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La Federación de Empresarios Internacionales
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EDITORIAL: Two years on

Back in October 2014, an attempt by the UK before the European Court of Justice to challenge the EU's cap on banker's bonuses was big news. Then, one of the court's principal advisors – Advocate General Jääskinen - declared, quite erroneously, that the EU did posses the powers to apply the cap. Weakly, the UK government threw in the towel and the way was open for what was little more than a political attack on the city of London and a growing impression by many in the business community that the UK government was under the heavy thumb of Europe.

But the real blow to banker's bonuses was not in the end wielded by the EU, but by UK voters in the Brexit poll. This led to the departure of some bankers to the continent and a depressed demand for banking services. In a Britain faced with economic marginalization there will undoubtedly be less in the coffers for bonuses early next year. A further blow will also come from the UK Prime Minister's insistence that she will not put a special case for the city of London when it comes to negotiating the terms of a Brexit deal.

The UK relies entirely upon the city of London to maintain a positive balance of payments and without it would not be able to continue working as a viable economy. We should not all be misled by the fact that UK stocks have risen to a sixteen month high, as this is largely on the back of a weak domestic currency. Very soon the true message of Brexit will hit the markets and the party will be over. What Brexit and the failed Columbian referendum both show only too clearly is that when popular democracy is given a voice it generally results in an outcome that hurts the interests of the voters themselves. A similar popular vote about bankers' bonuses would have let jealousy prevail and then bankers certainly would have left in droves.

It would have all been so different if Britain had stood up to the EU back in 2014 and listened to FedEE. BBC Radio 4 Interview about bankers' bonuses with Robin Chater, FedEE Secretary-General, October 20th 2014. (7 minutes).

BULGARIA: Legal cover up

The Bulgarian parliament has voted to ban the wearing of burqas in public, thus following similar bans already in force in France and Belgium and in certain public institutions in the Netherlands.

Although the European Court of Human Rights upheld the French ban in 2014, its reasoning was highly questionable. Such restrictions are, without doubt, discriminatory - as no such restrictions are applied to other face coverings such as the 'full-face motor-cycle helmet' or the male beard. The helmet is commonly worn when not driving and, even more than facial hair, poses a security threat by denying the possibility of recognition in a public place. All face coverings "hinder the formation of interpersonal relationships". In fact, the full-face helmet additionally protects a would-be terrorist from being apprehended.

Both legislators and judges are just not being honest and this is leading to bad and inconsistent law. Their true concern is about the subjugation of women to men in fundamentalist Islamic culture and the undue concern by some adherents about other men seeing the face of their wives. This has become symbolized by the Burqa, Nijab and even the hijab. But to say as much would leave law makers directly open to accusations of religious discrimination. They thus looked for other reasons to legitimize their actions.

If burqas were worn by men, or the oily knuckle fraternity and beards by women - without being associated with Islam - then such bans would clearly not exist. Wearing a burqa in the office is quite a different matter, but it would be equally unacceptable – for good reason – to allow the wearing of a full-face helmet whilst sitting at a desk.

RUSSIA/UAE: Cash and late payments

Late payment of wages is the focus of labour law amendments in both Russia and the UAE this month.

Russia's Federal Law Number 272/FZ requires that all salaries - apart from incentive payments - must now be paid in two installments each month and must not be delayed longer than 15 calendar days. Failure to pay a salary within the grace period will lead to a penalty interest that accumulates by the day. Employees will also be able to file a court claim within one year and do so in the court nearest to where they reside.

The wage protection decree in UAE applies to companies with 100+ employees. It requires that all salaries are paid within 10 days of their due date. Failure to do so will not only result in the Ministry of Human Resources and Emiratisation blocking new work permits within a week of the payment deadline, but also a raft of other penalties, including a fine and loss of corporate bank guarantees.

In a further move, the Russian Federal Tax Service has issued a written reminder to employers that under Federal Law Number 173/FZ they may not make any cash payments to either foreign employees or independent contractors who are non-residents.

