FedEE
The Federation of International Employers
La Federación de Empresarios Internacionales
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Inside this Issue:

Editorial: Advanced economies need 77 million immigrants

The OECD is the principal organisation for advanced economies — such as most countries in Western Europe, the USA, Japan, South Korea and Australia. Its latest short-term population projections indicate how quickly such economies are going to be hit by the falling ratio of people in work compared to those in retirement.

Between 2015 and 2019 the number of people aged 15-64 will grow by 0.65%. However the population of those aged 65+ will grow by a staggering 9.8%. As a result, although there are currently 4.02 people of working age to each retiree, this proportion will fall to 3.68 in the next four years. This means that, to maintain the status quo, OECD countries must find an extra 77 million working-age people — around 20 million per year. Moreover, this figure will be even higher if we take into account emigration out of the OECD.

Changes in the birth rate will not affect this imbalance in such a short period and therefore the only readily available source of economically active people are immigrants. Yet instead of encouraging immigration, OECD governments are tightening up immigration rules and filtering out the most qualified immigrants. This creaming off process will also deprive the poorest countries of the world of the talent they need to develop their own economies — economies the advanced countries need to provide export markets for their goods and services.

Sadly, recent terrorist attacks will only aggravate the situation still further by encouraging governments to shut down borders. In addition it is almost certainly increasing the incidence of racial prejudice across societies — particularly in the west — which places a further drag on economic growth. This, coupled with the rising burden of economic dependence, will almost certainly throw the advanced economies into a further recession by 2019, if not before. The solution lies in immigration — but only statisticians and demographers can see how stark and urgent that choice has become.

Canada: Larger employers in Ontario must soon be fully AODA compliant

Legislation that gives people with disabilities living in the Canadian State of Ontario greater work accessibility rights was passed in 2005 and is being phased in over a period of 20 years. On January 1st 2016 the latest phase comes into force.

The Accessibility for Ontarians with Disabilities Act, 2005 ('AODA') already requires employers to have drawn up a long-term general accessibility plan and individual workplace emergency response plans for each person with disabilities. This must also be reviewed every time the employee changes their job or work location. The law requires employers to document every step of the way towards complying with the meeting of special needs for people with disabilities and the law contains a substantial checklist on what must be covered in such documents.

From January 1st 2016 private sector organisations employing 50 or more people will also have a positive duty to inform all job applicants that they will accommodate the needs of people with disabilities. Then, once appointed, a new employee may request an accommodation of their needs and their employer must enter into a cooperative dialogue to respond to the request. This process must also extend to all existing staff and, in each case, a person with disabilities must be given a written 'accommodation plan' or be provided with formal notification that the company cannot approve such a plan.

Furthermore, an additional new obligation is for special measures to be taken when an employee returns to work after a long period of absence due to a disabling illness or injury. Employers must also help people with disabilities succeed and achieve career development through special coaching, training and other forms of positive action.

Policing the new requirements will be the Accessibility Directorate of Ontario that will have the power to conduct inspections and issue fines ranging from 500-15,000 Canadian dollars (370-11,100 US dollars) per day for non-compliance.

Europe: Governments increase the cost of highly-skilled foreign labour

Minimum salary thresholds for highly-skilled employees who are non-EEA citizens will be increased in a number of European countries in the New Year, thus raising labour costs for employers.

In the Netherlands gross minimum salary thresholds will increase by 1.6% on January 1st 2016. The new monthly salary thresholds will be 4,257 euros (4,625 US dollars) for highly skilled migrants aged 30 years and over, 3,121 euros (3,390 US dollars) for highly skilled migrants under the age of 30, 2,237 euros (2,430 US dollars) for foreign students graduating in the Netherlands and 4,987 euros (4,520 US dollars) for EU Blue card holders. These rates do not include holiday allowances.

Minimum salary levels will also increase in Belgium by approximately 0.5% taking the minimum annual salary thresholds to 39,824 euros (43,500 US dollars) for highly skilled foreign employees, 66,442 euros (72,570 US dollars) for executive-level employees and 51,494 euros (56,250 US dollars) for Blue Card holders.
In Germany, minimum salaries for EU Blue Cards will increase by almost 2.5% on January 1st. The new minimum gross annual salaries will be 49,600 euros (54,170 US dollars) for non-shortage occupations and 38,688 euros (42,260 US dollars) for shortage occupations.

