



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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An amendment to the Bulgarian Commercial Code has been proposed that would give employees the right to submit a claim as a priority creditor if their company files for bankruptcy.

Current legal provisions allow bankruptcy proceedings to be initiated by debtors, creditors, liquidators or the National Revenue Agency. In 2011, the Labour Ministry issued around 2300 citations for unpaid salaries and there have been a number of high-profile cases of major delays in meeting outstanding salary obligations by Bulgarian companies in liquidation.

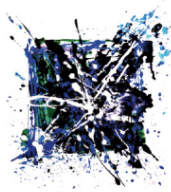
The proposal is currently open for public consultation prior to its approval by the Cabinet and submission to the national Parliament.

ECJ: Trigger for collective redundancies consultation

Advocate General Paolo Mengozzi, an advisor to the European Court of Justice (ECJ), has published his opinion on when an employer's

obligation to consult collectively about redundancies should be triggered.

In Professor Mengozzi's view, employers do not have to consult before taking the business decision that may ultimately lead to redundancies being made. Where there are a group of companies and the decision on collective redundancies is not made directly by the employing company itself but, for example, by a parent company, the obligation to consult is triggered when "a strategic decision is taken which compels the employer to contemplate or plan for redundancies". Moreover, any decisions taken by a parent company that could lead to redundancies must not be presented as a *fait accompli* and should be made clearly provisional upon the completion of collective consultation with potentially affected employees and their representatives. The final decision will be made by the ECJ later this year (Case C 583/10 The United States of America v Christine Nolan).



EU: IT graduates on the decline

Figures just published by the European Union's (EU) statistical agency Eurostat indicate that Scandinavian countries remain amongst the biggest users of information technology (IT) systems. 78% of 16-74 year olds in the EU have had "hands on" experience of using computers compared with more than 93% in Scandinavian countries.

However, in 2005 5.8% of all University graduates in Norway majored in IT, but by 2009 (the latest year for which figures are available) the proportion had fallen to 4%. This trend is to be found in all Scandinavian countries – Finland (4.6% to 3%), Sweden (3.9% to 2.9%), Denmark (3.8% to 3.3%) and Iceland (3.7% to 2.6%). This suggests that IT has been largely mainstreamed in Scandinavian university courses and the majority of graduates will have used computing in a sophisticated way as an integral part of their studies.

Irish Republic: Heavy penalty for multiple discrimination

The Irish Equality Tribunal has made a substantial compensatory award to a former marketing manager for discrimination and victimisation arising from incidents which occurred whilst she was employed by a major hotel group.

The complainant alleged a pattern of unlawful treatment starting when she became pregnant with her first child and culminating in her termination shortly after she informed her employer that she was pregnant with her third child. These amounted to:

- * Pressure put on the complainant to take redundancy,

- * An attempt to repackage her termination as 'early maternity leave',

- * The refusal to pay full maternity pay for her third pregnancy,

- * Blocking access to her company fuel card and mobile phone without warning.

The tribunal accepted that these actions constituted harassment, victimisation and discrimination based on gender and family status within the meaning of the Employment Equality Acts and awarded the complainant compensation totalling 315,000 euros.

Italy: Criminal liability for data loss

The Italian Supreme Court has recently ruled on the application of Article 635(2) of the Criminal Code in respect to negligence leading to data loss from a computer.

The employee concerned deleted a large quantity of data from the hard disk of his employer's computer and also removed the back-up CD-ROMs. The employee was subsequently found guilty of a criminal offence. However, the Court held that damage, for the purposes of Article 635(2), may be said to occur where a computer system (or data) is altered - even if it can be later recovered or restored. It does not need to be irrecoverable to amount to an offence, as it is sufficient that the recovery is expensive or time consuming.

The Court emphasised in its judgment the importance of having a company IT policy and effectively communicating it to all relevant employees (Court of Cassation, Criminal Section, case 8555/2012).

Netherlands: Dismissal lawful for social media comments

A Dutch court has found that employees who heavily insult their employers on social media sites may be fairly dismissed.



