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COMMENT: Secret engagement

When I visited China for the first time and looked out of my hotel window I thought that I could hear the sound of social unrest from side streets nearby. But when I left my hotel and traced the sounds, I found something very different. Lined up in front of a barber's shop were a smiling row of uniformed employees enthusiastically chanting in response to their boss's questions.

This was not blind obedience, but the emanation of a culture where public displays of employee commitment are quite normal and the clear indication of a well-run enterprise. As I witnessed more and more of these sessions in other businesses, my shock and initial suspicion dwindled away. Here was a deep sense of identification not achieved by a carrot or stick approach, but a deeply held respect between people and a faith in an organisation that provides them with employment. In Chinese society, employment is not seen as a right but as a privilege, where an employee's good performance is constantly recognised and poor performance held in check by colleagues.

In the West, employee loyalty has no such foundation. Incentive programmes generally have little impact, as remuneration paid is soon perceived as a basic entitlement. If the only loyalty that exists is the sort that can be bought, then the organisation has failed. Sadly, Chinese motivational methods cannot be easily exported, but their underlying logic can be translated. Companies that openly care about employee welfare or encourage charitable acts, sponsor employee sporting teams, encourage retired employees to pop in for lunch, or even just have employee of the month awards are at least going some way to building more of a genuine commitment. Commitment is, of course, a very hard concept to pin down and it certainly cannot be engendered either by laws or company rules. This, for instance, reminds me of the national flag and national anthem issue rumbling in several countries around the world. In the Philippines, a Bill just approved by the House of Representatives makes it a stringently punishable offence to sing the national anthem “Lupang Hinirang” without outward enthusiasm. During a visit to Thailand, I also found that the national anthem was played in many Bangkok streets, parks, public buildings, and even offices twice a day, and everyone is expected at the time to stand still and remain silent.

One of the biggest tasks for HR is finding ways to convert instrumental loyalty to an intrinsic and genuine loyalty in the broader context of societies that encourage skepticism and disrespect for authority. In my experience, this is never achievable if management – particularly senior management – is remote and enjoys the conspicuous trappings of material success. Wars used to be fought by kings and generals leading troops headlong into battle, then along came Napoleon and leadership was removed to some distant and safe hill overlooking the action.

Going back to China, I have frequently been struck by the way managers and supervisors lead from the front. One evening I visited a park. It was getting dark and had only recently stopped raining. A gang of workers were laying turf. The only way I could tell who was in charge was to notice the person working the hardest, but moving about to keep up the work momentum. It was no enforced labour, just a jovial and well coordinated rush to beat the oncoming gloom. A few days later I returned; the turf was already looking like established grass and there were no signs of the mud or equipment that had littered the site shortly before. It was just a rapid job, well done.

BRAZIL: Immigration reform

A new, more liberal migration regime is now close to implementation in Brazil. The Migration Law 2017 (13445) will replace the former Alien Tort Statute. It decriminalizes migration and family unification whilst giving migrants equal access to welfare and educational provisions. It bans mass deportations and allows for urgent temporary visas to be issued to protect vulnerable groups or individuals.

Within the measure are also mechanisms to encourage coordination and consultation over migration issues, involving local councils and trade unions. Implementing regulations have still to be agreed and some clauses of the original Bill that were vetoed by President Temer are still being debated in Parliament. Moreover, the police and security services strongly oppose the changes as they could allow those with criminal backgrounds in other countries to take up residence in Brazil. It is by no means certain that the new law will diffuse anti-immigrant sentiments in a country seeking to recover from a major economic downturn and still suffering from an unemployment rate of around 14%.

FRANCE: Plein de bonnes intentions

In a bid to lure financial sector firms to move from the UK to France after Brexit, the French government is proposing to establish a special court operating in the English language to handle disputes related to financial contracts governed by English law. However, it will take more than legal structures to attract firms to operate in

France – given its prohibitive tax structure and tough job protection laws. That is why Macron's proposed labour reforms will be key to making the country attractive for multinational companies. The militant CGT union has already called a strike for September and wide-scale street protests can be expected this Summer. If the new French President follows his predecessors, he will eventually cave in to such pressures or heavily water down the reform package. If he does not follow the lead from last year's Loi El Khomri and push reforms through without a National Assembly vote this Summer, then his dreams will get bogged down in a nightmare of endless debate.

