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Australia: No implied duty of mutual trust and confidence

The Australian High Court has held that the implied duty of mutual trust and confidence, as defined in the UK case of *Woods v WM Car Services (Peterborough) Ltd*, should not be implied by law into all employment contracts in Australia.

In this significant decision, the High Court held that universal implication of the duty of mutual trust and confidence into all employment contracts in Australia would have to come as a result of a parliamentary decision; the Courts, it stated, could only imply such a term into individually arbitrated cases on the basis of the specific facts and circumstances.

In coming to its conclusion, the Court reflected on the “implied term’s” emergence within the different statutory landscape of the UK. The Court stated that a term should only be implied due to necessity for the effective performance of a contract - as in Australia the statutory protection against unfair dismissal removed the necessity to have such a duty implied into all employment contracts. [Commonwealth Bank of Australia v Barker [2014] HCA 32]

California: Introduction of paid sick leave

California has become only the second US state, after Connecticut, to approve a law guaranteeing paid sick leave.

The state’s Governor, Jerry Brown, has signed a draft law that requires employers to provide a minimum of three days paid sick leave to their employees each year. For employees to be entitled to this right, they must have worked for 30 days or more in a calendar year. Employees will accrue sick leave at a rate of one hour per 30 hours worked, although this may be capped at three days per year by employers. Employees may use sick leave for their own sickness or treatment, to care for a sick member of their family or to recover from domestic violence.

The new law will apply to nearly all part-time and full-time workers in all businesses in California, however, certain exceptions will apply. Most notably, those employees who are subject to rules under collective bargaining agreements will not be covered by this new law. The measure will come into force in July 1st 2015.

China: Greater penalties for workplace accidents

The Standing Committee of the National People's Congress has approved amendments to the Work Safety Law in China. The revisions, which improve accident prevention, enhance law enforcement and increase penalties on companies, will enter into force on December 1st 2014.

Under the amendments, fines on companies involved in serious workplace accidents have been significantly increased. The amount an employer will have to pay will depend on the gravity of the accident. For an ordinary accident, the fine may range from 200,000 renminbi (25,196 euros/32,566 US dollars) to 500,000 renminbi (62,990 euros/81,406 US dollars) but for extremely serious accidents, the fine may reach 20 million renminbi (2,519,580 euros/3,256,242 US dollars). Under the old law, fines did not exceed 100,000 renminbi (12,598 euros/ 16,281 US dollars).

'Persons in charge' will also face harsher penalties if it is deemed that the accident happened as a result of their negligence. Penalties will include demotion, dismissal and fines of between 30% and 80% of the person's income from the previous year. In addition, these managers will be banned from acting as persons in charge of companies in the same industry.

Under the new law the Administration of Work Safety will have greater powers to prevent workers from suffering work safety accidents. In addition to its current powers it will have the power to order an employer to suspend business activity or cease using certain facilities or equipment.

France: Minimum requirements for additional health cover published

Under 2013 law on job security, all employers in France will be required to provide additional health insurance to their employees with effect from January 1st 2016. On September 8th 2014, Decree no. 2014-1025 on supplementary health insurance was published, specifying the minimal level of additional health insurance that employers will have to guarantee.

The Decree provides that employers will have to meet all costs that were until now borne by the individual for consultations as well as the costs of hospitalisation that are not reimbursed through the social security system.

Employers will further have to guarantee an additional 25% of the base rate for dental care currently guaranteed by the health insurance system (the so-called 'tarif de responsabilité').

Employers will also be obliged to reimburse employees for eye care up to the cost of 100-200 euros (127-254 US dollars) - depending on the complexity of the corrections required. This obligation will apply to treatment periods of two years for adults and one year for minors.

Germany: Different notice periods based on seniority are not discriminatory

The German Federal Labour Court (BAG) has held that the differentiation of termination notice periods depending on an employee's continuous service, as provided for in article 622 of the Civil Code, is not discriminatory on the grounds of age.

A recently dismissed employee argued that she suffered indirect age discrimination. This was because younger employees could not accrue as much service as older

employees and were therefore disadvantaged. However, the Court confirmed the legitimate aim of article 622 was to protect loyal employees. It also stressed that employers are able to extend the notice given beyond the statutory minimum levels or agree to do so through under the terms of a collective agreement.

