



**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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### Belgium: Extra protection for working fathers

The Belgian parliament has passed new provisions to protect against dismissal fathers taking leave on the birth of a child. It has also improved employee protection in cases where a working father requests the conversion of their current or former spouse/partner's unused maternity leave into additional paternity leave.

Fathers may take up to 10 days' paid paternity leave on the birth of their child. The new law protects the employee from dismissal for three months from the date on which they inform the employer of their intention to take the leave. During this period the employee may only be dismissed for reasons unrelated to the leave - and the burden of proof is on the employer to establish that their dismissal is unrelated. The penalty for non-compliance with this provision is an indemnity equal to three months' remuneration on top of the termination indemnity.

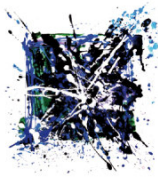
In addition, parliament has increased the length of an employee's protection against dismissal when they request to convert unused maternity leave into paternity leave. A father is now protected from

dismissal from the date when he informs his employer of his intention to take additional paternity leave until one month after the end of the leave. The new law also provides that if the employee is dismissed for reasons relating to additional paternity leave, an indemnity equal to six months' remuneration is payable on top of his termination indemnity.

### Denmark: Tackling unregistered workers

Construction companies in Denmark are being targeted by unions in an attempt to reduce unregistered foreign workers. Representatives from the trade union BAT have been visiting construction sites to identify foreign workers whom they suspect are working for wages far below the industry standard. According to the union, half of the workers identified as immigrants were not registered by their employer as working in Denmark.

According to the Danish Construction Association there are around 15,000 Polish, Lithuanian and other eastern European workers on Danish construction sites, despite high unemployment rates in the construction sector. The minimum wage for a construction worker is around 130



kroner (17.5 euros) an hour, whereas the unregistered workers are earning from around 30 to 115 kroner (4-15 euros) per hour.

## **Europe: Latest ECJ ruling on age discrimination**

The European Court of Justice (ECJ) has clarified the application of the directive on equal treatment in employment and occupation which prohibits any work-related unequal treatment based on an employee's age. In its judgement the court confirmed that, in implementing the directive, member states may provide for a difference in treatment based on physical capabilities which are related to age - but only where it is a genuine and determining requirement for being able to carry out a professional activity.

The case in question related to the collective agreement applicable to the German airline Lufthansa that prohibited pilots from continuing to perform their duties after the age of 60. The Federal Labour Court asked whether this was compatible with EC law. The ECJ held that the age limit constituted a disproportionate requirement and was not a necessary measure for the protection of public health and security. It justified this by the fact that under international regulations pilots aged between age 60 and 64 may only continue to fly if they are part of a crew in which other pilots are aged under 60. Therefore, if this condition is met the automatic termination of all pilots' contracts at 60 years of age represents discrimination on the grounds of age [C-447/09, Reinhard Prigge, Michael Fromm and Volker Lambach v Deutsche Lufthansa AG]. See <http://tinyurl.com/5v7cn9k>

## **France: When does a non-compete clause commence?**

The French Supreme Court has recently clarified when compensation should commence under the terms of a non-compete clause.

In the case in question, two employees had been dismissed and released from working during their notice period. Their employment contract included a non-compete clause providing for compensation equal to 25% of the remuneration they had received during the 12 months preceding the end of their employment contract. The question for the Court to consider was when the non-compete obligation should be treated as having commenced. Should it have been when the employment ended, when the three month notice period would have expired or when the employer notified the employees of their dismissal?

The Court held that as the employees had been released from working during their notice period the start date for the non-compete obligation should be the day when they actually discontinued their work obligation. This date should also be counted as the starting date for the calculation of (and payment of) financial compensation.

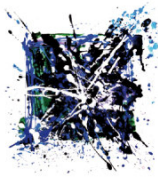
## **France: Minimum service qualification period unlawful**

The European Court of Justice (ECJ) has responded to a referral from the French Supreme Court relating to annual leave entitlement.