The employment contract of a 38 year-old warehouse employee was terminated after he made insulting comments about his employer on a social networking site. In his defence, the employee claimed that the communications were private because only friends could see his comments. However, the judge ruled that the risk of republishing by other site users was high and that the comments were at least semi-public.

There are no known earlier cases in the Netherlands in which a judge ruled that an employee could be dismissed on the basis of comments made about an employer through social networking sites. For this reason, it is thought that this case will form an important legal precedent.

Portugal: Done deal could soon be undone

Portugal's weak centre-right administration has bowed to pressure from opposition parties and a leading trade union confederation and reopened the debate about the package of labour law reforms agreed at the beginning of February.

The reforms included cuts in overtime pay, increased working hours, more flexible dismissal requirements and reduced holidays. Because they were a condition for ongoing EU/IMF support - as part of a wider set of austerity measures - this latest decision endangers the whole bailout deal and could heavily destabilise the country's fragile economy.

UK: Accessing employee social networks

The UK Information Commissioner's Office (ICO) has warned employers that it would hold 'very serious concerns' if they were to ask for social media site login and password details from existing or potential employees - indicating that it would breach the UK Data Protection Act.

The ICO is advising companies that they should not hold excessive information about individuals and that it is questionable why they would need such information. Their comments follow the increasing practice of asking for networking passwords during interviews in the United States.

A media industry spokesman has cautioned that if an employer discovers that a job applicant is a member of a protected group, the employer may be vulnerable to claims of discrimination if it does not subsequently recruit them. Personal profiles on networking sites often include sensitive information such as gender, race, religion and age.

Pay, Tax and Benefit Trends

FINLAND: A number of reforms will take place to Finland's welfare system in 2014. The period of income-linked unemployment benefits for those who have been employed for less than three years will be reduced from 500 days to 400 days - and to 300 days if the recipient refuses suitable work. Early retirement will also be abolished and the lowest qualifying age for part-time pensions raised by one year.

FRANCE: The French government has met with France's largest unions to discuss constraints on pay and working hours in order to increase business flexibility and avert job losses. The French President, Nicolas Sarkozy, is aiming to reduce labour costs by changing the burden of taxation from payroll deductions to VAT/TVA. However, it now looks unlikely that the parties will reach agreement before the country's general election in May.

LATVIA: The Latvian government has approved amendments to the Law on Pensions. The current retirement age under the state pension scheme will increase from 62 by periods of three months on both January 1st 2014 and 2015 - then from 2016, by six months every year, until it reaches 65



by 2020. Early retirement will also increase by the same schedule to reach 63 by 2020.

NETHERLANDS: Pay and bonus levels for the boards of the 25 leading blue chip companies in the Netherlands declined by 8.1% last year. Top executives also received fewer rewards in the form of company shares or share options.

UK: A report released by the UK government has warned employers who refuse to pay Interns the national minimum wage (NMW) that they could face sanctions. The report from the UK Low Pay Commission found that the number of unpaid entry-level positions was continuing to rise. Moreover, there was strong public support for a tougher crackdown, which could include a ban on employers advertising jobs that pay below the NMW and the prosecuting of firms that seek to recruit unpaid Interns.

UK: The UK's Office of National Statistics has just issued its latest figures from the 2011 Annual Survey of Hours and Earnings. These reveal that although the gender hourly pay gap (excluding overtime) for all employees stood last April at 20.2% the differential between male and female earnings was considerably lower - at 11.7% for full-time workers and was reversed for part-time employees. The median hourly earnings of part-time women were 4.8% higher than for part-time men. This gap was entirely due to earnings within the 22-39 age range.

UK: Coventry city council in the UK is facing a £2.3 million (2.75 million euros) legal and compensation bill for a long-running equal pay dispute. Low-paid female workers are set to receive six years of back pay to bring their historic earnings into line with men doing similar jobs.