This legal article was also considered by the European Court of Justice (ECJ) in 2010 - as it originally provided that only service accrued from the age of 25 would be considered when determining the notice period. In this instance, however, it was found that the requirement was unlawful as it amounted to age discrimination. [BAG 6 AZR 636/13]

Ireland: Streamlining the application process for work permits

From October 1st 2014, there will be nine different types of employment permits and new applications forms for each type of permit in the Republic of Ireland.

The new permits include categories for “critical skills”, internship, sports and cultural sectors, spouses and other dependents of persons with “critical skills” and intercompany transfers.

In December 2014, Ireland will be piloting a “Trusted Partner Scheme”, which introduces an accreditation programme for employers. Once the company has been accredited, participants in the scheme will benefit from a more streamlined application process and reduced waiting times. The pilot scheme will not be available to all employers – participants must be approved by either IDA Ireland or Enterprise Ireland.

Spain: New rules on sick leave

On September 1st 2014, changes to procedures relating to sick leave came into force in Spain.

Royal Decree 625/2014 introduces particular monitoring schedules, depending on the estimated duration of sick leave. The estimated duration is to be based on the illness as well as the age and job function of the employee. (For further details of the various monitoring schedules please see our Knowledgebase).

The Decree also states that employees must send sick notes to their employer within 24 hours of issue. A company must send both sick notes and “fit notes” to the National Institute of Social Security or the mutual insurance company within three working days from receipt of the notes.

UK: Dismissal permitted before conclusion of criminal proceedings

The UK Employment Appeal Tribunal has held that an employer may begin disciplinary proceedings against an employee before criminal proceedings relating to the same conduct are concluded.

An employee was dismissed by their employer after disciplinary proceedings substantiated the employer’s belief that the employee had been dishonest. Criminal proceedings in respect of the dishonest conduct had yet to commence, and the employee contested that a reasonable employer would have waited until the criminal proceedings had been concluded before dismissing the employee. The Employment Appeal Tribunal, however, found that a fair investigation and appeals procedure had been undertaken by the employer, and as such the employer’s decision was permitted. (Okhiria v Royal Mail UKEAT/0054/14/LA)

Pay, Tax and Benefit Trends

CAMBODIA: Workers from 300 clothes factories across Cambodia have launched a campaign to increase their monthly minimum wage from 100 US dollars (78 euros)

to 177 US dollars (137 euros). Earlier this year, demands to increase the minimum wage to 160 US dollars (124 euros) were rebuffed by employers who only undertook to increase salaries from 80 US dollars (62 euros) to 100 US dollars (78 euros) per month. Due to the protests, eight leading fashion retailers have agreed to pay their workers higher wages. The campaign comes weeks before the Labour Advisory Committee - made up of employers, trade unions and the government - meet to discuss a new minimum wage that would come into effect on January 1st 2015.

CYPRUS: According to the European Union's statistical office, Eurostat, average hourly labour costs decreased by 3.9% in Cyprus over the year to Q2 2014. Generally, in both the eurozone and the European Union, average labour costs increased by 1.2% over the year to Q2 2014. The only other country which saw a decrease in labour costs during this period was the Republic of Ireland (-0.4%). The highest annual increases in hourly labour costs were in Estonia (7.3%), Slovakia (6.0%), Latvia (5.9%) and Lithuania (5.1%).

CZECH REPUBLIC: The government of the Czech Republic has announced that the national minimum wage will increase to 9,200 koruna (334 euros/433 US dollars) per month as of January 1st 2015. This is a 700 koruna (25.42 euro/32.31 US dollar) increase on the current minimum wage of 8,500 koruna (309 euros/400 US dollars). The hourly rate will rise from 50.60 koruna (1.83 euro/2.38 US dollars) to 55 koruna (2 euros/2.59 US dollars). The minimum wage in the Czech Republic was last increased on August 1st 2013.

