



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: New privacy guidelines

The Belgian Privacy Commission has published draft guidelines on the monitoring of workplace email and Internet traffic.

Current provisions dealing with the workplace privacy include CBA no 81 on the monitoring of electronic online communication data and the 1992 Data Protection Act. The new guidelines seek to clarify the application of privacy measures in contexts such as gaining access to work-related data stored on an employee's computer.

Employers are advised to introduce a complete ban on the use of workplace email accounts for private communications or web browsing. Such a policy would entitle an employer to access all company emails on any of its computers. In addition, it is advised that proper document and email management systems are put in place to allow the implementation of business continuity measures when an employee is absent.

The Commission's guidelines will not amount to regulations, but any employer wanting to undertake employee monitoring who does not strictly comply with the guidelines will have to be able to show that the principles of proportionality,

transparency and finality set out in the guidelines have been adhered to.

Denmark: Employee share buy-back clause invalid

In a recent judgement, the Danish Supreme Court has found that a clause regarding the sell-back of shares was unreasonable and therefore invalid under Section 36 of the Contracts Act.

The case involved a manager employed in a Danish subsidiary of an international group who had been offered the chance to invest in parent company shares. His contract stipulated that in the event that the employment relationship was terminated, the company had the right to buy back his shares at a price determined after taking into account the period passed since the share purchase, and the reasons for termination. However, when the manager's employment relationship ended he refused to sell back the shares because he was only offered the purchase price.

The Supreme Court held that to enforce the sell-back of shares at a value lower than the market price would be unreasonable, especially when the employee had not breached his employment contract.



Austria: Replacement of immigration quota system

Austria has revised its immigration law and replaced its quota-based immigration model with a criteria-based system.

Under the new law, there are five types of labour migrants who may gain access to the labour market - highly qualified workers, skilled workers in trades or professions where there is a labour shortage in Austria, foreigners who have graduated from an Austrian university, other 'key' employed workers and self-employed 'key workers'.

The recently introduced 'Red-White-Red' card system applies to workers from outside the EEA (plus Romania and Bulgaria). The evaluation criteria include qualification levels, work experience, language skills and age. Points are granted for each factor, with those who gain a certain level of points are granted access to the Austrian labour market without being required to undergo further checks.

France: Access to personal emails on company systems

The French Supreme Court has now set out guidelines for when employers may reasonably take disciplinary action against an employee for using their work email system for private purposes.

According to existing case law, emails sent by employees from their work computer are assumed to be work-related in nature and, as such, their employer is entitled to read them and to use their content to justify disciplinary sanction against them - except where the employee concerned has specifically identified their emails as being "personal".

A recent case before the court involved an executive who had been dismissed for having private email correspondence with a colleague and had downloaded inappropriate pictures to his work email inbox. The Court held that the employer was entitled to read these messages - as they were not flagged as personal. However, it also ruled that the employer could not use such evidence as the basis for disciplinary action against the employee as the contents of the emails was private. Nevertheless, the court did not discount the possibility that an employer might take disciplinary action against an employee who unreasonably used their work email system for personal purposes. An example of unreasonable conduct would be where the employee sent a large number of emails that disrupted the normal traffic of corporate emails or misused company time.

Hungary: Changes to tax and social security rules

Recent Hungarian legislative changes have implications for certain employee benefits and social security liabilities.

Holiday vouchers will only qualify as tax-free fringe benefits until October 1st 2011, after which they are to be included as part of the employee's taxable income. In addition, back-to-school allowances (or provisions in kind) paid to employees will only qualify as a tax-free benefit for the 60-day period before and after the school starting date. Further payments outside of that period will be treated as taxable income.

Rules on the social security status of foreign employees have also been modified. Current rules state that a foreign individual who is employed by a foreign company and is assigned to work in Hungary will not be subject to social insurance in Hungary. However, this will change on January 1st 2012 so that if the work assignment is expected to last for longer than two years, the



individual must make contributions to the Hungarian social security system. If the assignment is expected to be shorter than two years then there will be no social security liability in Hungary. Employees already undertaking assignments in Hungary will be treated as though their assignment began on January 1st 2012.

