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May 12th 2016

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Editorial: Does economic development matter more than pay equality?

The Polish and Hungarian governments have made clear that they oppose suggested changes in the posted workers Directive that would require such workers to be paid more than the minimum wage in their host country. The proposal put forward by the Commission in March would require local and posted workers to be paid equally.

The requirement to pay posted workers at any specified rate exceeds the powers of the European Union. In Article 153(5) of the EU treaty it states that the EU's powers shall not extend to 'pay'. Although the EU institutions frequently ignore 'ultra vires' when it suits them — as in the case of bankers' bonuses — they can usually find some other treaty base to justify any action which they wish to take.

In fact, the Commission justifies its proposal on the grounds of protecting workers' rights and fair competition. It is true that eastern European nationals benefit from their ability to undercut local rates in western Europe — particularly in the construction sector. But this also allows more international competition to be generated and stimulates much needed growth in less developed EU member states.

Denmark: Instant dismissal justified for misuse of mobile phone

The Danish Supreme Court has dismissed an appeal to a High Court decision concerning the instant dismissal of a professional employee for the private use of a company mobile phone. This case illustrates the extent that courts in Denmark are willing to go to penalise employee misdemeanours, even when the penalty is clearly disproportionate to the wrongdoing.

In the case in question the employee had bought tickets for private rail journeys by means of an app on the company-issued phone. These had amounted to 1,300 Krone (just 200 US dollars) over a five-month period. The employee pleaded that they thought their tax penalty for private use of the phone allowed such private purchase. The company also admitted it did not have a policy in place covering use of company telephones. Even so, the court took the view that the employee 'ought to have realised' that explicit consent was required from their employer. [Case 110/2015 judgment of March 17th 2016]

France: Attempts to relax labour laws met with protests from employees

Where examples of high growth/low unemployment exist they are invariably in countries that offer low levels of job protection and take a minimalist approach to labour laws. Even the French government is realising as much after many years of an overtaxed, overprotected labour environment. The latest proposed reforms have, however, incited wide-scale protests from a population that still believes that the more companies are constrained the greater they will thrive.

The reforms — which are now to be pushed through using the government's emergency powers under the constitution — include a number of measures making it easier for employers to lay off workers when experiencing economic difficulties at home or abroad. But to be effective the reforms need to extend to every aspect of employment — including the massive social security burden faced by employers in France and the huge bias against employers when facing actions before the Conseil de prud'hommes (labour courts).

Global: The steel ceiling still faced by many women

In spite of a World Bank report last Autumn and repeated warnings from UN Committees, Russia continues to bar women from 38 industries and 450 occupations — such as a metro train driver — on the grounds that they are too arduous or dangerous for females. In fact, the ceiling is even more extensive because many more senior jobs require prior training in technical skills the training courses for which are barred to women.

These legal restrictions originate in a 1932 soviet-era law, but the current legal base is government resolution 162 of February 25th 2000. What is more, Russia is not alone in applying wide-scale barriers to the employment of women. The former soviet state of Belarus operates bans in respect to 182 jobs, whilst Azerbaijan prohibits women from 38 job categories, Moldova from 29 job categories and the Kyrgyz Republic from around 400 specified jobs.

Bans on the employment of women in certain jobs or trades still exist in 100 countries worldwide. Furthermore, 29 countries ban women from working at night and in 18 countries a married woman cannot work at all unless she has her husband's permission. According to the World Bank, the greatest number of laws restricting women's economic activities all exist in the Arab world — with Saudi Arabia (29), Jordan (26), Iran (23), Yemen (22), Afghanistan (22), Sudan (21), Iraq (20), Bahrain (20) and UAE (20) heading the list. By contrast, in the European Union Bulgaria still operates five restrictive laws, Romania four, Greece three and Poland three. Only 17 countries worldwide have no restrictive laws in place. In Europe this includes Hungary, the Netherlands and Spain and elsewhere this includes Canada, New Zealand and South Africa.

