



**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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### Finland: Employment and growth agreement

In Finland, employers' federations and workers' organisations have come to an agreement on the so-called "Pact for Employment and Growth".

The Pact, which lays out guidelines for the negotiation of sectoral collective bargaining agreements, "seeks to restore a healthy trend of economic growth by increasing employment, equitably boosting the purchasing power and earnings of all employees, and enhancing the prospects of businesses in global competition". In order to achieve these aims the Pact proposes the reduction of unemployment insurance contributions for 2014 and an increase in employment pension insurance contributions between 2014 and 2016.

The agreement also aims to facilitate the take-up of short-term employment opportunities by the unemployed and proposes a review of the current bargaining system to be completed by the end of 2014. As regards working time, the Pact proposes

that a working group be established to clarify when actual working time becomes a binding term of employment in addition to, or over and above, the working time condition stipulated in the employment contract.

A deadline of October 25th 2013 has been set for sectoral collective bargaining to be completed. On this date the national employer and workers confederations will confirm their commitment to the Pact, if coverage of the Pact and government measures in support of the Pact are sufficient.

### Irish Republic: Recent trends in discrimination rulings

Recent rulings from Ireland's Equality Tribunal suggest that not taking appropriate steps to accommodate disabled employees, being inconsistent or not following procedures to prevent discrimination can prove costly for employers.

The Tribunal, which deals with complaints under the Employment Equality Acts 1998–2011, recently awarded 63,000 euros to a dismissed



employee, who had been left temporarily disabled after a work accident, after their dismissal was found to be discriminatory. The Tribunal ruled that the employer failed to provide "reasonable accommodation" as there was no evidence that they had tried to evaluate the employee's ability to carry out his tasks, nor consulted the company's occupational health expert on the matter. [DEC-E2013-077]

An employee who had been undergoing treatment for cancer was also awarded 80,000 euros for discriminatory treatment after being denied the chance to interview for a promotion. The Tribunal found that the employee had been discriminated against on grounds of age and disability and held that the employer's selection process for promotions did not comply with equality legislation. [DEC-E2013-090]

In another case, an employee was forced to leave his employment at age 65. Justifications invoked by the employer included eligibility for pensions benefits, the importance of recruiting and promoting young people, and the ability to avoid costly physical examinations in departments where health and safety issues were paramount. The tribunal said that although these may be legitimate reasons, there was not appropriate supporting evidence in this case. Additionally, other employees of the company had been able to stay until the age of 70 and the employee's contract of employment did not contain a retirement age. [DEC-E2013-084]

These decisions reinforce the proactive nature of an employer's duty to accommodate disability and the difficulty of establishing a defence against age discrimination. It is important to note that the size and financial capabilities of the employer is an important factor in determining whether proposed "accommodation measures" impose a disproportionate burden, as well as in determining the awards.

## **Latvia: Equal treatment and right to return to an equivalent post**

The European Court of Justice (ECJ) has ruled on a case referred by a Latvian court concerning the equal treatment of employees on parental leave. In this case, a female employee on parental leave was among a group of employees to be assessed for redundancy selection. Following this assessment, on her return to work she was offered a position which was shortly due to be abolished. She claimed the decision was discriminatory as it was based on a performance assessment from her pre-leave service period, whereas active employees were assessed on a more recent assessment which used different criteria. She also argued the right to return to the same or equivalent post.

Under the Latvian Labour Code (2001, No 105), the period during which an employee is on parental leave is considered to be of equivalent status to normal working time — so that they continue to enjoy full employment rights and equal treatment.

The ECJ considered that, as it was not impossible for the employee to return to her original job, her employer had not complied with their obligation to offer an equivalent post. Additionally, the Court ruled that although employers are allowed under the EU Parental Leave and Equal Treatment Directives to assess employees on the basis of their last period of actual work, they must nevertheless apply identical selection criteria to all employees facing redundancy whether or not they had exercised their right to parental leave. [Case C-7/12]

## **Netherlands: Unpopular emergency levy to be extended**

Although originally introduced as a temporary measure, the Dutch 16% levy on employers for all remuneration paid in excess of 150,000 a year will



now continue to apply next year. This will cost employers an additional 500 million euros.

Thousands of employers have filed letters of objection to payment of this year's levy, although no cases have yet been heard. The main legal arguments centre around Article 1 of the First Protocol of the European Convention on Human Rights (ECHR) — the right of peaceful enjoyment of possessions — and the retroactive nature of the levy which also covers income received in 2012.