SPAIN: Severance pay for fixed-term jobs

The right of temporary workers to receive severance payments has long been a cloudy issue. Now the European Court of Justice (ECJ) has cast a huge blow against the attractiveness of Spain as a location for job growth – and also raised doubts about the legitimacy of laws in other EU countries that deny temporary workers severance pay.

In its ruling C-596/14 of 14 September 2016, the ECJ declared Spanish legislation on the handling of severance pay for temporary replacement workers illegal on the grounds that it infringes Directive 1999/70 concerning the framework agreement on fixed-term work concluded by the 'European Social Partners'. The court found that Spanish legislation discriminates against temporary replacement workers by denying them the same amount of severance pay that permanent workers receive when their contracts are terminated. It therefore requires the Spanish courts to grant temporary replacement workers the same compensation as is provided in the case of dismissal for objective reasons - which amounts to 20 days' pay for each year of service.

UKRAINE: Heading for the border

The political and economical position of Ukraine lies in the balance, with civil war in the east, the loss of Crimea to Russia, the rogue Transnistria state in the south - and growing uncertainty in its relations with the European Union. Back in 2014, the EU finally agreed to an 'association agreement' with Ukraine - which was formally ratified by all the member states except the Netherlands. Although the Dutch parliament passed the Approval Act it was never given an effective date and therefore the EU deal could not go ahead. The Association Agreement is an important stepping stone to full EU membership, but even that is still beyond its grasp.

On the surface, however, it is still business as usual. The European Parliament's Committee on Civil Liberties recently approving a facility for Ukrainian nationals to enter the EU without a visa and remain there for up to 90 days. Yet it is a long way from EU parliamentary committee approval and acceptance by the EU Council of Ministers.

Leading the opposition to this latest liberalization of entry rights is Poland. Five million Ukrainian's currently live and work in Poland and account for 13% of the resident population. There are fears in Poland that any liberalization could result in effective "colonization" with further undercutting of wage rates. Certainly, any closer ties with Ukraine could drag it into its conflict with its Russian speaking minority – and even Russia itself. Moreover, the leaky border with Russia because of the conflict could intensify if border controls with the EU were relaxed and more illegal immigration to the EU from Russia could take place.

The leading country gaining Schengen visas has long been Russia, with Ukraine not far behind – and in a high proportion of cases those issued visas never return to their home country. Many EU countries appear to adopt a "blind eye" policy, provided the visitor has useful skills. But the removal of a visa requirement altogether along the Ukraine border with the EU could lead to an unquantifiable influx of workers affecting far more countries than just Poland. There are at least ten million official unemployed in Russia alone, plus an underclass of cheap labour from former soviet states. The EU will seem as attractive to them as those braving the seas to escape from Sub-Saharan Africa. Yet the difference will be that there will be no way to regulate the flow or its potentially devastating impact on the economies of particularly smaller EU member states.

Meanwhile Ukraine has recently persuaded Israel to enter into a bilateral agreement over the free movement of labour. This removes the visa requirement, whilst establishing a basic set of worker's rights. For Israel the treaty offers the opportunity to displace Palestinian workers – a move that will undoubtedly destabilize the country once again.

UNITED KINGDOM/EEA: Holiday pay

The sticky issue about how to treat sales or other commission payments when calculating holiday pay has finally been resolved by the UK Court of Appeal (British Gas v Lock ECJ/C-539/12. CA A2/2016/1163) and now there is no justification at law for employers to withhold such payments from employees. Fortunately the court did not provide guidance on how actually to make the necessary calculations and neither has the government's advisory body ACAS issued any formula. Therefore, it is down to individual employers to make their own policies on the matter and towards that end FedEE is offering the following suggestions.

The calculation of commission during holiday periods may either be based on the average commission paid within a set period, the commission that probably would have been gained if the employee had not taken holiday at a particular time, or the commission actually earned by anyone substituting for the employee during their vacation.