Things are getting better in many developing countries and over the last two years 65 countries have introduced improvements to encourage gender equality. But still less than a third offer parental leave and even USA federal laws still do not grant paid maternity leave. Where women have least rights there are also normally pressures on young girls to abandon their education at the earliest opportunity and this limits their opportunities still further.

Netherlands: Additional obligations for employers under new Whistleblowers Act

On July 1st 2016 the recently-adopted Whistleblowers (Safe Haven) Act will come into force in the Netherlands. The Act affords greater protection to whistleblowers by providing that employees who report suspected wrongdoing in the workplace in good faith may not be terminated or disadvantaged in any way. The Act also places specific new obligations on employers.

Under the Act, employers with 50 or more employees will be required to adopt an internal whistleblowing policy. Although a fair amount of freedom is given to companies with respect to the contents of the policy, the Act does stipulate minimum requirements. For example, the policy must stipulate the procedure to be followed by the employee or former employee when making an internal report of suspected wrongdoing and it must state the definition of an instance of suspected wrongdoing. In addition, it must state the name of the person(s) in the organisation designated to receive formal whistleblowing reports.

Employers will be obliged to deal with reports confidentially if requested by the employee making the report. It will also be necessary to inform all employees of the circumstances under which suspected wrongdoing may be reported externally and the legal protection anyone making a report, either internally or externally, will be granted. The Act also requires employers to gain the consent of their company works council before adopting, amending or withdrawing a whistleblowing procedure.

UK: New approach to funding apprenticeships

From April 6th 2017, all employers operating in the UK with a total pay bill of more than 3 million pounds (4.33 million US dollars) per year will have to pay an apprenticeship levy. This will go into a fund for apprenticeship training that will be accessible to all employers.

According to guidance issued by the UK government, the apprenticeship levy will be charged at a rate of 0.5% of a company's annual pay bill, minus a 15,000-pound (21,600 US dollar) levy allowance. All earnings subject to Class 1 secondary National Insurance Contributions will count towards the pay bill. Earnings for the purposes of calculating the levy will include wages, bonuses, commissions and pension contributions, but not other payments such as benefits in kind. The levy will be paid through the Pay as You Earn (PAYE) process along with tax and social security payments and will be deductible for corporation tax.

Employers who are liable to pay the levy will be able to access funding for apprenticeships in England through a new digital apprenticeship service account. Separate arrangements for apprenticeship funding will apply in Scotland, Wales and Northern Ireland. Employers in England who do not have to pay the levy will not have to use the digital apprenticeship service until at least 2018.

Further government guidance on the levy will be published in June, October and December 2016.

USA: Detailed new obligations for training supervisors in California

Since April 1st 2016 employers in California have had to comply with rigorous new anti-discrimination, prevention of harassment and non-retaliation regulations under the California Fair Employment and Housing Act. However, it is less commonly known that the regulations also establish revised requirements in respect to sexual harassment training procedures.

Employers with 50 or more employees have been required to provide supervisors with sexual harassment training since 2005. Now, however, it will no longer be possible to offer just basic online, theoretical training — such training may only be supplementary to other methods of training. Furthermore, the requirements for trainers have been extended so that now they must be able to train supervisors on how to identify harassment in practice rather than just in theory. They must also be able to train supervisors on their obligations to report any harassment or discrimination that they discover. Additionally, under the Act there is an obligation on employers and trainers to keep detailed records of each training session, its attendees, questions asked and documents distributed — including sign-in sheets and completion certificates — for at least two years.

The Department responsible for the new regulations has made clear that they will be taking ‘preventative remedies’ where companies infringe any aspect of the regulations, particularly in the context of any harassment or discrimination claims. However, these are unlikely — at least initially — to be in the form of monetary penalties.

