



**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: Twin dismissal penalties lawful

The Belgian Supreme Court has ruled that the indemnity for protection against dismissal for employee representatives may be cumulated with an indemnity for employment security arising from noncompliance with a collective bargaining agreement (CBA).

This conclusion was justified because, in the court's view, the payments represent penalties for separate infringements. The indemnity for protection against dismissal is a sanction which must be granted in the event of the failure to respect the specific procedure which ensures that the dismissal of a protected employee is justified. The indemnity for employment security is, however, granted in the event of the failure to respect the procedure provided for by a branch or industry CBA. The CBA indemnity serves to compensate the damage which was caused by the dismissal, and therefore protects the employee's personal interests.

### Czech Rep/Slovakia: Limitations on flat tax rate

The Czech and Slovak governments are both introducing a number of economic reforms in an attempt to push down the public budget deficit to below 3%.

The Czech cabinet has approved a 1% increase in VAT and an increase in the general level of income tax. From 2014 a new 20% tax rate on an individual's gross income will replace the 15% rate calculated by reference to their "super gross wage". There will also be a 7.0% 'solidarity tax' surcharge on individuals with gross incomes of around four times the Czech average (currently 4,037 euros a month).

In Slovakia, the ruling Smer party has proposed that the majority of workers should continue to pay income tax at a flat rate of 19%, but that those with high earnings should be taxed within a new 25% band. Highly profitable companies will also be subject to a new higher corporation tax rate of between 22% and 23%.



## **EU: Commuting and rural-urban divide**

According to the EU's statistical agency Eurostat, just 3% of the UK population lives in rural areas compared with 73% in the Irish Republic. Although the rural population is growing in both countries the growth in the UK is at a lower level than for intermediate and urban areas.

At an EU level, ruralisation continues to be on the decline with 41% now living in urban areas and a further 35% in intermediate areas. Only in Belgium, France, Ireland and the UK are there significant recent trends towards living in rural areas.

With an increase in ruralisation, there should come a growth in commuting distances. However, this does not appear always to be the case. Between 2006 and 2010 the number of workers in the Irish regions of Borders, Median and West working within their regions rose by 4.7%, whilst in the southern and eastern regions it grew by 3.2%. In the UK commuting distances are growing, especially in Northumberland and south-west Scotland. The major exception is in Dorset and Somerset where there was a 7.6% increase between 2006 and 2010 in the number of people deciding to work within the area where they live.

## **EU: Impact of last recession on jobs**

Although employment in service-based businesses across the EU was hard hit by the recent recession, growth has now resumed - albeit not yet at pre-recession levels. By contrast, employment in the construction sector grew by 15% between Q1 2004 and Q2 2008 before subsequently falling by over 17%, with no evidence of recovery.

Employment in production has been in long-term decline, but was accelerated by the recession. Between the Q1 2008 and Q3 2010 industrial employment fell by 11.4 % before leveling out as the recession waned. Most hard hit during the

recession were mining and quarrying, petroleum and gas production, tobacco products, textiles and clothing and leather goods.

## **EU: Is GDP a myth in some member states?**

In 2011 total employee compensation - in cash and in kind - in the European Union accounted for 49.2% of GDP. Big variations in this measure exist across the EU from 55.2% in Denmark down to 34.2% in Greece.

Country differences will partly be due to economic structure, levels of economic development and labour productivity, but a significant factor underlying the differences will be the underreporting of compensation because of the black economy. This is well illustrated in Italy (42.3%), Romania (37.4%) and Bulgaria (37.2%) - all countries where tax evasion by employees is known to be commonplace. The most disturbing consequence of this phenomenon is that GDP as a whole may be significantly underestimated for many economies as wealth is siphoned off and held as cash or black market items of personal consumption that never show up in official economic statistics.

## **Germany: Age-related leave differences unjustified**

The German Federal Labour Court has declared that it is discriminatory to vary annual leave allowances according to an employee's age - even if the scaling of allowances is set out in a collective agreement.

According to the agreement in question, holiday entitlements ranged from 26 days for employees under the age of 30 years to 30 days for those over the age of 40. The court could not find any justification for disadvantaging those under the age of 40 and held that it could only be remedied through an upward adjustment, granting 30 days leave to all employees irrespective of their age.



Curiously, the court did concede that age-related scaling might be legitimate if it was provided to take into account the increased need for recreation time by older employees. Therefore, differences in entitlement might be justified for employees nearing retirement (20/03/12 no.9 AZR 529/10).

## **Irish Republic: Whistleblowers to obtain legal protection**

Irish minister Brendan Howlin has announced that the government is drawing up a draft Bill on Protected Disclosures in the Public Interest.

This new legislation is designed to protect whistleblowers who report what they genuinely perceive as possible criminal offences - or failure to comply with a legal obligation, the miscarriage of justice or the infringement of health and safety legislation. However, as currently conceived, the legislation will not apply to disclosures made on an anonymous basis. But protection will extend to matters arising in another country - provided they breach the laws of Ireland or the other jurisdiction.

The final draft of the Bill is expected to be published in the second quarter of this year.

## **Poland: Bill on raising the retirement age**

The Polish government has proposed an amendment to the Retirement and Social Insurance Fund Pension Act in order to increase the retirement age to 67 for both men and women. The changes will be phased in from January 1st 2013, but will be completed by 2020 for men and 2040 for women.

Currently, the retirement age for state pension purposes is 60 for women and 65 for men. According to the new regulations, once the changes have been fully introduced men will be able to take partial early retirement from the age of 65, whilst women will be able to do so at 62.

The level of pension received during partial retirement will be approximately 50% of that after attaining the full retirement age.