Reducing the French tax burden will be a much more difficult objective - given the overmanning, bureaucracy, and waste in the French public sector. Macron seems to prefer working with German Chancellor Angela Merkel to tackle European tax havens rather than squeeze spending budgets at home. Their chief fear is that once the UK is outside the EU, it can start offering lucrative tax breaks to inward investing companies, open up "free ports", and offer state aid to domestic companies – free from the constraints formerly imposed by the European Union.

GERMANY: Overhaul of pension system

The German government is seeking to extend the popularity of company pensions to medium-sized and smaller companies. To do this they are enacting the The Act on the Strengthening of Occupational Pensions (***Betriebsrentenstärkungsgesetz***).

This will introduce a fully fledged defined contribution-based system into Germany for the first time. Schemes will not allow for lump sum payments and must be converted to annuities upon their vesting. Employers will just be responsible for paying for an insurance contribution to guarantee the integrity of third party investment funds. Furthermore, investment funds will not have to offer an option with a guaranteed rate of return.

Another feaure of the system will be its focus on collective bargaining arrangements. Within sectors, management and unions will be encouraged to set up defined contribution schemes. In fact, it will be difficult under the new scheme to be outside a sectoral collective agreement as those controlling a fund will have to accept any "non-tarrif" applicant. This will increase the inherently anti-trust nature of German commercial and labour relations – although the German government seems to be innocently unaware of the anti-competitive monster they are creating in their midst.

Employees who wish to opt-out of the scheme will have to make a very overt declaration to do so. For those who remain in the scheme, contributions can be added to existing deferred compensation funds. The amount of such funds will be increased from 4% to 8% of the social security contribution ceiling.

GLOBAL: Dismissing criminal employees

It is normally clear in most jurisdictions whether details of past criminal convictions can be obtained and the extent to which they can be used in making hiring decisions. But what about if an established employee commits a criminal act? Must they inform you and can such an action be just cause for disciplinary action – or dismissal for gross misconduct?

In the UK much hangs on two things: whether such an eventuality is explicitly mentioned in contracts and company policies, and whether the nature of the crime could reasonably be taken as a basis for dismissal in a particular job. It is all a matter of carefully weighing factors such as trust and reputation against job sensitivity and the seriousness/character of the crime. In a job handling money or dealing with customer relations, a crime of theft may more than outweigh the employment rights of the individual. Moreover, employers will normally be justified in taking actions once a decision to prosecute an employee has been made, as no absolute proof requirement exists in the employment relationship.

In New Zealand the debate has moved on to consider whether it is lawful to dismiss someone because they belong to any organisation that could bring the employer into disrepute. For instance, membership of a "gang" could pose a potential threat and under the Crimes Act 1961 it is an offence, in itself, to be a member of a criminal gang. But then antidiscrimination laws step in and offer protection to employees against unfair treatment because of their beliefs or political opinions.

In Nigeria the courts have long followed the principle of not "forcing a willing employee on an unwilling employer". However, until recently disciplinary action could not be taken against an employee until a crime had been proven. This was expensive for an employer as suspension on full pay may have been required for over a year until the trail took place. Now the Supreme Court has ruled that an employer does not have to wait for the results of a hearing. Although Imonikhe v Unity Bank Plc relates to alleged crimes against the company, the same logic should apply to sufficiently serious crimes against third parties by an employee.