Pay, Tax and Benefit Trends

ARMENIA: A proposal to raise the Armenian minimum wage on July 1st 2016 from 55,000 drams (115 US dollars) to 65,000 drams (136 US dollars) per month has been vetoed by the Labour and Social Affairs Minister, Artem Asatryan. The minimum wage rate has been increased by 64% since 2015, but the government is concerned that a further rise this year could lead to a greater loss of jobs — the current unemployment rate standing at almost 20%. Overall, average monthly pay levels grew by 3.4% over the year to March 2016.

CHINA: According to China’s Ministry of Education the remuneration of interns recruited from ‘vocational schools’ should be determined by reference to a number of factors, including: pay for a similar job, the workload of the student, work intensity and working time. In any case, it should not be less than 80% of the remuneration normally paid to those not on internships performing the same duties on a probationary basis.

EUROPEAN UNION: According to Eurostat, the EU’s statistical agency, those in the euro area are saving significantly more of their incomes than those in the rest of the European Union. In the 4th quarter of 2015, for instance, euro area residents saved, on average, 12.7% of their incomes compared to only 10.5% for EU residents as a whole. The difference in savings habits was not due to a decline in real incomes outside the euro area — quite the reverse. In the EU as a whole real household income per capita increased by 0.6% in Q4 2015 following a 0.7% increase in the previous quarter. Whereas in the eurozone real household income rose by only 0.1% in Q4 and 0.4% in Q3 2015. In other words, real incomes are rising fastest in countries such as Sweden and the UK that are not in the eurozone — but individuals are using their increased resources to spend rather than save.

EUROPEAN UNION-USA: A number of recently leaked official documents from talks about the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and USA reveal an impasse on a number of fronts. One of these is a demand from US negotiators that their business groups have advance warning of any planned EU measures and have a say about them on a par with their EU counterparts. This builds on the proposed Investor-State Dispute Settlements (ISDS) system already contained in the draft deal which will allow corporations to sue governments when their profits are endangered. Trade talks began in 2013 and are now in their 13th round. It now seems highly unlikely that any final agreement will be reached for at least another year.

MALAYSIA: A new minimum wage will come into effect in Malaysia on July 1st 2016. In the Malaysian Peninsular it will rise by 11% to 1,000 ringgit (256 US dollars) per month and in Sabah, Sarawak and Labuan it will rise by 15% to 920 ringgit (236 US dollars) per month. These rates will apply equally to native and foreign workers and the next revision of the rates is set for 2018. The government has also revealed that it is considering the introduction of an employment insurance scheme to provide financial support for laid-off workers.

OMAN: The provincial government of Dhofar in the south of Oman is pursuing an active policy of encouraging private-sector companies to raise the wage levels for Omani employees. Its first success has been the signing of an agreement with the Mina Petroleum company to establish a minimum company wage of 525 Omani rial (1,364 US dollars) per month.

PERU: The national monthly minimum wage in Peru increased on May 1st 2016 from 750 Peruvian sol (226 US dollars) to 850 Peruvian sol (256 US dollars). The outgoing president, Ollanta Humala, signed the decree implementing this 13% increase earlier this Spring, just 11 days before the country's general elections. Peru's minimum wage was last increased in 2012.

UKRAINE: The Cabinet of Ministers in Ukraine has submitted to parliament for approval a Bill that would abolish income tax on pension payments. Once passed it is likely to come into force later this month. In a further move the government has suspended pension and other welfare payments to 500,000 people who have been displaced by the civil war in the eastern oblasts (regions).

USA: Twelve years ago California pioneered the provision of paid leave for new parents in the USA, although it still limited statutory payments to 55% of normal salary for up to six weeks. Now San Francisco will probably be the first US municipality to require employers to give parental leave on full pay by topping up the six weekly payments. The benefit will only be available to those with 180 days' service when they obtain it and initially the ordinance will cover companies with 50+ employees. Coverage will then extend to companies with 20+ employees in stages over a 12-month period until January 2018. Only two states apart from California — New Jersey and Rhode Island — currently require paid parental leave, but neither at full pay.