UK: A UK-based car dealership network has been ordered to pay a total of more than £30,000 (36,000 euros) to 40 employees after failing to pay them the minimum wage. HM Revenue &

Customs stated that the employer had made deductions from workers' pay for the use of lease cars and salary sacrifice schemes which reduced earnings to below the national minimum wage. The employer was additionally fined £5,000 (6,000 euros).

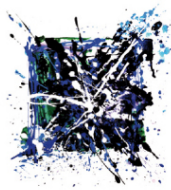
Other European HR news in brief

AUSTRIA: The Austrian Temporary Employment Act (AUG) - giving temporary agency staff the same rights as permanent employees - is due to come into force on July 1st 2012. The Act has a number of elements that have sparked opposition from temporary work agencies. A planned charge of 110 euros will apply when temporary staff leave the service of an agency. Agencies will also have to give temporary workers two weeks' notice before dispensing with their services.

EUROPEAN COMMISSION: The European Commission has proposed several improvements to monitoring and enforcement rules in a bid to increase the protection of workers temporarily posted abroad. The changes to the Posting of Workers Directive focus on pay and holiday entitlements and are designed to combat the widespread abuse currently found to be taking place in the construction sector.

FRANCE: A former employee of a French insurance company has been fined 15,800 euros for lack of loyalty to his former employer following comments made on an online social networking site. Believing that his dismissal was unjustified, the employee made disparaging and insulting remarks about his former employer and ensured that his employer, friends of his former manager and the media were able to access the comments.

FRANCE: The French Supreme Court has recently ruled that dismissing a state careworker who lived 20km away from their workplace - instead of the 200 metres maximum distance stipulated in their employment contract - was



unlawful. According to rights afforded under the European Convention on Human Rights and the French Labour code, an employee is free to choose a place of residence for themselves and their family. The court held that any restriction placed upon this is valid only if it is essential to protect the legitimate interests of the employer and proportionate to the aim pursued (Cass. Soc.28/02/12, no. 10-18308).

GERMANY: A new survey from the German association of temporary employment agencies, IGZ, has found that the conversion rate from temporary to permanent work rose from 32.6% in Q2 2011 to 36% in Q4 2011. More temps are also working on a full-time basis.

GREECE: The European Commission has requested that Greece recognises professional qualifications acquired in other member states and ends discrimination against holders of post-graduate diplomas obtained in other European countries. The Commission considers that an incorrect evaluation or the refusal to take into consideration a post-graduate diploma obtained in another EU Member State leads to discrimination with regard to access to Greece's labour market. Greece now has two months to reply. If the reply is not satisfactory, the Commission may decide to refer the matter to the European Court of Justice.

NETHERLANDS: The Dutch government is considering making companies with over 250 employees responsible for unemployment benefit payments made to dismissed employees. Employers will have the option to insure against the risk or contract with intermediaries to seek employment for those that lose their jobs. The cabinet is also considering a cut in the maximum

duration of benefit payments from 38 months to 12 months.

NETHERLANDS: The Dutch Supreme Court has ruled that employers that contract self-employed staff are responsible for their safety. The case in question was brought by a freelancer who had lost his lower leg following an accident on a client site. The court found that the company remained responsible for the consequences of the incident, despite the individual not being one of their employees.

NETHERLANDS: The Dutch education minister Marja van Bijsterveldt has decided to adopt a recommendation by the Vocational Education and Business Partnership Foundation (SBB) and reduce the normal duration of advanced vocational courses (MBO) from four to three years. If parliament approves the Bill the new, shorter courses will begin in 2013-14.

NETHERLANDS: Research carried out by the Insurance company BNP Paribas Cardif has found that 40% of job applicants in the Netherlands have experienced periods of unemployment lasting for three months or more. In over a quarter of these cases the applicants have attempted to hide the jobless period in their CV.



FedEE news:

LONDON 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 Grouk 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 3.00 pm until 4.30 pm and will include refreshments. As places are strictly limited please contact us as soon as possible on admin@fedee.com or by calling (0044) 0207 520 9264.

For further information on the event visit www.fedee.com and see our events page.

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