



**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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**Italy:** Revisions to law on temporary agency work

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**Irish Republic:** Temporary Agency work Bill becomes law

**Germany:** Pay negotiations finalised

**EU:** Corporation tax rates on the increase

### France: Unjustified redundancies not null and void

The French Supreme Court has overturned previous decisions by the Paris and Reims Courts of Appeal regarding the economic reasoning relied on by an employer to justify collective redundancies.

Previously both appeal courts had held that where the economic motives were not valid, the redundancies were null and void. The Supreme Court has confirmed that redundancies will only be null and void if there are no redeployment measures contained in the social plan and not where there is no economic reasoning to justify the dismissals. In the absence of real and serious economic grounds, the dismissed employees will be entitled to damages - but cannot obtain a finding that their dismissals are null and void (Cass soc. May 3 2012 no 11-20. 741 Vieveo France).

### France: The right to confidential communication

The French Supreme Court has extended the right of confidentiality during telephone

conversations to all 'protected employees' - such as works council members.

Protected employees have a right of privacy and must have access to their own telephone line dedicated to the performance of their mandate - to which their employer may not have access. Previously the Court had held that only employee representatives who had been elected or appointed by a trade union had the right to an exclusive and confidential telephone line.

### Germany: New deal for temporary agency workers

A new five-year pay deal has been concluded for temporary agency workers in Germany's engineering sector.

Although in principle Germany follows the legal basis of equal pay for equal work, this rule was liberalised as part of the Hartz reforms for the temporary employment sector - which means that unskilled temporary workers in particular can have their basic pay up to 40% lower than that of permanent employees in the same company,



provided that a collective bargaining agreement for permanent employees is in place at their place of temporary work.

The new agreement provides temporary agency workers with enhanced pay rights for longer assignments. These range from basic pay, plus 15% for assignments lasting between six weeks and three months to basic pay, plus 50% for assignments of nine months or more.

In Germany around 900,000 employees are currently employed through temporary agencies, around 240,000 of which are working in the engineering industries covered by the IG Metall deal. Around 50% of these are unskilled workers.

## **Greece: Private collective bargaining comes to an end**

Talks have broken down between Greek employers, trade unions and the provisional government over collective bargaining and wage reform.

The terms of the IMF/EU bail-out agreement signed in February included the abolition of collective bargaining in the private sector and a large reduction in the minimum wage. Despite this, the Ministry of labour and social insurance proposed an agreement that would mean effectively no cuts in wages and a tacit continuation of collective bargaining. However, as the parties have failed to agree on a compromise, employers need only respect the minimum wage (585 euros gross per month for adult workers - but less for those under 25) - as collective agreements no longer have legal effect.

## **Irish Republic: Temporary Agency Work Bill becomes law**

The long-awaited Irish Protection of Employees (Temporary Agency Work) Bill has been signed by the President and has now become law. This

gives effect to EU Directive 2008/104/EC on Temporary Agency Work.

The Act gives temporary workers the right to the same basic working conditions as those enjoyed by employers of the company using their services. Although the right to equal pay has retrospective effect to December 5<sup>th</sup> 2011 this does not apply in all cases. If the agency worker has a permanent contract with the agency and is paid between assignments, equal treatment as regards pay does not apply.

The Act excludes those employed under a managed service contract where the workers concerned are responsible for managing and delivering their own service. Also exempt are those on work placement schemes, JobBridge or any publicly-funded vocational training.

## **Irish Republic: New social security rules**

The Irish Parliament has passed legislation which amends social insurance requirements for stock options, stock purchase rights, restricted stock units and other share-based remuneration.

The new legislation provides that employers shall no longer be required to withhold employee social insurance contributions from any gains on the exercise of the rights or options. However, employees will remain liable to pay social security contributions on all gains, but will pay them directly to the Department of Social Protection's special collections unit. The amendments (which do not effect 'save as you earn' plans) will take effect following official publication, due sometime during the next two months.

## **Italy: Relaxation of temporary agency provisions**

The Italian government has passed new legislation to bring the rules governing temporary agency workers into line with EU Directive 2008/104 EC.



Legislative Decree no.24 2/3/12 modifies the existing Biagi Law by broadening the grounds which employers can use to justify agency contracts. Previously, in order to use an agency arrangement, the employer was required to specify "the technical, organisational, productive or replacement reasons" justifying it. Under the new rules the reasons do not have to be articulated where the worker has been on a state-funded redundancy programme for at least six weeks; where the worker is classed as either disadvantaged or severely disadvantaged - or where the applicable collective bargaining agreement does not require the employer to specify the reasons.

## **Netherlands: Levy on top pay part of austerity measures**

Yet more details of the Dutch five-party agreement aimed at reducing the country's budget deficit to below 3% have been revealed.