Other Global HR News in Brief

CHILE: Key aspects of a recent labour reform have been declared unconstitutional by Chile's Constitutional Tribunal. The President, Michelle Bachelet, had steered through a number of radical changes and gained Senate support in March. However, opposition groups challenged some key elements — namely those which provided that employers could only negotiate with designated unions over wages and could not give non-unionised employees the same benefits as those negotiated for union members. The government has now said, however, that it will veto those parts of the law ruled to be unconstitutional, which are now being sent back to Congress for discussion.

CYPRUS: In Cyprus the House of Representatives have been rushing through a number of measures ahead of the general election on May 22nd. One of these concerns sick leave. Currently an employer can lawfully terminate an employee who has been absent for more than 26 consecutive weeks. However, under an amendment hastily approved by representatives, employment would extend for as long as the employee remained on sick leave. The President had questioned the wisdom of this decision and the amendment has now been sent back to the House for further debate.

GERMANY: A labour court in the German state of North Rhine-Westphalia has issued a preliminary injunction against a company that offered a financial incentive to employees to end their union membership and even posted an example of a resignation letter for them to copy. Such an action is clearly against Article 9 of the German Constitution and the Federal Labour Court (BAG) has previously found against companies that had non-union hiring policies or sought to discover union affiliations amongst their employees. Freedom of association is sacrosanct in Germany and companies infringing such cease and desist orders can face very heavy financial penalties.

HONG KONG: A Bill that would give labour tribunals greater powers in unfair dismissal cases is currently before the Legislative Council of Hong Kong. The Employment (Amendment) Bill 2016 would allow labour tribunals to issue reinstatement or re-engagement orders in cases of unlawful dismissal (as per section 32A(1)(c) of the Employment Ordinance) without requiring the consent of both parties. Consent of both parties would continue to be required in all other cases of unfair dismissal. Before making an order of reinstatement or re-engagement in response to unlawful dismissal the tribunal must consider all the circumstances of the case, including the relationship between the employer and employee. If an employer failed to comply with an order for reinstatement or re-engagement they would be required to pay additional compensation.

MALTA: Although a 2% disability quota was adopted by the Maltese parliament in the 1960s it was never fully implemented. Now the government has reached agreement with the national employers' association, the employment and training corporation and chamber of commerce to introduce a 13-point code of practice on employing people with disabilities. Employers will have a year to comply with the code or be obliged to pay a special levy.

SWEDEN: The Swedish Migration Agency has persuaded the government to extend ID Checks at the border with Denmark until at least November 2016. Originally the extra controls conducted within Denmark were applied for six months and were due to end on July 4th. There was then to be a two-week gap before an option to reintroduce them for another six months could be taken up. However, the refugee crisis has continued to put pressure on Sweden — particularly as it has taken more refugees in the last 16 months (relative to its population) than any other EU state. A law will therefore be hurried through removing the two-week relaxation of border controls and automatically extending controls even before the current restrictions end.

SWITZERLAND: Foreign nationals who have lived in Switzerland for 12 years or more now have only until the end of this year to obtain Swiss citizenship. To do so they must have first obtained a C permit. Once this deadline has been reached Swiss Citizenship will no longer be open to foreign nationals — however long they reside in the country. For those who miss the deadline by a few days then the Canton of Vaud may offer some late hope as it has announced that it will not close applications until February 1st 2017.

THAILAND: Companies operating in Thailand must now submit copies of their work rules to the Director-General of the Department of Labour Protection and Welfare using a new e-filing system. All revisions to the rules must be resubmitted via the system within seven days of them being published internally within the company. The rules must be written in the Thai language and the Director-General may still request a hard copy of the rules to be submitted at any subsequent date.