In Australia the legality of dismissal for criminal accusations differs by state. An employer seeking to discipline an employee in Northern Territory or Tasmania must wait until a final decision has been made at trial, for it is discriminatory to treat an employee adversely only on the grounds of their arrest, proceedings where any charge was dismissed, or where the employee was found not guilty. As in the UK it is equally unlawful in Western Australia and the Australian Capital Territory to dismiss an employee on discovery of a spent conviction – in this case a crime committed longer than ten years ago. In other Australian states only Federal laws apply and the only recourse is an application to the Australian Human Rights Commission. This will not result in litigation as the Commission only has powers to investigate, report, and recommend.

In the USA, dismissal for criminal activity during an employment relationship is closely bound up with restrictions when hiring the employee. Here the limitation on employers is largely Title VII of the Civil Rights Act 1964 – which can be applied to using criminal convictions as a basis for making employment decisions in respect to certain social groups. For instance, 28% of recorded criminal acts are committed by African Americans, but this group only makes up 13% of the US population. Therefore, taking criminal convictions into account when making hiring or dismissal decisions would inevitably be indirectly discriminating against this group.

One common requirement in all jurisdictions is the need to give employees a chance to explain and put their case forward before any decision is made about their employment. Furthermore, if gross misconduct is not mentioned or defined in a way that includes criminal actions involving third parties – both during and outside working hours – then a court may find it very difficult to fill the void and make the presumption that an employee should have known that such conduct could affect their employment relationship.

KAZAKHSTAN: Wrong means right

A UN agency, the International Labour Organization, has just issued a report criticising the government of Kazakhstan over its inadequate labour laws and enforced closure of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) earlier this year. However, whatever happens in this highly autocratic state seems to do little to blunt its continued economic expansion.

The national parliament is, for instance, working on a Bill that would remove independent candidates from all future presidential elections. This will at least put an end to the curious practice of arresting such candidates on fabricated criminal charges ahead of each election. Moreover, the Kazakh Religious Affairs Minister, Nurlan Ermekbayev, has revealed that his ministry is drafting a Bill banning the wearing of the Muslim headscarf and burqa in public, even though 70% of the country's population are Muslim. The country's long-standing President Nursultan Nazarbayev has apparently also suggested that the ban should extend to male beards and the wearing of all black clothing.

The President's "modernisation" programme is proving to be highly popular with the international community. Astana ***Expo*** 2017 that took place last month attracted exhibitors from over 100 countries and inward investment in this oil-rich economy is rising fast, with the number of foreign companies operating in the country having grown by 25% over the last year alone. In part, this is due to the modification of the Labour Code in favour of employers last year. These changes included removal of the former guarantee of 2/3 of an employee's average monthly salary during a temporary lay-off, no future necessity to give notice of termination to an employee on probation, and the fact that there is no longer an automatic conversion of a labour agreement to a permanent contract until it has been extended or renewed for a second time.

NIGERIA: Edge of a cliff

There is a strong undercurrent of unrest and impending radical reform in Nigeria, which may threaten the position of multinational companies operating in the country. Labour productivity last year rose by 10.8%, but unemployment – particularly amongst young people – has continued to grow rapidly. Higher educational systems have for many years produced a rising volume of graduates for which very few opportunities exist in either the public or private sectors. Although many graduates have moved abroad an increasing number are forming a powerful discontented movement that the government is struggling to appease. The government has never collected accurate statistics on unemployment and not until this April did they begin to register individuals without jobs.

Another source of instability is the failing health of President Muhammadu Buhari – the military leader from the north elected in 2015 with a mandate to end corruption and defeat the islamist terrorist group Boko Haram.

In the oil sector, the House of Representatives has just passed the Petrolium Industry Bill, partly in response to social unrest in the Niger Delta about the poverty that remains there in spite of the oil wealth. This not only brings together numerous former laws into a cohesive measure, but also gives host communities in oil-producing areas the right to receive some of the monetary proceeds from production.
In the telecoms sector, the House of Representatives committee on telecommunications recently summoned CEOs from leading companies such as Intels, MTN, Glo, Airtel, and Etisalat to challenge them over the number of mass redundancies that have been taking part in the sector. The House is also concerned with the duration of post-compete clauses that have been imposed on departing employees – with restrictions lasting up to four years.