EUROPE: The European Court of Justice (ECJ) has stated that previously agreed collective wage agreements will continue to apply after a business transfer has taken place. In this case, the ECJ was asked whether Austrian Airlines, owned by Lufthansa, were entitled to cancel a previous agreement unilaterally when it transferred its operations to its Tyrolean Airways subsidiary. The Court

upheld the opinion of the Advocate General, Cruz Villalon, given in June 2014 that old collective wage agreements should remain in force when operations are transferred to a new company and should remain valid until they expire or are replaced by a new agreement.

FRANCE: An amendment to the law on 'contrats de génération' (generation contracts) has just come into force in France. As a result, from September 15th 2014, companies that hire a young person aged 16-25 years on an indefinite contract within six months of hiring an employee aged 55 or over have been able to receive financial aid of 8,000 euros (10,301 US dollars) per year for a period of three years. As before, companies that maintain the employment of a senior employee whilst hiring a young employee may receive financial aid in the amount of 4,000 euros (5,150 US dollars) per year.

LITHUANIA: The government of Lithuania has endorsed a proposal to increase the national minimum monthly wage by 35 litas (10 euros/12.92 US dollars) from October 1st 2014. This would bring the national minimum wage to 1,035 litas (300 euros/387.62 US dollars).

POLAND: On January 1st 2015, the national minimum wage in Poland will increase to 1,750 zloty (418 euros/537 US dollars) per month. At present, it is 1,680 zloty (402 euros/518 US dollars). The taxation of benefits in kind will also change on this date, subject to publication, as a result of amendments to the Polish Corporate Income Tax Act, the Personal Income Tax Act and other taxation laws. In addition, all residents of Poland will be required to report and pay tax separately at a rate of 19% on income derived from controlled foreign corporations. However, there will be exceptions - where the business is located in, and undertakes a 'genuine economic activity' in, an EU member state or a country which is part of the European Economic Area (EEA).

SOUTH AFRICA: Following months of negotiations, a wage agreement affecting approximately 80,000 employees in the clothing industry in South Africa has finally been signed by the Southern African Clothing and Textile Workers Union. Under the agreement, general workers will receive pay increases of between 7.5% and 10.5% - the exact amount depending on their geographical location. In metropolitan areas, employees will receive a 7.5% wage increase with an additional 0.5% being paid to a provident fund or the annual bonus fund. In non-metropolitan areas, the wage increase will be 10% for general workers and 10.5% for machinists, again with an additional 0.5% being set aside for annual bonuses. The agreement has been back dated to September 1st 2014 and will last for two years.

Other Global HR News in Brief

CHINA: The government of Beijing, China issued a decree on September 14th tightening the rules on hiring foreign workers. Under the decree, non-nationals will have to fulfil certain criteria before they are able to work in the city. They must be aged between 18 and 60 years and have no criminal record. They must have at least a bachelor's degree and two years of relevant work experience. The worker must have a valid passport, work permit and residence certificate. It is also important that the worker identifies a specific employer in their application for a permit.

EUROPE: The European and Economic Committee (EESC), a consultative body made up of representatives from employers' organisations and trade unions, has issued an opinion to address the rise of undeclared work in Europe. At present, there is no initiative at a European level to combat this growing problem. The EESC suggests an array of measures that could be implemented, such as tax incentives, inspections, imposition of fines and more regulation. The Committee's opinions will be passed on to the EU's Council, the

European Commission and the European Parliament for their review.

FRANCE: In a recent decision, France's Supreme Court has reinforced the high level of protection against dismissal afforded to pregnant employees. The Court held that an employer should withdraw a decision to dismiss an employee and should reinstate them in the event that the employee sends them a medical certificate confirming their pregnancy within 15 days of dismissal - even if the employee was not actually pregnant at the time of dismissal. [N° de pourvoi: 13-12496]

IRELAND: The Irish Employment Appeals Tribunal has confirmed that employers should act reasonably in all circumstances. Even if the employee has verbally stated that they are resigning, the employer should allow a cooling off period and act in a reasonable manner when the employee has subsequently changed their mind and made it clear that they have not resigned and wish to continue working. (*Jacinta Oman v Dunboyne Hair & Beauty Studio* (case no. UD998/2013))

MEXICO: The International Commission on Occupational Health has stated that Mexico needs to establish an occupational health system that will cover employees in informal economic sectors. The labour law of November 29th 2012 required employers to provide its employees with safety training, provided guidelines for health inspections and established a National Consulting Commission regarding occupational health and safety. However, most of these provisions only apply to the formal economic sectors, whilst almost 60% of employees in Mexico are employed in the informal sector and therefore are not covered by labour market regulations and social protection.