In the UK a new minimum annual salary for Tier 2 skilled workers applying for indefinite leave to remain is being introduced on April 6th 2016. The initial rate will be 35,000 pounds (52,500 US dollars) and this will increase to 35,500 pounds (53,250 US dollars) on April 6th 2018, 35,800 pounds (53,700 US dollars) on April 6th 2019 and 36,200 pounds (54,300 US dollars) on April 6th2020. Certain exceptions to the minimum salary threshold do apply.

Germany: Relaxation of employee consent rules under the Federal Data Protection Act

In a recent ruling the German Federal Labour Court has held that employees may validly consent to the processing of their personal data within the scope of their employment relationship. Prior to this ruling the data protection agencies had considered that the imbalance in power between employees and employers made true voluntary consent improbable.

Under Section 32 of the Federal Data Protection Act (BDSG), employee personal data may be processed in just a few specifically defined situations. However this ruling extends the possibility of processing of personal data beyond the scope of this legal provision.

Employee consent must, however, be based on full knowledge of the processing involved, the consent must not be given in blanket form and the employee must be able to revoke their consent at any time. It is essential that the purposes and method of consent are checked with a specialist German lawyer before acting on this ruling.

Netherlands: Guidance on UVW dismissal procedures

Following the introduction of a new law on termination in July 2015, the Dutch state agency UWV has just published two implementing sets of rules which clarify the legal requirements and procedures for terminating employment on economic or long-term disability grounds.

Under the new law, requests for termination based on either of these two grounds must be submitted to the UWV and not the court and will be assessed on the basis of the provisions of the Civil Code and the termination arrangements in place (*Ontslagregeling*). The two new sets of implementing rules, which are available on the UWV website in Dutch (economic reasons; disability), offer detailed explanations of the legal provisions.

According to the rules, in respect of termination based on long-term disability an employer must accompany their application with evidence that the employee is not expected to recover within 26 weeks and is unable to perform their normal or adjusted work duties. There must also be evidence that retraining and redeployment during this period is not possible. Termination for economic reasons requires an employer to show that reassignment to another job role is not possible within a reasonable period, even with the aid of training.

Links to the forms that must be used by employers to apply for dismissal on these grounds are available in the FedEE Knowledgebase.

South East Asia: Will the new ASEAN economic community mean much for employers?

After twelve years of negotiations the ASEAN Economic Community (AEC) agreement has finally been signed by all ten Association of Southeast Asian Nations (ASEAN) member states (Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Cambodia, Laos, Vietnam and Myanmar).

Modelled loosely on the European Community — but without a powerful central court or single currency — the AEC has the free movement of skilled labour as one of its fundamental freedoms. Huge differences remain, however, between the laws of the ten member states and it is estimated that it will take at least ten years before a true economic community is achieved.

The AEC agreement requires ASEAN states to allow enterprises in most sectors to be majority foreign owned, however this is still far from being realised in Cambodia and Singapore, whilst countries such as Thailand, Malaysia and Singapore have laws that prevent the hiring of foreign workers unless no suitable local worker can be found. There is also a huge pool of workers in the Philippines who are relatively well educated, speak English to a high standard and are willing to work for less than most existing skilled workers in the more developed ASEAN countries like Singapore. Their threat to take over local jobs is already leading to much social unrest in several ASEAN countries.

November also saw the upgrading of the China-ASEAN free trade Agreement which seeks to open up the service sector and allow all signatory countries to establish solely-owned or joint-venture companies. Since the first trade agreement with China in 2002 the total value of trade surged from 54.8 billion US dollars in 2002 to 480.4 billion in 2014. However, Singapore has refused to sign the latest upgrade and four of the ASEAN countries (Malaysia, Singapore, Vietnam and Brunei) are part of the new American-led Trans-Pacific Economic Partnership — which could well serve to undermine the AEC and lead to great economic rivalry with China.