What period employers choose for averaging must be consistent between employees receiving commission and there is no obligation to increase holiday pay except for the minimum period of annual leave set out in the EU working time Directive (ie; 4 weeks a year). Although it may be tempting for averaging purposes to take the four weeks immediately prior to taking leave - because that happens in a current year to be lower than normal - that may not always be the case each year or for all employees. For instance, in same cases it may be higher than normal because the employee is trying to close sales ahead of their absence period. Generally speaking, the longer the commission reference period for averaging purposes the more stable and realistic the imputed commission payment will be. In fact, if the average of actual commission earned by the employee concerned is taken for a year then it would include previous shortfalls for holidays taken and also sickness absence periods. This would represent a potential saving – although it would ultimately be vulnerable to a legal challenge in itself.

Finally there is the question of timing in respect to any commission payment and its interaction with other bonus payments. If employers pay commission provisionally each month or quarter (whether or not 'on account') they must continue with this practice unless they come to an agreement with the employee that they will pay a fixed addition to the employee with their normal monthly pay to cover holidays. The temptation to make this supplement fixed should be avoided as if actually commission earned in the future fell then the employer would be left having to pay an inflated supplement.

Paying for 'virtual commission' earned will all get a bit messy and complex because even salary payments for a day's leave will need to be adjusted. Moreover many employers will resent having to pay commission to an employee providing cover as well as the employee on holiday for the same sales achieved. There are partial ways around this by establishing a cover allowance to compensate employees taking over colleague's accounts. However, beware that this does not get out of hand if the practice extends to covering for long-term sickness absence too. If colleagues will provide cover for free then grab the concession with both hands - but make sure the practice is clearly documented.

One unwise habit that this legal case will hopefully expose (and encourage companies to rectify) is the practice of paying both commission and company performance bonuses in full to sales personnel. This is also effectively paying for the same outcome twice, or running the danger of rewarding poorly performing personnel for the higher performance of their colleagues. That is why such schemes should contain an offset clause whereby any bonus paid has a certain deduction to take into account commission earned. The offset should be a fixed proportion – otherwise it would penalize top performing staff earning high commission levels.

Although British Gas v Lock is a UK case it has previously gone before the European Court of Justice and therefore all that we have suggested may be taken equally to apply to employers in other EEA countries.

UNITED KINGDOM: What next?

Until Brexit negotiations have been completed it is not easy to predict what will happen to European Union (EU) citizens working in the UK, or to UK citizens working elswhere in the EU. It is highly likely, however, that some measure of free movement will be required as a condition of ongoing trade relationships.

One problem for the UK is the border between Northern Ireland and the Irish Republic. Although the UK is not party to the Schengen agreement this is in large part an open border. Under a post-Brexit regime this may well need to be subject to strict passport checks and even immigration controls – which might, in turn, inflame the catholic community in the north.

Existing EU immigrants working in Britain would largely be protected, but could face problems if they gave up their job and left the country for even a short period. It will probably be much easier for UK expatriates already working in the 'rest' of the EU, provided they have registered locally as residents. Certainly they would have especially strong protection in the Irish Republic - because of pre-EU free movement traditions - and Cyprus, which has a special relationship with the UK and is the UK's only Commonwealth member in Europe.

The biggest change will come for employers seeking to hire EU workers since the Brexit vote. It could well be that certain conditions may apply for such employees when the UK' membership of the EU finally ends. Although it would be difficult to force employers to dismiss employees with over two years service, employees with shorter service periods, fixed-term employees and independent contractors would all undoubtedly be subject to future controls – and probable fixed annual quotas.

The UK Prime Minister, Theresa May, is trying to play down her proposals to require employers to declare the numbers and proportion of foreign workers they employee.

But this move will undoubtedly presage further, perhaps draconian, measures to make it more costly or administratively more difficult to rely significantly on foreign employees working in Britain. Of course, the impact of Brexit can only have a negative impact upon the UK economy, so many foreign workers may – in the end - be only too glad to go back to their countries of origin.

USA: The least united state

California continues to lead the way in being the most legally awkward state in the USA in which to employ anyone. Its latest reform is to make any employment contract unlawful that contains provisions under the laws of another US state or foreign jurisdiction. It is also equally unlawful to require any dispute to go to court or arbitration outside California. However, there is one exception to this rule – where an employee is represented by a legal counsel when the contract negotiations take place.