UNITED KINGDOM: Although the European Court of Justice (ECJ) ruled in Lock v British Gas (2014) that if an employee is paid commission then that element must be included when calculating holiday pay, the decision has turned out not yet to be the last word on the matter. British Gas refuses to accept the ECJ ruling and has taken their case to the UK Court of Appeal. A hearing has been scheduled for mid-July. Meanwhile, related cases are mounting up. For instance, in a recent local tribunal decision 56 employees of Dudley Metropolitan Borough Council were found to have a right to receive holiday pay that included regular voluntary overtime additions. A similar finding was also made last year by the Northern Ireland Court of Appeal (Patterson v Castlereagh Borough Council) — however, this case is only binding on employers in Northern Ireland.

UNITED KINGDOM: The UK's Trade Union Bill has now received Royal Assent — thus making it the Trade Union Act. It is not yet known, however, when the Act will come into force. The Act will require a minimum voting turn-out rate of 50% before industrial action may take place and will also require unions to give employers at least two weeks' notice of intended industrial action.

USA: It is a perennial question for employers: when does accountability for any act by a company officer leave that person individually liable? In the USA this recently became clear in the context of violations under the Family and Medical Leave Act. The Act applies to companies that have 50 or more employees in a 75-mile vicinity. The US Court of Appeals concluded that a Human Resource Director possessed the authority to represent an employer in their own right under the Act. This meant that they were individually liable for any violations under the Act that took place.

USA: The US House of Representatives has voted 419-0 in support of a draft Email Privacy Act that would require US authorities to obtain a search warrant before accessing emails that are over 180 days old. Currently only a subpoena is required before acquiring such data from an internet service provider. It remains unclear whether this measure will now progress through the Senate as it could be blocked or delayed by the Senate Judiciary Committee.

Dates for your diary:

June 1st 2016: Freedom of movement restrictions on Bulgarian and Romanian citizens removed in **Switzerland.**

July 1st 2016: Increase in levies on construction sector and service sector work permits and S-Pass permits in **Singapore.**

July 1st 2016: The requirement for companies in Dubai, **UAE**, to provide health insurance cover for all employees extends to companies with fewer than 100 employees.

July 1st 2016: Minimum wage increase takes effect in **Malaysia.**

July 1st 2016: New Whistleblower Act comes into force in the **Netherlands.**

Latest news for business travellers:

Two previously-scheduled Southern Rail train conductor strikes have been cancelled and replaced with one 24-hour strike due to take place on May 18th. This will affect train services in London, **UK**.

In the **Republic of Ireland**, workers at Dublin's tram operator Luas are planning 24-hour strikes on May 13th, 20th and 27th if an agreement over pay is not reached. Additionally, a four-hour stoppage is scheduled for May 26th between 3pm and 7pm.

In **Belgium**, Brussels underground network is now operating at full capacity after the reopening of Maelbeek station on Monday, April 25th.

A national air traffic control strike is due to take place in **Italy** between 1pm and 5pm on May 14th.

Tours Val de Loire Airport in **France** will be closed on June 22nd, 23rd, 27th, 28th, 29th and 30th due to essential works.

FedEE news:

IMPROVE YOUR KNOW-HOW ABOUT A MAJOR ISSUE FACING HR TODAY: The way companies handle personal data has come to the forefront in the last few years and now represents one of the biggest risk areas facing HR Professionals. That is why FedEE is establishing a forum to allow HR generalists to get up to speed with all the practical things they need to do in the EU and other major jurisdictions across the world. Our first meeting has been rescheduled from June 2nd 2016 to July 13th 2016 in order to avoid a conflict with UK school holidays. The meeting is geared to non-specialists and forms part of the mission of FedEE to demystify legal and technical jargon and minimise the effort required to keep abreast with developments. To learn more about the event and to sign up please view our event brochure or call our events unit on +44 (0)117 975 8611.

NEXT FELLOWSHIP MEETING: The next Fellowship Meeting will take place from 10am to 4pm on July 12th 2016 at Adam House, The Strand, London UK. For more information, please see our events page. If you are not currently a Fellow but are interested in becoming one, please contact us on +44 (0)117 975 8611.

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