Under French law, the right to annual leave is subject to the condition that the employee must have worked for the same employer for a minimum period of 10 working days during the reference period. According to the ECJ this is incompatible with the Working Time Directive. In particular, the absence of a worker on sick leave during the reference year does not prevent that worker's right to take annual leave.

## **Germany: ELENA database to be closed**

The German Federal Economics Ministry and the Ministry of Labour have decided to end the Electronic Wage Verification System (ELENA).



This highly controversial database is operated by the state pensions agency and requires employers to submit data about pay, work absence, reasons for dismissal and disciplinary action. It was created to streamline the approval and administration of state welfare benefits such as unemployment compensation, education support (BAföG) and child allowances and reduce the overall level of paperwork demanded from employers. However, the system became the target for privacy rights groups and its development costs escalated. Since ELENA went live employers have also submitted over 500 million reports and clocked up more time in maintaining the system than under the former manual procedures.

## **Germany: Whistleblowing and freedom of expression rights**

The European Court of Human Rights in Strasbourg has recently found that German case law relating to whistleblowing violates the right to freedom of expression.

The case concerned a nurse who disclosed irregularities in the operation of her hospital. She filed a criminal complaint against her employer after repeatedly attempting to draw attention to poor care and staffing levels. The complaint was not pursued because the Berlin Public Prosecutor's Office stated that it was not based on fact. Not long afterwards, the nurse was dismissed without notice for serious breach of contract and this was upheld by the regional labour court.

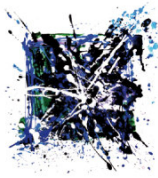
The ECHR advised that states should show restraint in restricting freedom of expression in matters of public interest. The fact that the criminal complaint contained few facts was not the responsibility of the nurse, but of the public prosecutor to investigate. In future, German courts will have to take into account whether dismissal is a proportionate reaction to a criminal complaint.

However, the ECHR did add that there may be circumstances where dismissal could be a proportionate reaction - for example, where the employee is motivated purely by revenge or to undermine employment relationships.

## **Slovakia: New Labour Code - key provisions**

On September 1st 2011, major changes to the Slovak Labour Code came into force which aim to strengthen the position for employers. The key changes include:

- \* The facility to enter into a collective agreement setting probationary periods of between six and nine months for certain senior employees.
- \* The introduction of job-sharing and 'working hours accounts' allowing weekly hours to be increased or reduced according to an employer's needs.
- \* New statutory notice periods: one month for employees with less than one year of service, two months for more than one year of service and three months where an employee has worked for between one and five years employment and termination takes place for "organisational reasons".
- \* Changes to severance pay: when an employee's contract is terminated by mutual agreement the employee has the option to receive either ongoing notice payments or a severance lump sum before the notice period begins.
- \* The option to make employees subject to a non-compete clause for up to 12 months from the date of termination - provided the employer pays 50% of average monthly earnings during the restricted period.



## **Spain: Government tackles youth unemployment**

The Spanish government has approved a new package of labour market reforms ahead of the general election on November 20th 2011 that are aimed at fighting the country's current unemployment crisis.

Under the proposed changes, fixed-term contracts will no longer be automatically converted into permanent contracts after two years. A new type of job contract will also be introduced aimed at people between the age of 16 and 25 who are without qualifications. This approach - modelled on a similar system in Germany - will operate for one or two years and include a training element for 25% of the employee's time. Employers taking on an unemployed person using this type of contract will be exempt from making social security payments for the duration of the contract.

## **Spain: Unpaid leave cannot be extended unilaterally**

In Spain, employees with at least one year's service are entitled to take an unpaid extended leave of absence for a period of between four months and five years.

The Spanish Supreme Court has recently considered whether an employee is entitled to unilaterally extend the length of an agreed leave period - as long as they do not extend it beyond the maximum period of five years.