MOROCCO: Effective immediately and until further notice, the Ministry of Employment in Morocco has suspended the processing of work permit applications. As a result of substantial restructuring within the Ministry,

all employment processing services and the processing of applications from foreign nationals to work in the country are postponed. It is expected that when these services are recommenced, significant delays will be experienced by employers and applicants.

NETHERLANDS: Legislation has been sent to the Lower House of Parliament in the Netherlands that would extend the rights to sick leave and maternity leave. The draft legislation provides for an extension of maternity leave after a new-born child is hospitalised for a long period, allowing a mother to care for her child at home for 10 weeks before returning to work. It also provides for maternity leave to be transferred from the mother to the father if the mother dies during childbirth. As regards sick leave, it has been proposed that individuals taking care of a sick friend should be permitted to take leave from work.

At present, carers may only take leave to care for a sick spouse, child or parent.

SAUDI ARABIA: Saudi Arabia's Ministry of Labour has imposed fines ranging from 50,000 Saudi riyal (10,378 euros/13,329 US dollars) to 100,000 riyal (20,756 euros/26,659 US dollars) on employers who have violated labour law provisions. Over 62,700 violations had been noted during periodic inspections undertaken in the last 9 months and the total value of the fines issued amounts to over 10 million riyal (2.1 M euros/2.7 M US dollars). Other penalties included prohibiting the recruitment of new staff for between one and five years and the discontinuation of certain Ministry services to certain employers, such as the renewal of employment permits.

Dates for your diary:

October 1st 2014 **Australian** companies with more than 500 employees are required to meet new minimum standards for gender equality.

October 1st 2014: From this date, employees in **France** may take an extra six months of parental leave for their first child, as long as both parents share the leave.

October 1st 2014: The **Russian** law on Commercial Secrets takes effect.

October 6th 2014: From this date, **UK** employers who are late in submitting real-time PAYE returns will face automated penalties from HMRC.

Latest news for business travellers:

The World Health Organisation maintains that there is a low risk of tourists or business travelers becoming infected with the Ebola virus in **West Africa**.

High levels of volcanic activity continue around the Bardabunga volcano in **Iceland**, which may cause severe disruption to flights. Officials have stated that there have been approximately 20,000 small earthquakes in the past month.

The Australian Department of Foreign Affairs and Trade and the British Foreign and Commonwealth Office are advising against all travel to **Yemen** and urging all their nationals to leave the country due to high risks of terrorism.

The Philippine's Institute of Volcanology and Seismology has announced that Mayon Volcano may erupt at any time, so severe travel disruptions are possible.

The Chinese government is warning citizens not to travel to **the Philippines** following a series of abductions there. The Australian government has also issued a strong warning not to travel to central and western Mindanao, including the Zamboanga Peninsula and the Sulu Archipelago of the Philippines.

FedEE news:

FedEE's AUTUMN 2014 FELLOWSHIP MEETING will take place on Thursday 30th October in London. If you are interested in attending the Meeting, please contact the Membership Secretary, Angelika Rivero (angelika.rivero@fedee.com) for further details.

LAUNCH OF FEDEE GLOBAL: FedEE Global is finally here! We have now officially changed our name to The Federation of International Employers (FedEE Global) to reflect our increasingly global coverage. You will see that we now have full knowledgebase entries for Algeria, Argentina, Australia, Japan, Morocco, South Africa and UAE. We also have a new section in our knowledgebase containing useful guides for the 'global employer' as provided by our partners Baker & McKenzie and Multilaw. Knowledgebase entries are currently being prepared for Brazil, China, India and Mexico, as are Law Programmes for Argentina, Brazil, Mexico, Peru and Venezuela. These will be available soon. If you have any questions about our changeover to FedEE Global please contact us on membershipservices@fedee.com.

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