USA: The costly folly of good intentions

The fast-food company McDonalds has agreed to pay the US Justice Department a fine of 355,000 US dollars out of court to settle multiple cases of unintended discrimination in its own direct US outlets against employees who are not US nationals.

At first glance the practice of local managers denying continued employment to staff whose green cards had expired would seem to be compliant with the necessary employment eligibility verification process, but US federal discrimination laws are far from straightforward. The act of asking employees for unnecessary documentation based on citizenship or immigration status is classified as discrimination.

Many managers in the company clearly did not know the request was ‘unnecessary’ or discriminatory. This is because of little-known clauses in the Immigration and Nationality Act which state that permanent residents may choose to use any valid documentation to prove their right to work — even green cards that have expired.

This case is a good illustration of how employers often seek legal compliance only to infringe other laws in the process. The most frequent traps awaiting the conscientiousness manager are the many counter-intuitive strictures in anti-discrimination, data protection, health and safety and competition laws. It does not fundamentally matter what an employer intended or what is ethically correct, but only whether the letter of the law has been observed.

Pay, Tax and Benefit Trends

CANADA: On January 1st 2016 middle income earners in Canada (those with incomes ranging from approximately 45,000 Canadian dollars (33,000 US dollars) to 90,000 Canadian dollars (66,000 US dollars)) will have their marginal tax band cut from 22% to 20.5%. This will reduce the annual tax bills by up to 540 Canadian dollars (400 US dollars) for couples and 330 Canadian dollars (240 US dollars) per year for single taxpayers. However, the addition of a new 33% upper tax band will cause those earning over 200,000 Canadian dollars (148,000 US dollars) per year to experience a tax hike.

EUROPEAN UNION: The EU Statistical office has finally issued statistics for the tax take in 2014. This rose slightly as a proportion of GDP — continuing a trend that began in 2011. In absolute terms the amount of tax and net social security contributions increased in 25 EU countries and fell in just three — the Czech Republic (-3.4 %) Croatia (-0.7 %) and Sweden (-1.6 %). Overall tax and net social security revenue in 2014 accounted for 40% of GDP in the EU as a whole and 41.5% in the euro area. However, in Denmark more than half (51.8%) of all the national wealth generated was siphoned off for government spending.

HUNGARY: According to the Hungarian Central Statistical Office, gross wages averaged 259,500 forint (894 US dollars) in the private sector between January and September 2015. When taking into account a 0.3% reduction of consumer prices, average wages during this period increased by 4.0% in real terms compared with the same period a year earlier.

ISLE OF MAN: The Isle of Man's minimum wage will increase on January 1st 2016 to 7.00 pounds (10.55 US dollars) per hour. This is a 35 pence increase from the current rate of 6.65 pounds (10.02 US dollars) per hour.

LITHUANIA: It has been agreed that Lithuania's national minimum wage will increase by 7.7% on January 1st 2016 — from 325 euros (356 US dollars) to 350 euros (383 US dollars) per month. This is despite the fact that it was last increased just a few months ago in July 2015. The government is trying to court favour with voters ahead of a General Election next year — however increases in the minimum wage will also increase public sector pay bills and further add to state borrowing.

NETHERLANDS: Statutory minimum wage rates will once again be increasing in the Netherlands on January 1st 2016. The new rate for full-time employees aged 23 or over will be 1,524.60 euros (1,648.00 US dollars) gross per month. This is an increase of 16.80 euros (18.16 US dollars) per month on the current minimum wage. Lower statutory minimum wage rates apply to workers under the age of 23.

SRI LANKA: The Sri Lankan government has approved a new private sector law that will establish a national minimum wage of 10,000 Sri Lankan rupees (70 US dollars) per month. This decision, yet to be approved by parliament, follows the establishment of a new monthly poverty line of 4,000 rupees (28 US dollars). The national employers federation has opposed the decision, but has indicated a minimum wage would be acceptable if it varied by company profitability.

TAIWAN: In an attempt to encourage increased spending power in Taiwan, President Ma Ying-jeou has announced that he is going to press his government to introduce corporate tax breaks for companies prepared to boost wages. Wage stagnation and the drift of enterprises to the Chinese mainland has severely reduced economic growth in recent years.