As things stand, VAT is to be increased from 19% to 21% and the first and second brackets of income tax are to be cut by 0.4 percentage points, to 1.55% and 10.4% respectively. Employers are to become responsible for the first six-months of unemployment benefit, whilst redundancy pay is to be maximised at half a year's salary. Employers will have to pay a special temporary levy of 16% on annual salaries above 150,000 euros and golden handshakes over 531,000 euros will be taxed at 75%.

## **Switzerland: Taxation of stock options**

The Swiss Federal Act on the Taxation of Employee Stock Option Plans and Employee Share Plans will take effect on January 1st 2013. The Act distinguishes qualifying share plans from non-qualifying employee stock options.

Employee shares are taxed at the time of acquisition and the taxable amount will be equal to the market value of the shares, reduced by the

discounted price paid by the employees. In the case of restricted employee shares, the market value will be subject to an annual discount of 6% - for a period of up to 10 years.

In future, stock options that are not tradable in a stock exchange will be taxed at the time of exercise. The taxable amount will be the difference between the exercise price and the market value of the shares at the time. By contrast, tradable (unrestricted) stock options will be taxed at the time of grant as if they were normal employee shares.

If stock options are granted in a foreign country-but exercised in Switzerland after an employee becomes a Swiss resident taxpayer - the relative gain will be taxed by reference to the time spent in the foreign country between the purchase and the vesting of the options. Conversely options granted in Switzerland that are exercised in a foreign country by a non-resident taxpayer will be subject to a withholding tax at source.

## **Switzerland: No protection for employee representatives**

The Swiss Supreme Court has recently decided that employees who also carry out employee representative duties may be dismissed for economic reasons.

The claimant in the case had argued that his role as chairman of the works council had ultimately led to his dismissal. The Court held that senior employee representatives did not benefit from extended protection from unfair dismissal; their dismissal merely requires justified reasons.

The Swiss Federal Parliament is scheduled this year to discuss proposed legislation that would increase employees' protection against unfair dismissal. The proposed legislation would also strengthen the protection of employees who carry out trade union or works council leadership



activities - bringing Switzerland into line with the ILO Workers' Representative Convention (1971).

## Pay, Tax and Benefit Trends

**BULGARIA:** Opposition is mounting against the Bulgarian Cabinet's proposal to create a common retirement age for men and women by 2020. Under current legislation, the minimum state retirement age will increase incrementally by four months per year - starting this year. The retirement age will therefore reach 65 for men and 63 for women by 2017. However, the leading KNSB trade union confederation has come out strongly against further progress towards gender parity.

**EUROPE:** This year corporation tax rates across much of the EU have increased, following a period of decline since 2000. Currently Bulgaria and Cyprus have the lowest corporation tax rates (10%), followed by Ireland (12.5%), Latvia and Lithuania (15%). The highest rates can be found in France (36.1%), Malta (35%), Belgium (34%), Portugal (31.5%) and Italy (31.4%).

**GERMANY:** Around 800,000 German metalworkers are set to benefit from a 4.3% pay increase, following long-running negotiations between engineering employers and the union IG Metall. The accord, which will run until April 2013, also includes a new limit on the use of temporary work contracts. A permanent contract must now be given to any temporary employee after serving two years with the same employer.

**GREECE:** A report published by Ernst and Young forecasts that the average real net pay level of an employee in Greece is likely to fall by 22.7% in 2012, compared with 2011. The monetary changes are EUR 17,024 in 2011 and EUR 13,167 euros in 2012.

**IRISH REPUBLIC:** New data published by the Irish employers' body IBEC in its annual pay

survey reveals that about one third of Irish employers expect to increase basic pay in 2012 and 67% will either freeze or reduce basic pay rates. Additionally, 56% of companies stated that they were planning to hire new staff within the next six months.

**SWITZERLAND:** The Swiss upper house of parliament has voted in favour of the withholding tax agreements with Germany, the UK and Austria. The treaties are designed to ensure that assets held in Swiss bank accounts for foreigners are taxed the same as capital held in domestic accounts. The agreements are due to enter into force, following ratification by the relevant treaty partner states, on January 1st 2013.

## Other European HR news in brief

**CZECH REPUBLIC:** The Czech Supreme Court has held that an employer may unilaterally withdraw from a non-compete clause in an employment contract where they are able to provide a legitimate reason that was foreseen when drawing up the original clause.

**EUROPE:** The European Commission has launched a pilot project to improve cross-border mobility for young people seeking work. The service, which is linked to the current EURES project, will initially focus on young people in Denmark, Germany, Italy and Spain.

**DENMARK:** Denmark's government has amended immigration legislation to make it easier for a foreigner resident in Denmark to be joined by their spouse. Residence permits granted on the grounds of family reunification also now allow the right to work. The existing written immigration test is to be abolished and replaced by a new test in the Danish language. An applicant must pass the new test within six months of settling in the country in order to gain a full residence permit. The test is still being developed and is expected to be introduced early next year.