By way of encouragement for employees to void external jurisdiction clauses the state will also meet attorney fees for any necessary legal challenge. The new section 925 to the California Labor Code, which comes into force on January 1st 2017, will apply to anyone who primarily resides and works in California – ironically thus making anyone who is on an assignment outside the state to have to return there to pursue a dispute with their employer.

Pay, Tax and Benefit Trends

CAMBODIA: Cambodia's 600,000 workers in its crucial textiles and footwear industry are set to earn a $US153 minimum wage per month, starting January 1st 2017 - up 9.2 % from the current $US140 . The rates are set in $US because the local 'Riel (KHR)' currency is non convertible, heavily depreciated and US dollars are the de facto national currency in Cambodia.

CANADA: Average non-farm weekly earnings in Canada over the year to July rose by only 0.1% to $955 ($US727). Wages in most sectors either remained static or declined. The only increases were in educational services and construction. Contributing partly to the static nature of weekly wages was a slight decline in the average working week from 33.1 hours in July 2015 to 32.7 hours a year later. But the private sector job market also remained in decline, with nearly all the 1.1% overall job growth arising in the public and healthcare sectors. In fact, manufacturing jobs declined by 1.6% and jobs in mining, quarrying and oil/gas extraction by a massive 10%.

CZECH REPUBLIC: On October 5th, the Czech Republic's government approved an increase in the minimum monthly wage to 11,000 crowns ($US456), a rise of 1,100 crowns ($US 46) starting 2017. Consequently employees working for a minimum wage will be paid 66 crowns ($US2.73) an hour. The boost is the second rise announced this year, aimed at improving the pay for around 115,000 workers.

TAIWAN: Average annual per capita remuneration - such as regular and non-regular wages, severance pay, overtime pay, and bonuses – in Taiwan's industrial and service sector stood at NT$675,000 (US$20,990) in 2015. This was up 2.4% from the year earlier. Regular wages accounted for 68.6% of average remuneration - the lowest proportion since the data was first compiled. This was mainly due to the growth of "non-regular wages", which accounted last year for 17.4% of total remuneration.

USA: Following several high profile Supreme Court cases in Florida, the Florida Office of Insurance Regulation has agreed that worker compensation insurance may rise on December 1st by 14.5%. This will not affect existing costs until annual renewal. 70% of this increase is to fund the fee increase of lawyers involved in compensation claims against employers in the state.

Other Global HR News in Brief

ARGENTINA: A national Labour Appeals Court in Argentina has annulled an agreement between the Labour Ministry and the McDonalds fast food company. Under the terms of the arrangement McDonalds would have hired 5,000 young people temporarily as interns, being paid 4,500 pesos ($US293) per month – well below the national minimum wage. The trade union group opposing the agreement told the court that the interns would not receive a pay slip, have social security contributions paid by the company or receive any overtime pay or year-end bonus in line with other company employees.

BRAZIL: There seems to be no light at the end of the tunnel for the banking sector in Brazil because of a strike being held now for over a month. More than 14,000 branches all over the country have been inoperable, thus creating enormous inconvenience to businesses and individuals alike who are only able to conduct their transactions online. The banking trade union Sindicato dos Bancários in the regions of São Paulo, Osasco and Região is demanding an increase of wages of approximately 15% in order to absorb the spending gap arising from the country's high inflation rate. The union leadership appears unwilling to back down, a fact that creates more uncertainty each day it is prolonged.

JAPAN: The Ministry of Foreign Affairs (MOFA) in Japan has announced that a relaxation of visa rules for Chinese visitors would come into effect on October 17th 2016. This will be the second time in the last two years that Japan has eased visa restrictions on Chinese citizens. Under the new rules, multi-entry business visas will last for up to 10 years instead of 5 years – as previously.