UK: The UK government is planning on introducing a requirement for the largest 2,000 companies to publish their tax strategy openly online. This measure has been included in the Finance Bill 2016 which is expected to receive Royal assent next Spring. However, the draft law remains vague about the level of penalties for non-compliance or partial compliance.

VIETNAM: From January 1st 2018 foreign nationals working in Vietnam will be subject to social insurance charges — including unemployment and medical insurance. Such charges are currently obligatory only for nationals who are on permanent contracts or fixed-term contracts lasting three months or longer. Nationals on fixed-term contracts lasting at least one month but less than three months will also be subject to social insurance charges from January 2018.

Other Global HR News in Brief

BRAZIL: President Dilma Rousseff of Brazil has signed a new law establishing a national programme to tackle bullying — including such behaviour in the workplace. The law defines bullying as any physical or psychological act that aims to intimidate, humiliate or prejudice an individual or group of individuals, including: physical attacks; personal insults; gossip and pejorative name-calling; threats, cyber bullying and social isolation.

DENMARK: A draft law on employment clauses (see April 23rd 2015 edition of the newswire) has finally been passed by the Danish parliament and will come into force on January 1st 2016. The new law will significantly limit the use of non-competition clauses, non-solicitation clauses and customer clauses in employment contracts entered into from January 1st 2016. Those clauses already agreed to before the entry into force of the new law will retain their validity — but only for a period of five years in the case of non-solicitation clauses, which are generally banned under the new provisions.

ETHIOPIA: The Ethiopian government has introduced a new draft law that would require employment agencies to pay a 100,000 US dollar deposit into a special fund to be used in support of workers deployed abroad. The draft law would also ban the hiring of employees to work abroad unless the individual had been educated to at least grade eight. Until the Bill becomes law a temporary ban has been applied on all citizens travelling abroad for work.

FRANCE: Employers in France who are found to have used illegal labour may now have their details added to an employer blacklist for up to two years. The list will be published on the Ministry of Labour's website where it will be accessible to the public free of charge. In the case of natural persons the details published on the list will include name, sex, date of birth, business address, nature of the offence and the start and end dates of inclusion on the list. In the case of legal persons the information published will include the name of the company, the identity of the legal representative (where also convicted), the company's address, the nature of the offence and dates of inclusion on the list.

FRANCE: The French Prime Minister, Manuel Valls, has announced that the reform of the country's Labour Code will take place over the next two years starting with a reform of working time laws. The government has said that the statutory 35-hour work week will not be changed but that the possibility of adjusting daily, weekly or yearly working hours, rest times and paid leave through collective agreement will be introduced. Detailed proposals will be drawn up by January 15th 2016.

JAPAN: The projected shrinkage of Japan's population from 127 million to 87 million by 2060 is leading many employers to reassess their normal retirement age. The latest company to announce a change is automaker Honda, which is planning to delay retirement from age 60 to age 65 from March 2017. A new phased retirement package will be negotiated with trade unions.

MEXICO: The Mexican government has issued a new equal opportunities standard for employers. Although the standard is not binding it serves as a guideline for employers to evaluate equal opportunities practices in their workplaces. Furthermore, employers that are able to show they are fully compliant with the standard may obtain certification to this effect. According to the standard employers should have non-discriminatory recruitment process, an equal opportunity policy and code of ethics and should actively prohibit all forms of discrimination (including harassment). Employers should also have a fully representative oversight committee and conduct regular internal audits and work environment assessments.

RUSSIAN FEDERATION: The Russian government has signed a decree which confirms public holidays and non-working days in 2016. The Christmas holidays will run from January 1st to 8th 2016 with Christmas day on January 7th. In accordance with the Russian Labour Code, employees must be given one additional hour off on December 31st. In addition, as January 2nd and 3rd fall on a weekend two more one-off holidays have been designated — on Monday, March 7th and Tuesday, May 3rd 2016.

SPAIN: According to data from Spain's Ministry of Employment and Social Security, the number of workplace accidents resulting in sick leave totalled 254,197 in Spain during the first six months of 2015. This is 6.7% higher than in the same period a year earlier. Of these accidents, 86% took place during the working day and the remainder whilst a worker was traveling to or from work. One in every 160 accidents were serious and one in every 1,064 accidents were fatal.