**EU:** Latest figures from the EU's statistical agency Eurostat indicate that there was zero growth in the EU economy over the year to Q1 2012. By contrast, the US economy grew over the same period by 2.1%.

**FRANCE:** The recent introduction of French law no.2012-387 has brought with it an important change to provisions on working time. Previously, article L.3141-3 of the Labour Code only gave entitlement to paid leave after ten days' service. In order to comply with both European directive 93/104/EC and European Court of Justice case law, the new law removes any service condition and gives an employee the right to accumulate paid leave entitlement from the first day of employment.

**IRISH REPUBLIC:** The Irish Republic holds a referendum on May 31st to determine if Ireland should support the EU stability treaty. The treaty imposes rules on managing national budgets and the European Commission has stated that member states failing to ratify the treaty will not be able to access emergency funds after 2013.

**NETHERLANDS:** The Dutch Cabinet has been warned by its Advisory Council for Science and Technology Policy (AWT) that the Netherlands faces an acute shortage of highly skilled workers. The Council has urged the government to look to EU countries with high unemployment rates - such as Spain - as a source for knowledge workers. It

also believes more state investment should be put into training and the creation of 'human capital agendas' which aim to attract top personnel in those sectors where skill shortages are most severe, or at risk.

**NETHERLANDS:** New figures from the Dutch statistics office CBS have revealed that nearly one in five workers in the Netherlands has some form of flexible employment contract. These include temporary, call-out, agency and interim contracts. The number of workers employed on a non-typical arrangement has increased from 13% to 18% over the past ten years.

**NETHERLANDS:** Around 64% of Dutch employers visited by work inspectors in 2011 were found to be in contravention of rules on health, safety or working time. Although this is slightly higher than in 2010, the total amount collected in fines decreased from 42.7m euros to 34.4m euros. The number of workers found to be without the correct papers also fell between 2010 and 2011 - with some 40% of those working illegally originating from Romania or Bulgaria.

**POLAND:** Due to an amendment in the Commercial Companies Code, it is now possible to form a new limited liability company in Poland with the minimum of delay and bureaucracy. Details can be submitted online at the Ministry of Justice website and a company authorised within just 24 hours.

## FedEE news:

**FedEE LONDON NETWORKING MEETING:** We are now taking reservations for places at our June 26<sup>th</sup> networking meeting taking place in London.

The theme for the June meeting will be '**Managing the distributed workforce**'. Our guest speaker will be Stephen Ratcliffe of Baker & McKenzie LLP who will be leading a discussion on the issues that arise when managing a distributed workforce. He will highlight some of the legal and HR stumbling blocks that present themselves in cross border situations, including designating the status of country representatives and the



importance of getting this right; health and safety issues for home and teleworkers; the Rome Convention and the choice of employment contract; the influence of the Posted Workers Directive, and tax and social security issues.

FedEE's Secretary-General, Robin Chater, will be providing a round-up of recent employment law and HR developments from around Europe.

The **programme** will run from 2.45pm to 4.30pm with refreshments and networking. The venue will once again be the Novotel, Hammersmith, London.

Attendance is free but as places are strictly limited please contact us as soon as possible on [admin@fedee.com](mailto:admin@fedee.com) or by calling (0044) 0207 520 9264 to reserve your place.

**REFERRAL SCHEME:** FedEE is implementing a referral scheme to enable existing members to refer professional contacts from other organisations.

To participate please email the name, position and company name of the person you wish to refer to: [membership.services@fedee.com](mailto:membership.services@fedee.com) and invite your contact to join FedEE using the following link: <http://www.fedee.com/about-fedee/join-fedee> with the reference 'referral' in the comments box.

Should the referred organisation take up membership within a 3 month period, we offer a €125 discount on the annual subscription fee to the new member for the first year, and the same discount to the referring organisation when they renew. There is no limit to the number of referrals that can be made.

Please rest assured that FedEE will not contact the referred organisation directly, or add the information provided to any database or mailing list.

**JSB EMPLOYMENT LAW TRAINING OFFER:** FedEE and [JSB](#) are working in partnership to offer FedEE members a 10% discount on any employment law course booked using the discount code 'fedee12'.

JSB offers a wide range of employment law training for HR professionals, covering all aspects of UK and international employment law.

Full details of their employment law programmes can be found [here](#).

Their full range of **international employment law courses** covers over 30 countries, including comprehensive 1-day seminars on many European jurisdictions. Each seminar is led by a legal expert from the country in question, providing first class legal expertise that links legislation to practical HR management challenges. Full details of their upcoming courses can be found [here](#).

To activate the FedEE member discount code, simply quote 'fedee12' when booking.

**UK JUBILEE BANK HOLIDAY:** The FedEE offices will be closed during the UK Jubilee Bank holiday on 4<sup>th</sup> and 5<sup>th</sup> June. All enquiries will be dealt with on Wednesday 6<sup>th</sup> June. For urgent matters please email [admin@fedee.com](mailto:admin@fedee.com)



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