## **Russia: Tough immigration controls not eliminating illegal work**

A total of 500,000 foreigners have been denied entry to Russia since the start of the year. According to estimates from the Russian Federal Migration Service, over 1 million Ukrainians and 8.6 million citizens from Asian countries continue to live in Russia without official permission — even after the migration service tightened up entry rules and penalties last year.

Further measures are now under discussion, including the requirement for foreigners to be invited to enter the country by a legal resident and the introduction of a credit-style immigration card issued only after making a deposit of 42,570 rubles (980 euros) into a holding bank.

## **Spain: No entitlement to paternity leave**

The European Court of Justice (ECJ) has ruled on a case referred to it from the Social Security Court of Spain. In this case, the claimant — an employed father — was refused paternity leave because his child's mother was self-employed and not covered by a social security scheme.

Under Spanish law, an employed person is entitled to paternity leave upon adoption of a child, even if the adoptive mother is not an employed person, whereas an employed person who fathers

a child is entitled to such leave only where the mother is also an employed person.

The ECJ looked at Directives 92/85/EEC (safety and health of pregnant workers) and 76/207/EEC (equal treatment) in relation to national law. The Court decided that national law took precedence over Directive 92/85 in this case, and held that as the self-employed mother did not enjoy a primary right to maternity leave she could not grant such leave to the father under the Workers' Statute.

The Court declined to rule on whether Directive 76/207 could be interpreted as taking precedence over national law in this case. [Case C 5/12, September 19th, 2013]

## **UK: Amendments to TUPE regulations**

The UK government has published its plans to modify business transfer (TUPE) regulations.

In future, new employers will be able to combine pre-transfer and collective redundancy consultations. They will only be bound by collective agreements that were current on the date of the transfer and not changed subsequent to it, and will also be able to amend collective agreement terms one year after the transfer (provided that the changes are no less favourable to transferred employees). If a transfer leads to a change in workplace location then any resulting redundancies will not automatically be unfair.

The government is likely to lay the amendments before parliament by December 2013, with a view to them becoming law on January 1st 2014.

## **UK: Third party harassment**

UK employers will no longer be automatically held vicariously liable for harassment of employees by third parties (persons other than the employer and colleagues) or for failure to take reasonable steps to prevent such harassment.



The Enterprise and Regulatory Reform Act 2013 repeals the provision in the Equality Act 2010 with effect from October 1st 2013. This reverts back to the House of Lord's judgment, *Pearce v Governing Body of Mayfield Secondary School* [2003], which stated that an employer will only be liable for harassment amounting to discrimination if the failure of the employer to prevent it amounts to discrimination in itself.

## Pay, Tax and Benefit Trends

**BELGIUM:** The use of meal vouchers (*chèques-repas*) as a method of remuneration in Belgium could cease as from next year if a vote in October passes the proposed law. Meal vouchers, which are currently issued in 70,000 companies to 1.6 million employees, provide employers with savings in tax and social security charges, equal to about 2% of wage costs.

**EUROPE:** Hourly labour costs in the European Union rose by 0.9% over the year to Q2 2013. This is down from the 2% annual rise to Q1 2013. The biggest change was the non-labour cost element (mainly social security) where the annual increase fell from 2% in Q1 to just 0.3% in Q2. Labour costs grew most in Industry (+1.7%), but remained much more modest in Construction (+0.4%) and the service sector (+0.7%). The biggest annual increases were in the Baltic states of Estonia (+7.7%) and Lithuania (+6.5%) whilst there were substantial falls in Slovenia (-5.9%) and Cyprus (-4.6%).

**GUERNSEY:** Although the island of Guernsey in the English Channel is a British Crown Dependency, it does not have any redundancy legislation. However, the island's parliament has decided to review its employment protection law to introduce the right to receive redundancy pay. Drafting of the changes will not begin until next year and the priority will be to cover redundancy that does not arise from the insolvency of the employer.

**HUNGARY:** During the period from January to July 2013 full-time employees in the Hungarian business sector earned, on average, HUF 239,600 (800.19 euros) per month. Average earnings grew over the year by 3.5% and net earnings grew by 5.1%. The highest paid sectors were finance and insurance (HUF 484,400/1,617.27 euros per month) and information and communications (HUF 431,300/1,440.47 euros).

