FedEE
Federation of European Employers
Fédération des Employeurs Européens

Mettre à jour

Latest News from the Federation of European Employers (FedEE)

Inside this Issue:

Belgium: Changes to annual remuneration thresholds

The 2012 remuneration thresholds for the applicability of certain Belgian legal provisions are now in force.

* The maximum length of a probationary period is six months - unless the employee's gross annual remuneration exceeds 37,721 euros, in which case it can extend to a maximum of 12 months.

* Non-compete clauses are void where an employee's annual gross remuneration does not exceed 31,467 euros. For remuneration in the 31,476 to 62,934 euros bracket, the non-compete clause is only valid if provided for by a collective labour agreement.

*It should also be noted that the repayment of training costs in the event of an employee leaving their employment before the end of a certain period are valid only if the employee's gross annual remuneration exceeds 31,467 euros.

Czech Republic: Increased penalties for bogus self-employment

The amendments to the Czech Labour Code which came into force at the beginning of 2012 contain provisions aimed at stamping out the practice of falsely claiming self-employment status.

The modified legislation changes the definition of 'dependent work', making it indisputably illegal for workers who are in a subordinate role to an employer and who perform tasks in accordance with an employer's instructions to be considered as self-employed.

Financial penalties have been increased for both employers and workers - with labour inspectorates planning to introduce further controls later in the year. Fines of between 250,000 koruna (10,000 euros) and 10 million koruna (400,000 euros) may now be imposed on companies using the services of bogus freelancers and up to 100,000 koruna (4,000 euros) imposed on individuals found to have made a false declaration of self-employment.

Europe: Slow take-up of IORP schemes

The European Insurance and Occupational Pensions Authority (EIOPA) has published its 2011 report on the development of the cross-border activity of the Institutions for Occupational Retirement Provision (IORPs).

Following the implementation of Directive 2003/41/EC many EU member states have opened their borders to foreign IORPs. According to the Directive's standard requirements, IORPs must comply with the social and labour laws of the host country - although they are also subject to home country supervision.

Progress over the last eight years has been slow with the total reaching just 84 last year - involving a total of 9 home and 23 host countries. 11 new schemes were created in 2010-2011, but this was partly offset by the withdrawal of 5 schemes. By far the most notable two-way relationships have been those between Ireland and the UK, the UK and the Netherlands and Belgium and Luxembourg.

Finland: Fixed-term contracts for agency workers

The Finnish Supreme Court has recently issued a judgment on the use of fixed-term employment contracts for temporary agency workers.

In the case in point, a leasing company had concluded a fixed-term employment contract with an individual for the duration of the performance of a particular assignment. Once completed, the employee's contract was terminated. However the employee contested the decision on the grounds that the leasing company had a permanent need for workers. At the time the contract was entered into, neither the employer nor the employee knew exactly the date of termination.

The Court found that the termination of the user company's assignment did not constitute justified grounds for terminating a fixed-term employment contract with the leased employee. The fact that the termination date was not known at the time of entering into the contract indicated a permanent need for the employee and that therefore contracts concluded in such circumstances shall be deemed to be in force until further notice. Consequently, the contract was found to have been terminated without justification.

France: Action must be taken to close the gender gap

Companies in France that have not taken steps to close their gender pay gap through a collective agreement or unilateral action plan may now be fined up to 1% of their payroll costs.

Companies with at least 50 employees must negotiate a collective agreement or draw up a unilateral action plan in consultation with employee representatives. The decree of 9th July 2011 has also recently come into force. This specifies the conditions for applying the penalty. If after 6 months of negotiations with employee representatives (or refusal to enter into negotiations) the necessary obligations have not been met a penalty will be exacted by the Regional Director business, competition, consumption, labour and employment.

The latest decree also lays down the content of the equal pay action plan that companies will be required to introduce and the elements of this plan that must be made public.

France: Right to challenge basis for redundancy decisions

In something of a departure from previous case law, two recent French Court of Appeal decisions have sent a warning to employers to ensure that redundancy proceedings are not rendered unlawful for the lack of a clear 'economic motive'. According to the courts, if the economic motive presented to the works council to justify the proposed redundancies is unfounded, then the consultation process will not comply with the requirements of the French Labour Code. This will thus render invalid the entire redundancy procedure.

These cases have challenged the traditional interpretation of Article L1235-10 of the French Labour Code because they admit that staff representatives may challenge the economic rationale behind a restructuring plan from the outset of the consultation procedure. Until a Supreme Court ruling has been made employers should ensure that they can clearly justify the economic rationale for any plans involving significant redundancies. The plans may, for instance, be based on the need to stem continued financial losses or the need to deal with a reduction in economic competitiveness.