Irish Republic: Vicarious liability-lack of awareness

The Irish High Court has recently held that an employer's vicarious liability for bullying and harassment of an employee may arise even where they are unaware of the mistreatment

The case in question concerned a teacher who successfully claimed that a fellow employee (the Principal) had demonstrated "oppressive and bullying" behaviour towards her. The Board of Management (her employer) was held vicariously liable - a situation that would have obtained even if the Board had not been aware, or could not have reasonably known, that the claimant was being bullied (*Bridget Sweeney v the Board of Management of Ballinteer Community School* [2011] IEHC 131).

Italy: Right to reinstatement may be removed

According to the Bank of Italy, around 13% of young Italians who had jobs before the economic downturn have lost them - compared with only 3% in France and Germany. Such evidence has led the European Central Bank to urge the Italian government to overhaul its labour market.

The national parliament is about to consider a package of reforms aimed at speeding up economic growth and encouraging business to hire more young workers. Among the raft of proposals that the government aims to push through parliament within the next few weeks is a measure that would allow companies and trade

unions to opt out of labour regulations that deter the hiring of young workers. This could include the right of dismissed employees to seek reinstatement when their termination is perceived to be "without just cause". In practice, this facility has dissuaded employers from reducing staff levels during times of poor profitability and from taking on new workers when order books are strong. Consequently young workers have found it hard to secure either permanent or well-paid positions.

Malta: Incentive to improve access to work

Malta's workplace accessibility tax deduction scheme is offering a increased incentive to all employers who have a disabled staff member registered with the National Commission For Persons With A Disability (KNPD). The new facility provides further tax deductions for a number of costs, such as the modification of workplaces and provision of special training opportunities. In order to be eligible employers must ensure that expenditure incurred is directly related to the needs of the employee and in accordance with KNPD guidelines.

Deductions should be claimed during the year after that when the expenditure was incurred. An employer may claim all costs against tax liability - up to a maximum of 20,000 euros a year.

Netherlands: Pension reforms still on track

The Dutch Social Affairs Minister, Henk Kamp, has offered a partial compromise to the FNV trade union federation following their change of heart over the overhaul of the country's pension system. However, he has qualified it with a warning that should the offer be rejected, he will implement existing reform plans.

The union federations, employer groups and government agreed in June to changes to the



pension system which would give pension funds more scope to invest in higher risk assets, as well as raising the retirement age to 66 by 2020 and 67 by 2025.

The compromise offered involves reducing the planned 6.5% cut in pensions for people on low-incomes who opt for early retirement at age 65 when the new thresholds are introduced.

Romania: Clampdown on undeclared work

Recent amendments to the Romanian Labour code, which came into effect on May 1st 2011, introduced a number of important changes, including new penalties to prevent undeclared work. The latest statistics indicate that the new regulations may be having a profound effect - with the number of employment contracts growing by over 580,000 during May and June 2011, and more than 1,700 employers being penalised following site visits by the labour inspectorate.

The modifications mean that undeclared work is now being treated as both a civil and a criminal offence, with both employers and employees liable for infringements. Inspections carried out between May 1st and June 30th 2011 revealed that more than 3,900 people were working without legal papers. As a result, employers were fined a total of 5.5 million euros with 525 employers undergoing a criminal investigation for using more than five workers without an employment contract.

UK: New employment status distinction

The UK's first-tier tax tribunal has held that in determining tax liability where a foreign employer benefits from the services of an employee carrying out work in the UK, it is important to distinguish between the "contractual employer" and the "economic employer" of the employee.

The case in point involved a Croatian resident, contractually employed by a Cypriot company,

who had in turn subcontracted him to work for a UK company. The individual was not tax resident in the UK, but his salary was paid to him by a UK company that deducted tax under the PAYE system. He sought to recover that deducted tax under the terms of the UK/Yugoslavia double taxation treaty. Article 15 of the treaty provides that an individual's remuneration would normally be taxable where he is resident. However, the remuneration may still be taxed where the "employment is exercised" unless that individual is not present in the UK for 183 days and the remuneration is paid by or on behalf of a non-UK resident person for whose benefit the services are rendered.