## **Romania: New restrictions on temps agencies**

The Romanian government has introduced legislation (decision no.1256/2011) on the conditions for the operation and authorisation of temporary work agencies.

Temporary agency workers are now entitled to the same pay rates, working and employment conditions as those that apply to the agency client's own employees.

Moreover, in future all agencies must be registered legal entities and licensed by the Ministry of Labour, Family and Social Protection. Once granted, a licence will be valid for two years - but may be extended for further two-year periods. Temporary workers must be given a written temporary work agreement for each assignment and it will be a criminal offence for an agency to supply more than five workers without such an agreement.

## **Turkey: Contractual non-compete clauses**

The law relating to non-competition clauses in employment contracts will be amended under the terms of a new Turkish Code of Obligations which comes into effect on July 1st 2012.

In future, such clauses may prevent an employee from working for a competitor, although they may still hold shares in the rival company. For a non-competition clause to be valid it must be in writing, the employee must have legal capacity (not be under age) and the employee must have been in a position to acquire valuable knowledge or trade secrets that could be used to cause their former employer material damage.



## Pay, Tax and Benefit Trends

**BELGIUM:** The Belgian government has just introduced new measures to combat social security fraud. These extend from the construction sector to all other sectors, joint liability by contractors and subcontractors for unpaid remuneration, social security contributions and taxes. In addition, where obligations and formalities for part-time work are not complied with the Federal social security authority will automatically presume an employee is in full-time employment.

**BELGIUM:** New rules have recently taken effect on the acquisition of holidays at the start of an employee's career. For each three-month period worked during the first calendar year of employment, the employee may take one week paid leave from the last week of each quarter. The changes have been published in the Belgian State Gazette; further details will be specified in a royal decree.

**EUROZONE:** The European Central Bank (ECB) is predicting that the annual rate of consumer price inflation (HICP) within the eurozone is likely to stay above 2% in the near term, primarily due to rising oil prices, depreciation of the euro and increasing excise taxes in some member states. The effects of labour costs on inflation have remained fairly neutral with a rise of 2.1% over the year to Q4 2011. The continuing fall in employment levels will encourage restraint on pay levels, especially in the construction sector.

**GERMANY:** A 24-month pay deal has been concluded for two million German public-sector workers. The total increase of 6.3% represents a major victory for the Ver.di trade union that had submitted a 6.5% claim.

**JERSEY:** The minimum wage on the Channel Island of Jersey has been increased by 2.5% to £6.38 (7.74 euros) per hour. The minimum for

trainees has also risen to £4.86 (5.89 euros) per hour to bring it into line with Guernsey and the UK mainland. All rates are effective from April 1st 2012.

**NETHERLANDS:** Dutch Social Affairs minister Henk Kamp has clarified that a new statutory restriction on the right of employees to take earned occupational pension entitlements with them to a new scheme when they move jobs will only apply to pensions in excess of 15,000 euros per annum. As a result, over 90% of transfer value applications will not be affected by the decision.

## Other European HR news in brief

**GERMANY:** According to a decision by the Regional Labour Court in Dusseldorf, Germany an employer may not arbitrarily access data stored by a works council on the company's IT system unless it first obtains the council's consent. This ruling followed an application to the court by a company seeking authorisation to examine a document relating to an ongoing unfair dismissal case (07/03/12 no 4TaBV 11/12).

**ITALY:** The Italian government has approved a number of important employment law reforms. These clamp down on the misuse of flexible employment contracts and make it easier to carry out individual redundancies. In return, several improvements have been introduced to the unemployment benefit system. A comprehensive briefing on the reforms is available [here](#) from Uberto Percivale of Baker & McKenzie's Milan office.

**NETHERLANDS:** The Dutch Ministry of Social Affairs and Employment has confirmed that its experimental short-stay scheme for highly skilled migrants will run until the end of 2013. The fast-track procedure may be used by highly-skilled migrants, aged 30 and above, who wish to work in the Netherlands for up to 90 days.



**PORTUGAL:** Portugal's economic recovery is being hampered by its poor level of educational provision. Fewer than 30% of Portuguese adults have completed secondary schooling - making it Western Europe's least educated as well as poorest country. According the European Commission, Portugal's income per capita fell from 70% of the EU average in 1999 to 63% in 2011 and is expected to fall to close to 60% this year.

have fallen by 7% since the Agency Workers Directive came into force in October 2011. But employers appear to have been reducing their dependence on temporary agency workers before the legal changes came into effect - as over the past twelve-months temporary placements have fallen by a total of 18%.

**UK:** The number of short-term agency workers hired in the UK fell in March 2012 at the fastest rate for two-and-a-half years. Figures just published by the Recruitment and Employment Confederation (REC) reveal that temporary hires

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## FedEE news:

### **FedEE's pay benchmarking App available**

Jobsworth is the exciting new Iphone App from FedEE designed to help HR professionals price jobs whilst on the move. It is available in a basic version covering the UK and Ireland and a European version covering 47 different countries and territories.

To find out more please visit the Jobsworth website: [www.jobsworth.net](http://www.jobsworth.net)

### **FedEE's new index of EU labour market trends**

The new FedEE Index measures the degree of health of an economy by analysing the relationship between labour demand and supply, adjusted by real labour costs per unit of output, conventionally used as an indicator of economic competitiveness. For further information and to view the latest LMI graph see the [FedEE website](http://www.fedee.eu).

### **FedEE Knowledgebase UK data updated**

FedEE's UK Knowledgebase entries are now up to date with all the latest legal information for 2012. This has been kindly prepared by Nigel Moss, London Office, Baker & McKenzie- international lawyers.

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