Germany: 'Failure to notify' grounds for discrimination

The German Federal Court has ordered an employer to pay compensation to a job applicant who claimed that he had been turned down for a job because of his disability.

The employer in question had failed to notify the German state employment agency of the vacant position or conduct a formal interview. Every employer in Germany is required to submit a notification before advertising a new job vacancy so that it can be established whether the vacant position could be filled by an unemployed candidate - and particularly one who is disabled.

The Court added that under current reversal of proof rules, failing to comply with notification requirements is itself sufficient evidence to support a prima facie case for discrimination. It is therefore up to the employer to show that they did not discriminate.

Italy: Privacy watchdog limits use of questionnaires

The Italian Data Protection Authority has recently made clear that it is unlawful for an employer to gather information on the private life of a job applicant or a new recruit. In the authority's view an employer may not request such details as an individual's personal relationships, health or smoking habits (regardless of whether the individual granted their consent).

This decision was made with regard to a particular case involving a company that had issued a personal questionnaire during the recruitment process. It is consistent with the approach adopted by the Italian courts in declaring the use of aptitude tests unlawful if they breach article 8 of the Italian Workers' Statute by including questions relating to political opinions, trade unions, religious dogma or any other facts that are not relevant to their qualifications or potential position.

Italy: Relaxation of temporary work restrictions

The Italian Government has approved a decree that is designed to relax the 2003 Biagi law in respect to the hiring of temporary workers. Currently, temporary staffing is only permitted for technical reasons, reasons to do with "production and organisation" or to substitute for absent staff (but not workers on strike). Company-level collective agreements may also limit the specific circumstances in which labour can be leased.

The new decree states that employers will no longer need to give reasons for hiring temporary employees when agreement has been reached by way of a collective bargaining agreement. Neither will such justifications be necessary when hiring those who were formerly unemployed or originating from "disadvantaged backgrounds".

Spain: Dismissal for personal use of company IT systems

The Spanish Supreme Court has ruled that it was lawful to dismiss an employee for using her work computer for personal purposes.

The Court found that as the employer had a clear policy in place which stated that employees were not permitted to use work computers for personal reasons then the employee could not maintain that she had any right of privacy in respect to the use of company IT systems.

This decision is a departure from previous case law where employees were found to have a fundamental right to privacy. The crucial difference in this case was that the employer had in place a clear no-tolerance policy.

Spain: Further guidance on labour law reforms

Further details of the recent Spanish labour law reforms are now available in a new briefing from Baker & McKenzie.

Switzerland: Social security for cross-border workers

The Swiss Federal Social Insurance Office has confirmed that new social security regulations on Swiss/EU cross border employees (883/04 and 987/2009) will be implemented on April 1st 2012. These will also cover surface and air transport workers who were formerly subject to separate regulations.

In future, the maximum normal assignment period for employees temporarily transferred to work in Switzerland will be 24 months' duration, but with scope for extension to five years in certain circumstances. If an employee is a part-time posted worker carrying out duties in two or more countries they will need to establish that they perform a substantial part (minimum 25% of working time/or related income) of their activities in the home country to remain socially insured there.

The Swiss authorities have confirmed that employees currently on assignment will be covered by transitional provisions and that the new rules will not apply to citizens from EFTA members (Iceland, Norway and Liechtenstein) or from non-EU states.

Pay, Tax and Benefit Trends

BULGARIA*:* Four years after the introduction of a 10% flat income tax rate in Bulgaria, the socialist party is leading calls for it to be replaced by a progressive system. However, Bulgaria's finance minister has repeatedly denied reports that a removal of the flat-tax may be looming after the government scrapped its plans for a VAT increase in a bid to plug the country's growing budget deficit.

CROATIA: The Croatian Parliament has now approved the proposed package of tax and social security changes (MAJ 23/02/12). These included an increase in the standard rate of value added tax (VAT) to 25%, a new withholding tax on dividends and a reduction in employers' mandatory health insurance payments from 15% to 13%.

DENMARK: Danish employers and trade union confederations have agreed on the terms of a new two-year labour agreement affecting more than a quarter of a million workers in all areas of heavy industry and its administration. The outcome has been a modest 2.55% wage increase over the next two years to bring the minimum wage for industrial workers up from 106 to 108.70 (14.61 euros) kroner per hour.

GERMANY: Ahead of the first round of pay talks with German banking employers in Berlin, the Ver.di union has submitted a claim for an across-the board increase of 6%. The union is also demanding mandatory health protection, improved staff training and a renewal of the early retirement collective agreement.