The employee in question requested an extension of his initially agreed one year period of leave for an additional two years, but his company rejected the request. The court ruled in the company's favour, holding that an employee may not unilaterally extend the duration of extended absence. This follows from the fact that the employee is required to identify the duration of the leave at the time they make their request.

## **UK: Major increase in working time claims**

New figures released by the UK Ministry of Justice show an increase in certain types of applications to UK employment tribunals. The most notable rises were those relating to the Working Time directive, which were up by 20% between 2009/10 and 2010/11, whilst those relating to part-time workers regulations were up nearly three-fold. Additionally, age discrimination cases saw a 32% rise over the 12-month period.

Of the 382,400 claims that were made during this period, 30% concerned working time, 28% were for unfair dismissal, breach of contract and redundancy, whilst 19% were for unauthorised wage deductions.

## **UK: Grace period for salary sacrifice schemes**

The UK tax authorities (HMRC) have released further guidance concerning the implications of the AstraZeneca case.

The European Court of Justice (ECJ) has held that an employer providing part of an employee's salary in vouchers is making a supply of services to the employee and that this benefit must therefore be subject to Value Added Tax (VAT). HMRC have confirmed that they regard the decision as applying to both formal salary sacrifice arrangements as well as to the situation where a deduction is made from salary owed. Accordingly, businesses providing benefits under arrangements which qualify as salary sacrifice schemes must now account for output VAT on such supplies, where they are subject to VAT. However, in order to allow businesses time to make the necessary adjustments, HMRC will not require VAT to be accounted for on taxable benefits provided under salary sacrifice schemes until January 1st 2012.



## Pay, Tax and Benefit Trends

**BALKAN STATES:** A social security agreement between Slovenia and Bosnia-Herzegovina has entered into force, making citizens from either country eligible for state benefits in the country where they are resident.

**BULGARIA:** The national minimum wage in Bulgaria rose on September 1st 2011 by 12.5% from 240 BGN (122.71 euros) to 270 BGN (138.04 euros). Officially around 120,000 Bulgarian workers are paid at the level of the minimum wage, although the actual number of employees who are paid by reference to its level is much greater. The retirement allowances for widows and widowers have also increased from 20% to 26.5% of the deceased spouse's income.

**CZECH REPUBLIC:** Pay levels in the Czech Republic rose by more than consumer price inflation during the second quarter of the year. Average pay rose by 2.5% to 23,984 Koruna (981 euros) in the second quarter of the year - representing a 0.7% rise in real terms. However, pay rises were unevenly spread and actually fell in the non-business sector by 0.9%, whilst climbing by 3.2% in the business sector.

**CZECH REPUBLIC:** The lower house of the Czech parliament has approved a series of measures to overhaul the pension system. The proposed changes would enable employees to voluntarily opt-out from the current state scheme and contribute instead to a private pension fund. The government insists the change is necessary as the current state scheme is suffering a deficit which is unsustainable over the longer term.

**EUROPE:** The European Court of Justice (ECJ) has ruled that where an employee is covered by a collective agreement that makes length of service a factor in determining remuneration levels the transferee must take steps to protect established incremental rights. Furthermore, where equivalent

services are being performed before and after the transfer no substantial loss of salary may be suffered (Case C-108/10).

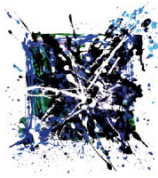
**FRANCE:** The French National Assembly has voted unanimously in favour of removing a facility for multinational companies to reduce their corporation tax liability by allowing them to include in their taxable income in France any deficits arising in their foreign subsidiaries.

**HUNGARY:** The Hungarian government will no longer have to seek agreement from employers and trade unions before setting the national minimum wage. With effect from January 1st 2012 the tripartite Interest Reconciliation System will be replaced by a new body - the National Economic and Social Council (NGTT). The NGTT will include representatives of employers, workers and chambers of commerce, but will have no decision-making rights - only the right to draft proposals to the government. In effect, the government alone will now decide on wage and employment-related regulations.