NEPAL: The Industrial Enterprises Bill has been approved by Nepal's parliament and is awaiting Presidential ratification. It contains a controversial provision which allows employers to withhold pay from employees for periods when they do not actually work. But even if it comes into force, it cannot be upheld by the courts until it is also ***accompanied*** by an amendment to the Labour Act - which is still being reviewed by parliament. Both provisions are aimed at the ad hoc labour protests that have plagued the country this year. Under the revised Act strike activity may still qualify for half pay – but only if due notice has been given to employers and government agencies. Employers would also be able to enforce lock-outs and dismiss employees if they face severe economic difficulties.

NEW ZEALAND: All South African travelers heading for New Zealand will need to obtain prior visitor visas from the November 21st this year. The cost of a visitor visa will rise to $NZ184 ($US 132) for paper applications. However, the online cost will remain the same. Those traveling before November 21st will still be able to travel to New Zealand and obtain a visa at the airport of entry, but must still meet all health and clean criminal record requirements.

NEW ZEALAND: In a recent landmark case, the New Zealand Court of Appeal has ratified an employment court decision concerning a five-month lockout of workers employed by the meat processing company Affco. The company had tried to side-step the need to renegotiate an agreement with the meat workers' union by isolating casual workers and offering re-employment conditional on accepting non-collectively agreed terms. If they did not accept the terms they were told to stay away from company premises. Previously it had always been legally uncertain how seasonal workers should be treated in respect to notices of suspension and being locked out as their contracts came to an end, or when new season hirings took place – especially where their contracts state they have the right to be offered re-employment.

OMAN: Statistics published by Oman's National Centre for Statistics and Information reveal that in spite of an increase of 110,000 expatriate workers during the first six months of this year the number of highly qualified workers declined by almost 2,000. The reason for this is that the economic downturn is causing employers only to offer employees six-month contracts. This level of insecurity makes jobs in the Sultanate less attractive for staff who have ample job prospects in other countries.

QATAR: Visitors entering Qatar's capital city Doha may now extend their time there for up to 96 hours using a free transit visa. To qualify, passengers must have a minimum stay of 5 hours in Hamad International Airport (DOH). Applications can be made on arrival and there is no need to notify immigration officials ahead of time.

SAUDI ARABIA: The middle-east Kingdom of Saudi Arabia has recently unveiled a raft of fee rises for travel visas. Visitors to the Kingdom on business now have to pay 2,000 SAR ($US 533) for a single-entry visa. A multiple-entry visa costs 3,000 SAR ($US799) for six months, 5,000 SAR ($US1332) for a year and 8,000 SAR ($US2131) for two years. The fee for a transit visa is 300 SAR ($US80) and the fee leaving the Kingdom through a seaport is 50 SAR ($US13). Exit and reentry visa fees for Saudi residents will be 200 SAR ($US53) for a single trip for two months, plus 100 SAR ($US27) for each additional month.

SWEDEN: A proposed new law being drafted by the Swedish the Enterprise and Innovation Ministry aims to establish quotas in the boardrooms of Sweden's top companies. The measure would become fully effective in 2019 and would require the boards of 280 listed companies and 50 state-owned enterprises to fill at least 40% of board seats with women. Employee representative bodies with places on company boards would also have to meet the quota. Failure to comply with the new requirements would result in fines ranging from 250,000 to 5 million kroner ($US29,000 to 584,000) depending upon company size.

UNITED KINGDOM: The British Prime Minister, Theresa May, has set up an official review of self-employment, atypical work, zero hours and flexible working practices. The probable focus and importance of this can be measured by the fact that the review committee is to be Chaired by the head of an arts charity rather than a top lawyer, judge or leading academic. The Chairman has for some years been involved in a body calling itself the 'Social Integration Commission'. This would suggest that many of the recommendations of the new review will focus on race as an issue in employment practices.

USA: The requirement of a company to require an employee to submit to a comprehensive medical examination or pay 100% of the health insurance premium was put to the test before a federal court in Wisconsin recently. There was no clear outcome, but the U.S. Equal Employment

Opportunity Commission, which supported the challenge, believes that it now makes it more problematic for employers to operate such conditional schemes. The points of law are quite complex, but it does establish that wellness plans are not immune from scrutiny under the Americans with Disabilities Act. The case now moves forwards to a full trial on alleged employer retaliation for refusal to undertake the medical examination.