**LITHUANIA:** An amendment to the Lithuanian Labour Code, which would require hourly pay rates and the rate of work (productivity and work intensity) to be specified in every collective agreement and employment contract, has been submitted to parliament. The draft also requires employers to assess job risk when determining remuneration levels and consult with employee representatives about job classifications. The changes are being sought by the Deputy Prime Minister in order to reduce the number of workplace disputes over excessive workloads.

**NETHERLANDS:** According to latest government estimates, 750 million euros of savings will be achieved in the Netherlands next year by employers due to a reduction in their earnings-related health insurance premiums from 7.75% to 7.5%. It is also estimated that the average annual insurance contributions by employees will fall slightly next year from 1250 euros to 1235 euros.

**POLAND/MOLDOVA:** A bilateral agreement on social security has been concluded between the governments of Poland and Moldova. The agreement ensures that workers posted between the two countries will not suffer from double taxation and will be able to claim their benefits in either country. It is expected to take effect in the second quarter of 2014, following ratification.

**POLAND:** The Polish government has confirmed that the national minimum wage rate will increase by 5% on January 1st 2014. From this date the



national monthly minimum wage for full-time workers will be 1680 PLN (397 euros) gross, up from 1600 PLN (378 euros).

**RUSSIA:** The Russian Labour Ministry is exploring new ways to encourage workers to postpone retirement. A government survey has found that 20% of workers would consider postponing retirement if it resulted in a significant increase in their pension income. For this reason, the Deputy Minister of Labour and Social Security, Andrew Pudov, would like to guarantee a state retirement income equal to 40-42% of previous earnings if a worker remains in employment for at least 35 years.

## Other European HR News in Brief

**BULGARIA:** The Bulgarian National Council for Tripartite Cooperation has given its support to a proposed amendment of the Labour Code which would allow parents to take maternity leave for children adopted up until the age of 5 years. Currently, maternity leave is only available to adoptive parents of children under 2 years of age. The proposed amendments do not, however, address the rights of single adoptive parents, who remain un-entitled to such maternity leave. If the amendment passes the legislative process it is likely to come into force in 2014.

**BULGARIA:** Trade unions in Bulgaria are pressing the government to alter draft amendments to the Law on Public Procurement in order to exclude offshore companies, and companies that do not meet certain workplace standards, from receiving contracts. The Bulgarian Confederation of Independent Trade Unions particularly wants to prevent contracts going to companies that have failed to make correct social security contributions, been found to have infringed health and safety rules, not met statutory and contractual labor standards or been in wage arrears.

**EUROPE:** Research carried out by Pricewaterhousecoopers (PWC) has found that the annual average sickness absence in Europe (7.3 days) is much higher than in the USA (4.9 days) and Asia-Pacific (2.2 days). In the UK, employees are taking fewer unscheduled absence days compared with two years ago (9.8 days in 2013 against 10.1 days in 2011) and technology companies now have the lowest incidence of sickness absence (3.4 days).

**EUROPE:** Vice-President of the European Commission, Viviane Reding, has developed a plan that would put the Commission into a quasi-judicial position, guarding the independence of national courts from political interference and maintaining fundamental rights in EU member states. This would mean that the EU treaty would have to be redrafted to prevent member states opting out of instruments like the EU Charter of Fundamental Rights. As a consequence the EU would have the power to make and enforce its own human rights rulings.

**FINLAND:** The Finnish forestry company UPM has decided to suspend an employee for two weeks because they smoked in the proximity of flammable substances within the precincts of their mill. The company operates a complete ban on their premises, including the use of electronic cigarettes. The suspension follows negotiations with employee representatives after the company had threatened to dismiss the employee.

**GREECE:** The practice of granting of an extra six days annual leave to those who used computers during their working day in the Greek civil service has now been scrapped. The policy was introduced in 1989 and applied to anyone using a computer for more than five hours a day. This is the latest public sector benefit to be withdrawn. Previous perks included an attendance bonus and a facility for unmarried daughters to inherit their dead father's pension.





**SWITZERLAND:** Next month legislation will come into force in Switzerland that requires large companies to negotiate a social plan to minimise the impact of a collective redundancy. The requirement will apply to companies with 250+ employees terminating at least 30 employees for economic or structural reasons within any 30-day period. It will not, however, apply in the event of company bankruptcy.

**UK:** The UK government has commissioned a review of its executive search voluntary code of conduct. The code was originally introduced in 2011 and was principally designed to encourage an increase in the number of female Directors on company boards.

## FedEE news:

**FELLOWSHIP MEETING:** The first Fellowship meeting will be taking place on Friday, 11<sup>th</sup> 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](mailto: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](mailto: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.

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