In determining whether Article 15 applied, the tribunal accepted that it was necessary to look beyond the contractual employer and identify instead the "economic employer". In particular, it was necessary to look at the terms of the contract of employment and consider for whose benefit the services were actually rendered, as opposed to who was formally identified as the employer. It was found that the UK company exercise control, recruitment and supervision of the employee, it also had the benefit of the employee's work outputs. For these reasons relief from tax under the treaty was not available (*Kljun v HMRC* [2011] UKFTT 371).

Pay, Tax and Benefit Trends

BELGIUM: From January 1st 2012 income received in Belgium during notice periods or by way of "in lieu of notice" payments will be free of tax up to the first 425 euros. From 2014 this allowance will be doubled. To qualify, the terminated contract must be for an indefinite period and the termination must be at the initiative of the employer. No allowances will be given for terminations carried out during probationary periods.



CYPRUS: The Cypriot Finance Minister Kikis Kazamias has announced that the government intends to cut public sector starting salaries and pursue tax evasion more vigorously. These measures are part of a planned austerity programme designed to avert a financial meltdown that could make Cyprus the fourth EU country to request a bailout. Recent data from the Cyprus Statistical Service has revealed that, on average, public service salaries are 30% higher than those for private sector employees.

CZECH REPUBLIC: Tripartite discussions about a possible rise next January in the Czech Republic's national minimum wage are now underway. The rate has not been revised since 2007 - but there is a big gap between both sides of industry over the necessary wage hike. Trade unions are pressing for a 15% rise, whilst employers are sticking at an upper limit of 6%.

HUNGARY: Latest statistics from the Hungarian Central Statistics Office show that gross wages in the country have risen by 4.7% over the year to June 2011. This compares with an annual 6.7% increase in May. The annual rise in net wages was 5.9% in June, compared to 7.5% in May - whilst real wages rose by 2.3%. Disability retirement ages have also risen - to 50.9 years for men and 49.8 years for women.

IRISH REPUBLIC: A quarterly pay survey from the Irish Small Firms Association has revealed that the majority of small businesses in Ireland have frozen pay rates this year, with many planning to continue to do so during 2012. The review found that three quarters of those who took part in the survey froze pay rates in 2011, with 69% intending to do so again next year. Pay increases that were implemented were usually linked to productivity and innovation. Only 13% of respondents said that they had increased basic pay so far this year - the average rise being 2.5%.

IRISH REPUBLIC: The Irish Minister for social protection has announced that employers no longer have to pay employer PRSI (Pay related social insurance) on share-based remuneration. The new rule, which comes into effect immediately, is part of the government's jobs initiative which aims to reduce the costs of doing business in Ireland. The employee PRSI charge will apply to all share-based remuneration from the 2012 tax year, regardless of when the agreements were entered into, with the exception of shares held in an Employee Share Ownership Trust before January 1st 2011.

NETHERLANDS: The Dutch government will publish its 2012 budget proposals on September 20th 2011. These are likely to include measures to increase the tax burden on higher income groups. The threshold for the top band of income tax will probably be lowered to bring an increasing number of professionals and middle managers into the 52% marginal income tax bracket. Funding directed towards the flat-rate child benefit payable to all parents (irrespective of income) could well be reduced and funding switched to the means tested child budget. The current subsidy for the cost of childcare will also no doubt be made dependent on income level.

UK: Companies in the UK covered by the new FSA remuneration code of practice for highly paid staff are now to be given until the end of the year to register their remuneration policy statements - provided that bonus payments are not authorised for payment before April 1st 2012. The revised Code covers a broad range of businesses from investment banks, retail banks, building societies, asset management firms, stockbrokers, corporate finance firms to multi-lateral trading facilities.

[Other European](#) HR news in brief

CROATIA: Economic crime rates are rising in Croatia - the European Union's leading candidate country. Between January and July 2011 a total of



4,118 such crimes were reported, up 6.9% on the same period last year. The most frequently reported crimes were computer fraud, abuse of position and authority, forging official documents and avoiding customs.

