



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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Austria: Pitfalls with semi-retirement clauses

A recent decision of the Austrian Supreme Court (9 ObA 51/11g) has found that semi-retirement agreements (*Altersteilzeitvereinbarung*) must contain a termination clause if the parties wish to cease the employment relationship when the semi-retirement agreement comes to an end.

In the absence of such a clause, the original full-time employment relationship is only suspended by the semi-retirement arrangement. Even though it is common for the parties to a contract containing a semi-retirement provision to terminate the employment relationship on its expiry, it cannot be implied that the expiry of such an agreement necessarily leads to the compulsory termination of the employment relationship. If the parties have not explicitly agreed on a specific termination clause, the expiry of the semi-retirement agreement results in the reactivation of the former full time employment.

France: Social security rules for 2012

The French law on the financing of social security for 2012 has been published in the Official

Journal. There are a number of important changes this year:

* The rate of the so-called employer '*forfait social*' contribution is increased from 6% to 8%.

* The social security scheme applicable to severance payments has been amended in regard to the termination of corporate officers, senior managers and persons referred to in Article 80 of the General Tax code. The non-taxable share excluded from social security contributions now has an upper limit of 72,744 euros.

* The rate of abatement for business expenses has been reduced. The automatic deduction is now set at a fixed rate of 1.75%.

* There are also changes in the way that the "fillon reduction" is calculated for employees on low incomes.

Irish Republic: Broadening of 'inability to pay' right

The Irish government has agreed to amend legislation on sectoral wage agreements in order



to extend the right of individual employers to plead inability to pay wage rates.

Finance Minister Michael Noonan has indicated that legislation on sectoral agreements would be amended to strengthen the "inability to pay" clause in Employment Regulation Orders and Registered Employment Agreements. The current legislative proposals permit an employer to apply to a Labour Court for a derogation from the wage rates set out in a sectoral wage agreement on the basis of inability to pay. The derogation can be granted for between three months and two years, provided an employer has not been granted an exemption within the previous five years for the same workers. The Labour Court must be satisfied that without the exemption there would be a risk to jobs or the sustainability of the employer's business.

Netherlands: Pay controls to apply across group companies

The Dutch Minister of Finance has published an amendment to a Bill introducing a ban on bonuses in state-aided financial institutions (SAFI).

Under the Bill, Directors of SAFI may not receive variable remuneration and their fixed remuneration may not be changed whilst the institution is receiving state aid. Under the new amendment this ban also applies where the aid is provided to a group which is not primarily a financial enterprise. It is irrelevant whether the aid is provided to the group as a whole or to more specific parts of the group. Where the group has its headquarters abroad, the ban will apply to that part of the group company heading up its Dutch activities.

Pay, Tax and Benefit Trends

BELGIUM: The income tax penalties for the personal use of a company car in Belgium have been changed. The tax is now derived directly

from the actual market value of a vehicle and its level of CO2 emissions. Tax discounts for cars with low CO2 emission have been abolished.

BELGIUM: Belgian legislation introducing a modest tax break on severance pay (IH 05/18/11) has come into effect. The exemption is €425 from January 1st 2012, then €850 (with automatic indexing) from January 1st 2013.

FRANCE: French President Nicolas Sarkozy has been given the backing of his party for his plan to fund a 13 billion-euro cut in payroll taxes by switching revenue generation to sales tax. The measures would raise the rate of tax on most goods and services by 1.6% to 21.2%. The government would use the extra revenue to finance a cut in payroll costs paid by employers.

GREECE: Both Greek employers and unions have rejected a proposal by the prime minister, Lucas Papademos, that private sector salaries should be reduced in order to make Greece more competitive. The minimum wage and associated supplements is likely to be retained, but a reduction in social security contributions has widespread support - as does a programme to provide up to 120,000 short-term jobs for 120,000 unemployed people.

RUSSIAN FEDERATION: Russia's ruling "United Russia" party is planning to introduce substantial increases in the national minimum wage in order to bring it more into line with the official subsistence level. Parliament plans to follow a three-step schedule this year with the monthly minimum wage increased from the current 4,600 rubles (115 euros) to 5,000 rubles (125 euros) in March 2012. On June 1st it will be increased to 5,500 rubles (138 euros), and finally to 6,500 (163 euros) by October 1st.

SWITZERLAND: Swiss trade unions have gained the necessary 100,000+ signatures to require the Federal Chancery to call a referendum on a



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national minimum wage of 22 francs (18.2 euros) per hour. If supported by the Swiss population, this measure would raise gross monthly earnings to 4,000 francs (3,313 euros) for those in the lowest paid jobs. It is estimated that approximately 400,000 workers would be affected by such a statutory increase.

UK: The UK government has confirmed that it will postpone the implementation of the increase in parental leave required by the EU Parental Leave Directive. This change will increase the rights to unpaid parental leave, for those with a child under the age of five, from 13 weeks to 18 weeks. The Department for Business, Innovation and Skills intends to make use of the one year grace period provided for in the Directive.