UK: 1.6 million Local Council workers in England, Wales and Northern Ireland will now be subject to a third consecutive wage freeze during 2012-13. Although a £250 (299 euros) pay increase was promised to public sector workers earning less than £21,000 (25,150 euros) in the Chancellors' emergency budget last year, local government pay is determined separately by negotiations held between employers and trade unions. The decision by unions to back down came after councils claimed that any increase would result in the loss of jobs and a reduction in essential services.

Other European HR News in Brief

BELGIUM: The Belgian Companies Code has been modified to improve the gender balance on the boards of listed companies. The revised Code provides that at least a third of the members of the board of directors must eventually be either men or women. This obligation applies to the company's sixth financial year commencing in the first full year falling after September 14th 2011, except in certain exceptional circumstance where companies are given more time to adapt. The Code also provides that listed companies have to report each year on progress towards the new gender balance.

BULGARIA/ROMANIA: The European Union has delayed until September the decision to allow Romania and Bulgaria into the visa-free Schengen zone. Both countries must receive a positive report from the EU's cooperation and verification team before border controls may be relaxed.

EU: The EU Commission has published its draft General Data Protection Regulation with the intention that a centralised body of EU rules will eventually replace the current system of country-specific data protection laws within a framework set by an EU Directive. Of greatest concern for larger employers will be the requirement for companies with 250+ employees to appoint a data protection officer. There will also be a new maximum fine for corporate breaches of data protection rules - amounting to 2% of a company's annual global turnover.

EUROPE: According to a recent survey of 41 European countries carried out by Mercer Consulting, women now account for 29% of senior managers and board members. This comes surprisingly close to the target for female board representation recently set by EU Justice Minister Viviane Reding of 30% by 2015 and 40% by 2020.

GERMANY: The German Federal Labour Court has recently ruled on the allocation of care leave. Employees of companies with more than 15 employees are entitled to take up to six months off for the purpose of providing nursing care for sick or infirm relatives. The Court held that such time off can only be taken in one block, even if the employee takes less than six months off. This means that if the employee takes, for instance, only four months care leave, they are not entitled to take a further period of two months at a later date.

ITALY: The Italian Supreme Court has, in a recent decision, confirmed that the dismissal of an executive without notice is wrongful if the employer does not issue a reprimand letter and provide for a period in which the individual can respond in their defence (S7(2) and (3) of the Law of March 20th 1970. The Court stated that this applies regardless of an individual's level of executive status (Decision 1424, February 1st 2012).

ROMANIA: Romania has introduced the EU Blue Card scheme allowing highly-skilled third-country nationals to live and work temporarily in the country and ultimately acquire long-term EU residency rights. The government is currently finalising the application procedures for the programme. To qualify for the scheme applicants must hold a post-secondary educational qualification and command an annual salary that is at least four times the average gross annual salary for a similar position in Romania. Where the applicant is seeking a position in a regulated profession they will also require a minimum level of relevant work experience.

SERBIA: The European Council has agreed to grant Serbia the status of an EU candidate country. It is thought that accession talks could commence by year end - provided further progress is made on the elimination of corruption and the resolution of the Kosovo question.

FedEE News:

THE NEXT FEDEE NETWORKING MEETING

FedEE will be holding its next UK Networking Meeting on the afternoon of April 24th at the Novotel, Hammersmith, London. Attendance is free - so do not miss this opportunity to meet up with other HR professionals in multinational companies.

The theme for the meeting will be ‘employee engagement’ and our guest speaker will be Terry Grourk of the survey company Enhancing who will be showing us how to conduct international employee surveys and interpret the results. FedEE's Secretary-General, Robin Chater, will also be providing a round up of recent employment law and HR developments from around Europe.

The event will run from 2.45 pm until 4.30 pm and conclude with refreshments. As places are strictly limited please contact us as soon as possible on admin@fedee.com or by calling (0044) 0207 520 9264.

NEW TAX AND SOCIAL SECURITY DATA

Latest available data for both employers and employees social security contributions, corporation tax and personal income tax across Europe are now available to FedEE members in our knowledgebase. Published figures - which for most countries are for 2012 - are for single, salaried employees in full-time permanent positions, whilst corporation tax rates are for medium to large enterprises.

Fédération des Employeurs Européens/The Federation of European Employers (FedEE) is the organisation for international employers operating across Europe. The Federation was founded in1989 with financial assistance from the European Commission. Our UK postal address is Adam House, 7-10 Adam Street, The Strand, London, WC2N 6AA, UK. Tel: (0044) (0)207 520 9264. Web:http://www.fedee.com. We utilise virus

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