ministry is the latest major German employer to ban the distribution of emails to off-duty staff — except in cases where a task must be actioned immediately. Labour Minister, Ursula von der Leyen, is particularly concerned about the tendency of remote workers to be unaware of rights to switch off business communication devices during their free time.

NETHERLANDS: Although the incidence of teleworking in the Netherlands doubled between 2004 and 2010, it remained virtually constant between 2010 and 2012. Last year, 59% of Dutch companies employing 10+ people allowed teleworking — placing it just under the 60% EU average. The highest proportion of teleworking employees in the EU are to be found in Finland, whereas the lowest proportions are in France and Spain.

POLAND: A Polish District Court has recently found that an employer was justified in the termination of an employee who refused to sign a post-employment non-compete agreement. Although the penalties set out in the agreement were high, the court accepted that the individual concerned — an IT specialist — was in a position to cause serious financial damage to their current employer if they joined a competitor. Setting the penalty at 24 times the employee's salary was justified by their employer because they could not allow "the potential advantages of the breach of contract to exceed the contractual penalties."

RUSSIA: Since August 9th, employers in Russia face much heavier penalties for violating immigration, arrival and residence rules. Employers must now ensure that they comply with official notification requirements in respect to foreign workers when they commence work, leave their employment and take unpaid leave. Penalties have also been increased for employers in the Moscow region, St. Petersburg, and Leningrad region if they are found not to be in possession of correct documentation, and special penalties apply for repeated offences anywhere in the country over any 12-month period. In addition to receiving fines, a company's operations may be suspended for between 14 and 90 days.

UK: A recent ruling by the English Employment Appeals Tribunal (EAT) has established that an employee has a statutory right to carry over only 4 weeks' annual leave to the following year if they have been unable to take it due to sickness absence. The remaining 1.6 weeks' annual leave entitlement may only be carried forward if the provision is specifically allowed for in their individual employment contract or other "relevant agreement". [Sood Enterprises Ltd v Healy]

UK: A pending High Court action is nearing its hearing stage in the UK following complaints by 79 construction workers that they had been blacklisted by an organisation called The Consulting Association (TCA) — whose blacklist was used widely in the UK construction sector for many years. This action follows a raid on the TCA's offices by the Information Commissioner's Office in 2009 and the seizure of a list containing the names of around 3,000 workers.

FedEE news:

FELLOWSHIP MEETING: The first Fellowship meeting will be taking place on Friday, 11th October 2013 at the Novotel London West, Hammersmith. This all day event will provide Fellows of the Federation with an unparalleled opportunity for networking and an exchange of information not possible in a conference setting. If you wish to attend this event please contact our Membership Secretary on membershipservices@fedee.com to book a place.

FEDEE FELLOWSHIP: Fellowship of the Federation is available to all senior HR professionals within FedEE member companies. If you are interested in becoming a Fellow please contact our Membership Secretary on membershipservices@fedee.com.

LAUNCH OF NEW LAW PROGRAMMES: FedEE has extended its Law Programme to cover five new countries: Belgium, the Czech Republic, Hungary, Switzerland and Turkey. The five new presentations, which offer an introduction to employment law in each of these jurisdictions, are now available to view on the FedEE Members' website.