EUROPEAN UNION: Because national labour administrations are organised in such differing ways, employers are often uncertain about the functions and powers of labour inspectors in countries where they operate. For this reason the International Labour Organisation has just published a special report which includes comprehensive descriptions of inspection services in 20 European countries. A Guide to Selected Labour Inspection Systems. ILO. 2011 (9789221246985 (ISBN). Available as a free pdf download from <http://tinyurl.com/3qt72dj>

EUROPEAN UNION: According to a report by the European Commission, 23,700 workers dismissed due to economic crisis and structural changes in world trade patterns were assisted by the European Globalisation Adjustment Fund last year. That represents more than double the number assisted in 2009. The fund paid out 83.5 million euros to nine member states in order to help the national authorities support dismissed workers in finding new job opportunities.

FRANCE: Official statistics show that the use of mutual agreement termination procedures in France were up by more than 30% during the last year, whilst the number of redundancies was down by almost 50% during the same period. Compromise deals are clearly the preferred option instead of declaring a redundancy during economically difficult periods.

GERMANY: Germany's Federal Labour Court has recently held that an employer's request that an employee attend a course to acquire the language skills necessary to perform their duties does not constitute discrimination on the grounds of

ethnicity. This would be the case even if the employer insisted that the employee take the course outside working hours and at the employee's own expense.

GREECE: The Greek government has announced that it is preparing a new program to contain, and hopefully reverse, the current collapse in the job market. During the first six-months of this year there was a huge rise in the number of full-time positions being converted to part-time contracts. Between June and July 2011 there was also a 19.86% reduction in new hirings (amounting to 12.1% over the year).

ITALY: A new Italian legislative decree (67/2011) has added night and assembly line workers and public transport drivers to the list of job categories that are potentially subject to 'arduous work' for the purposes of early retirement. According to an earlier legislative decree (374/1993) 'arduous activities' are defined as "particularly intense and continuous psychological and physical commitments" that may not be "prevented by appropriate measures".

NETHERLANDS: The Rotterdam District Court in the Netherlands has confirmed that former employees may not invoke the right to remain silent when questioned by the Competition Authority (NMa) in relation to their former employer. The NMa has maintained that former employees have no right to remain silent in cases where its investigation is targeted at the company alone. In such cases, current employees interviewed by the NMa may rely on a well-established right to silence. Former employees, however, cannot be regarded as representing the company and therefore have an obligation to cooperate with the NMa's investigation. Failure to cooperate may lead to the imposition of fines.



FedEE News:

HRM Expo Cologne

FedEE is partnering Europe's largest human resource management exhibition in Germany this Autumn. 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

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

Secretary-General Robin Chater will be speaking throughout the event and FedEE TV will also be in attendance filming.

FedEE/ACAS Training Film

FedEE has joined together with a number of interested parties to produce a ground-breaking drama dealing with many aspects of workplace discrimination and resulting litigation. The film is being funded by FedEE, Lincoln University and the diversity consultancy Consilium-Vyas and is being produced in association with the UK's Advisory, Conciliation and Arbitration Service (ACAS) and Trade Union Congress (TUC).

Aimed principally at HR and training professions, the 25- minute film will be an invaluable tool for use in equal opportunity courses and the briefing of line managers. It will be accompanied by tutorial notes and the DVD will also include a video recording of a discussion between several experts in the field of discrimination law. ACAS will be using the film for its own courses on how to deal with tribunals and the TUC will be encouraging its affiliated unions to show the film at conferences, meetings and during training days.

It will be available for hire or purchase from the end of September. Previews will be held at several locations during October 2011.

We can confirm the pre-order price to buy the film is £335.75 (full cost £395 less 15%)

The pre-order cost to rent the film for one week is £165.75 (full cost £195 less 15%)

Should you wish to place an order you can either email us on membershipservices@fedee.com quoting ref: WP0811 or, alternatively to pay by credit card please call us on (+44) 0207 520 9264

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