**NETHERLANDS:** The Dutch Cabinet has agreed to make significant cuts next year in the budget for people with disabilities and the chronically ill. This will be achieved by means-testing state benefits (WTCG) and by making it harder to register for the scheme. The WTCG scheme currently provides allowances of between 153 and 510 euros a month, according to a recipient's age. Making payments incomes-based should cut in half the current annual budget of 580m euros.

**NETHERLANDS:** The Dutch Finance State Secretary, Frans Weekers, has announced that the government is going to relax the regulation that taxes people's occupational pensions if they partially retire after age 60 - but continue to work part-time. In the past not only were pension payments taxed in full, but they were also limited to 40% of the normal full retirement pension.





**PORTUGAL:** The Portuguese government has passed a bill to impose an additional tax on workers' Christmas bonuses. The bonus (also called the thirteenth month payment) is equivalent to one month's salary and has hitherto been subject to the same tax and social security deductions as on normal pay. Prime Minister Coelho has stated that the government is introducing a one-off tax for this year of 50% on any amount above the mandatory monthly minimum wage of 485 euros.

**UKRAINE:** The Ukrainian government has brought forward its planned 2.6% increase in the national minimum wage from October 1st to September 1st 2011. It now stands at 985 UAH (86.35 euros) a month.

**UK:** New research on UK executive pay levels conducted by the Chartered Management Institute claims that, if the current trend continues, equal pay for male and female senior executives will not be achieved for almost 100 years. Male senior executives are currently paid over £10,000 (11,260 euros) more than their female counterparts. However, pay for female senior executives is rising faster than that for males (a 2.8% increase last year as opposed to a 2.3% increase for men) and at a junior executive level women now earn marginally more than men.

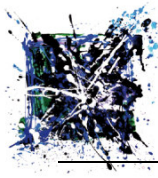
## Other European HR news in brief

**FINLAND:** The Finnish equality ombudsman has found that a male grooming rule enforced by United Parcel Service (UPS) represents a breach of the Finnish Equality Act. The rule requires male workers to have their hair cut short. This, according to the ombudsman, puts them in a less advantageous position than female employees because they are banned from working in customer service positions when they have long hair.

**ITALY:** The Italian Supreme Court has recently upheld the dismissal without notice of an employee who had assaulted a senior member of staff during work hours. In this case, a workplace dispute led to a senior employee being attacked and suffering physical injury. The court ruled that a dismissal without notice would be appropriate in such a case as the employee's conduct breached the duty of loyalty and obedience necessary for the employment relationship to continue.

**NETHERLANDS:** The Dutch heavy and light engineering sectors have come together through the merger of the technology sector employers' organisation FME-CWM and the engineering sector federation FWM. The new organisation will be called the Federatie Werkgevers in de Techniek and represent 29,000 companies jointly employing 480,000 employees. On the top of the agenda is a new general engineering wage accord - which should be in place within the next two years.

**ROMANIA:** The latest manpower employment outlook survey for Romania predicts that employers will slow the pace of recruitment by the fourth quarter of 2011. However, 80% of companies still expect to increase their headcounts this year - even though half of them report a shortage of skilled workers.



## FedEE News: HRM Expo Cologne

FedEE is partnering Europe's largest human resource management exhibition in Germany later this month. The HRM Expo will be held at the Koeln Messe on September 20-22 and we shall be running a different workshop for participants each day, please click on the following link to find out more information.

[http://www.fedee.com/images/HRM\\_Expo.pdf](http://www.fedee.com/images/HRM_Expo.pdf)

A limited number of free tickets will be available to FedEE members, so if you would like to attend please contact us on [membershipservices@fedee.com](mailto:membershipservices@fedee.com)

We will shortly be launching FedEE TV and our cameras will be filming the event. This will include interviews with speakers, exhibitors and visitors.

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