USA: The Governor of the State of California, Jerry Brown, has signed a bill extending the state's equal pay protection law to race as well as gender, with effect from 2017. Recent statistics indicate that despite the enactment of several laws at a federal and state level in the USA, there remains a huge pay gap between female and male wages – especially when each group is of a different race.

Dates for your diary:

November 8th 2016: **US** Presidential Election

November 29th 2016: **Mozambique** introduces new immigration regulations. These will impose severe limitations on the use of foreign labour.

December 1st 2016: FLSA new overtime rules become effective in the **USA.**

January 1st 2017 Introduction of the law giving public exposure about labour law infringements in **China**.

April 6th 2017 Introduction of apprenticeship levy for large **UK** employers.

April 23rd and May 7th 2017: **French** Presidential Election.

May 25th 2018: Final effective date for **EU** General Data Protection Regulations.

Travel Warnings

BELGIUM: A series of strikes are hitting public road, rail and air transport and access to some factories due to picket lines operated by militant workers. The strikes are intermittent and generally only each last a day - but they could continue for weeks.

CONGO: The U.S. State Department has published a travel warning covering all the Democratic Republic of Congo due to widescale, violent unrest arising from the decision of President Joseph Kabila to cling onto power, even though it is unconstitutional for him to do so.

ETHIOPIA: Over 50 people have been trampled to death as protesters tried to flee police firing tear gas and rubber bullets in Ethiopia's Oromia District. In response, the Israeli government has issued an advisory notice to its citizens not to travel to the cities Gondar, Bahir Dar and Debre Tabor which are subject to violent anti-government protests.

HAITI: Hurricane Matthew has caused more destruction on this island than anywhere in its path. The latest problem is Cholera, due to contaminated drinking water.

INDIA: The government has put airports in four states that border Pakistan - together with the national capital - on high alert. According to Indian intelligence sources the Pakistan agency ISI is sponsoring more than 100 terrorists to attack Indian domestic targets.

JAPAN: The official alert rating has been raised to danger levels following increased activity in Mount Aso, the 1,592-meter volcano, situated in Japan's central region of Kumamoto. This follows eruption of ash recently up to 7 miles in the air.

PAKISTAN: Travel to anywhere in Pakistan is not recommended, especially to the western provinces, following the multiple bombing of a train in Baluchistan that killed at least 4 people last week.

UNITED KINGDOM: Rail strikes on the Southern Rail Network are scheduled for the following dates and will last all day. These will affect rail services from Dover and Gatwick airport to London. Tuesday 11 October to Thursday 13 October, Tuesday 18 October to Thursday 20 October, Thursday 3 November to Saturday 5 November, Tuesday 22 November to Wednesday 23 November and Tuesday 6 December to Thursday 8 December 2016.

USA: The eastern seaboard is still clearing up after Hurricane Matthew, although it stayed sufficiently offshore to cause too much havoc for any but the population on the immediate coastline.

YEMEN: Health authorities in war-torn Yemen have confirmed a cholera outbreak in the capital Sana'a, whilst other outbreaks are suspected in the southwestern city of Taiz.

FedEE News

New Code of Practice: FedEE has prepared a draft **Code of Practice on Privacy at Work in Multinational Enterprises.** This has been prepared under provisions in the EU's General Data Protection Regulations (GDPR) that allows for such codes. If you would like to gain access to the code to help your organisation prepare for the GDPR and Privacy Shield then **be sure to book your place for the Forum meeting in Nicosia on November 18th.**

Systems and Publications: Our Job Evaluation and Pricing System (**JEAPS)** has just been updated. Moreover, if you have not received our new **Multinational Salary Planning Report** please contact the membership services unit and we will forward you a free copy in pdf format.

FedEE Projections: Price, pay and productivity forecasts for 2017 in respect to reference countries around the globe are now available in the members' area of our website.

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