Other European HR News in Brief

CZECH REPUBLIC: Non-EU employees working in the Czech Republic are now required to register with the Czech labour authorities by their first day of employment if they began work after January 1st 2012. Previously, only EU nationals were required to register.

ECJ: The European Court of Justice (ECJ) has ruled that the Working Time Directive must be interpreted as precluding a provision under French law which makes annual leave conditional on 10 days' attendance at work for the same employer during the reference period. In addition, the directive makes no distinction between workers who are absent on sick leave during the reference period and those who have worked (C-282/10).

ECJ: The European Court of Justice (ECJ) has ruled that it may be lawful to employ someone by means of a continual succession of fixed-term contracts. The case in question involved a Civil Servant in Germany who had been placed on 13 successive contracts. According to the court, renewal may be justified where an employee is

required to provide cover during recruitment for vacant positions - even though the replacements are being hired under contracts of indefinite duration (C-586/10 Bianca Kucuk).

FINLAND: The Finnish government has begun issuing a new biometric residence permit card which requires non-EEA foreign nationals to apply in person in order to submit biometric data. Employers may no longer apply for residence permits on behalf of foreign employees. Foreign nationals who have a valid residence permit affixed as a sticker to their passport are not immediately required to obtain the new biometric card, but must apply for it as soon as possible following the expiration of their permit or passport.

FRANCE: The French Supreme Court has recently ruled in a case concerning competence to dismiss an employee. The employee in question disputed his dismissal on the grounds that the letters inviting him to the prior interview and notifying him of the dismissal were signed by the employer's accounting firm - which had no competence in the matter. The Court held that the purpose of the prior interview and rules relating to the notification of the dismissal prohibit the employer from instructing a person from outside the company to conduct the dismissal procedure (Cass.Soc. 7 Dec 2011, no 10-30.222).

FRANCE: The Criminal Chamber of the French Supreme Court has ruled that an employee may be convicted of harassment under articles L1152-1 and 222-33-2 of the French Labour Code even if the individual concerned is actually the subordinate of the victim. These provisions do not specify the relative status of the parties. In the case in question the employee had harassed his superior for several years by spreading false rumours and through the portrayal of his victim as professionally incompetent. This had led to the victim's eventual suicide (Cass.Crim, December 6 2011, no 10-82266).



GERMANY: More than 450 German tax and customs officials have raided major supermarket premises in Bavaria, Baden-Wuerttemberg and North Rhine-Westphalia following allegations of underpayment of agency workers and evasion of social security payments. According to investigators, agency workers were paid around 30% less than the legal framework stipulates - although they are not yet able to estimate the sum of unpaid social security contributions.

HUNGARY: Amendments to the Hungarian Labour Code will enter force on July 1st 2012. The changes introduce a new form of labour agreement, called a 'Works agreement', for deals between an employer and a works council. A further new facility will be the 'call-in' contract for part-time workers which will allow an employer temporarily to extend working time upon giving three days' notice. The revised code also permits 'termination with immediate effect' in certain circumstances and provides for termination by notice in defined period contracts. New longer probationary periods are also permitted, as are longer extraordinary overtime hours.

ITALY: The Italian Court of Appeal in Florence has confirmed that cost reduction alone does not provide a legitimate basis for making employees redundant. In order to constitute a lawful dismissal for objective reasons, employers are obliged to demonstrate genuine and justifiable reasons relating to the improvement of their business and these must not merely be aimed at increasing profit. The reasons must also have a degree of permanency and not just be temporary cost-cutting measures.

MOLDOVA: The Moldovan parliament has passed a new Act on the protection of personal data, effective from April 15th 2012. This brings national legislation broadly into line with European Union rules on the processing of personal data, registration procedures (notification) for

processors of personal data, and the cross-border transfer of personal data.

NETHERLANDS: On March 1st 2012 changes to the Dutch Mass Redundancy Act (*Wet melding collectief ontslag*) will enter force. In future, the question of whether the Act will apply shall no longer be determined by the chosen termination method. Currently, it is possible to avoid its applicability by terminating redundant employees by mutual consent. Once the amendments have been implemented the dismissal of 20 or more employees within a period of three months will require notification to the *UWV Werkbedrijf* and trade unions, regardless of how the termination is executed.

NETHERLANDS: According to figures published by the association of temporary employment agencies (ABU) the number of hours worked by temporary staff in the Netherlands rose by 5% in the final weeks of 2011 compared to the same period in the previous year. The most notable increase was seen in the technical sector - where the number of hours worked rose by 14%.

NORWAY: The Norwegian government is split over whether to give effect to the European Agency Work Directive even though it is obliged to do so under the terms of its membership of the European Economic Area. Temporary agency workers account for around 2% of the national workforce and it remains only partly regulated following reforms in 2000 and 2008. Unions remain firmly against its introduction on the basis that it could encourage more temporary work at the expense of permanent opportunities.

UK: The UK government has confirmed that employees starting work before April 6th 2012 will continue to be able to claim unfair dismissal after one year's service. The new two-year qualifying period will only apply to those who commence employment on or after April 6th 2012.



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