UK: The UK government is coming under increasing pressure to curtail the rise in net migration. The easiest way to do this is to tighten up on the approval of employer sponsor licences for Tier 2 workers. This is being done in two ways — by making it more difficult to obtain a licence and by investigating those companies that have already obtained one. In particular, they will be looking at resident labour market tests and how far companies have actively sought people to fill posts from among the existing population of UK residents. Employers should also be prepared for challenges to intra-company transfers if the transfer is not considered 'essential' (as in the case of those transferred for career development reasons). Sponsorship credentials will be downgraded or cancelled if employers are found to be lax in the application of licence requirements.

Dates for your diary:

January 1st 2016: The national monthly minimum wage in the **Czech Republic** increases to 9,900 koruna.

January 1st 2016: **Poland**'s national minimum wage increases to 1,850 zloty per month.

January 1st 2016: Stricter rules on the payment of wages come into force in the **Netherlands**.

January 1st 2016: Mandatory paternity leave increases from 10 days to 15 days in **Portugal**.

January 1st 2016: Stricter rules on equal pay come into force in California, **USA**.

January 1st 2016: Labour reforms giving greater protection to foreign workers come into force in the **UAE**.

January 1st 2016: The minimum wage in the **Slovak Republic** increases to 405 euros per month.

January 1st 2016: The minimum wage in the **Isle of Man** increases to 7.00 pounds per hour.

January 1st 2016: **Lithuania**'s national minimum wage increases to 350 euros per month.

January 1st 2016: The national minimum wage rate in the **Netherlands** increase (see news story above).

January 1st 2016: A new law restricting the use of employment clauses comes into force in **Denmark**.

January 2nd 2016: Changes to parental leave take effect in **Poland**.

Latest news for business travellers:

Many countries around the **world** have increased security following the terrorist attacks in Paris, France on November 13th 2015. Some measures may increase the time required to pass through security at airports.

Disruption to rail services is expected in and around London, **UK** over the Christmas period. Paddington station will be closed for four days from December 25th until December 28th (inclusive). There will be no Heathrow Express service from the evening of December 24th until December 29th and from December 29th to January 3rd there will be changes to Great Western services.

There will be significant disruption to train services in **Spain** on Friday, December 18th due to strike action which is due to take place from midnight to 11pm. Local commuter trains, medium- and long-distance trains and high-speed trains will all be affected.

FedEE news:

ONE-DAY CONFERENCE ON EMPLOYMENT CONTRACTS AND HR POLICIES: On January 28th 2016 FedEE will be holding a one-day conference in London, UK, during which an impressive group of experts from around the world will be sharing their vast knowledge and expertise in the field of employment contracts and HR policies. More information on the agenda and speakers is available in our conference brochure. We have kept conference fees as low as possible for FedEE Members and Fellows and places are limited, so sign up today to avoid disappointment!

WEBSITE IMPROVEMENTS: Please note that we will be updating our website over the coming months to introduce a number of exciting new features. Members will be kept informed of the changes as they progress, through email communications and notices in our newswire.

CHRISTMAS OFFICE CLOSURE AND NEWSWIRE SCHEDULE: FedEE will be closed over the Christmas period from December 24th 2015 to January 3rd 2016 inclusive. This edition of the newswire will be the last edition of 2015 and the first edition of 2016 will be issued on January 21st.

2016 ROADSHOW EVENT: Next year the Federation is planning a series of half-day expert briefings for multinational employers and enterprises considering international expansion for the first time. These will bring together the know-how of FedEE, local law firms and accountancy firms around the world. In conjunction with these events we are preparing a comprehensive guidance note on the relative merits of different locations for head offices and operations in each continent, together with the grants available for job creation through inward investment in each locality. Venues planned for these events include Valetta (Malta), Lisbon, Milan, Madrid, Budapest, Hong Kong, Beijing, Jakarta, New Delhi and Singapore.

NETWORK WITH OTHER FEDEE PROFESSIONALS: Don't forget to sign up to FedEE's face-to-face networking community, butN. Join for free today at http://www.but-n.com.

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