The majority of companies in Nigeria now use outsourcing and subcontracting on a huge scale to sidestep labour laws. Thus, although massive tax incentives have achieved a high level of inward investment, it has not been translated into improved social conditions. The government is slowly waking up to the size of the casualised underclass of workers that could destabilize the country, especially if the present President does not serve his current term. Companies should therefore expect an imminent tightening up of labour laws and practices and further public challenges to their expropriated profits, austere contractor fees, and aversion to employment relationships.

UK/EU: Leave on redesignation

What happens if a self-employed worker later turns out to establish that they had been employed from the outset? In a recent case (C.King v The Sash Window Workshop Ltd) before the European Court of Justice, Advocate General Evgeni Tanchev has published advice concerning the taking of holidays where there is uncertainty about an employee's employment status.

In his view, where it is found that an employee has been wrongly designated as self-employed, then they remain entitled to all their statutory paid holiday that they were denied during their de facto employment relationship. Furthermore, "Article 31 of the EU Charter of Fundamental Rights grants an unequivocal right to paid annual leave to every worker. The Court's case law states that the existence of the right to paid annual leave is not to be subject to any preconditions whatsoever". Moreover, "it is incompatible with EU law to require a worker to take leave first before being able to establish whether he is entitled to be paid for it".

UNITED KINGDOM: Suspect labour costs

According to the Office for National Statistics, hourly labour costs in the UK private sector rose by 1.4% over the year to Q1 2017.

However, these official statistics are highly questionable. Without any explanation whatsoever, the hourly labour costs for two sectors were reported to have fallen by a very significant amount over the year. These were the chemicals and man-made fibres sector (-9.9%) and real estate companies (-7.2%). An indication that the figures represent a gross error in data collection and/or processing is revealed by the figures for the last two quarters. These show that real estate hourly labour costs grew by over 6%. This means that the fall in labour costs from Q1 to Q4 in this sector must have been over 12%. For this to be true then all estate agencies would have had to stop paying social security and stop female staff from taking maternity leave for a nine-month period.

FedEE statisticians frequently find gross errors in official statistics. Governments employ thousands of professional statisticians, but few figures are ever checked properly before publication. An ONS chief statistician was once asked how many people work in his department. He replied with a smile “about 2%”.

Pay, Tax and Benefit Trends

BELGIUM: Over the year to the first quarter of 2017, average earnings in industry (excluding construction) increased by 1.8%. In construction there was an increase over the same period of 3.7%, whilst in retail/wholesale trade and repairs the growth was 1.9%, and in services it was 4%.

CHINA: The average monthly old-age pension of enterprise retirees nationwide in China rose by an annual rate of 8.8% between 2012 and 2016. In 2016 it reached an average of RMB 2,362 ($US347) per month. Annual increases over the same period averaged 11.3% for unemployment insurance, 9.4% for death in service insurance, and 8.1% for maternity insurance.

CROATIA: In April 2017, average gross earnings in Croatia were 7945 kuna (US$1228). After deduction of social security and tax, net earnings averaged 5914 kuna ($US914). Over the year to May 2017, productivity in industry grew by 1.1%.

GERMANY: Over the year to June 2017, the German index of collectively agreed earnings in industry and services rose by 3.5%. During the same period, the harmonised index of consumer prices rose just 1.5%, meaning that those covered by collective agreements experienced a real increase in basic pay of 2%.

SLOVENIA: Over the year to Q1 2017, average gross monthly earnings in Slovenia grew by 2.6% to 926,66 euros (US$1,035) and net earnings to 651,88 euros (US$728). Compared to Q4 2016, the biggest increases in gross pay were in water services (5.8%) and utilities (5.7%).

UNITED KINGDOM: The deadline for filing annual returns concerning share options and other UK employment-related securities has been extended by the HMRC tax office from the 6th of July to the 24th of August. The first penalty for late filing will be £100 (US$130) but further penalties will be applied over time.

VENEZUELA: Venezuelan President Nicolas Maduro has ordered that the national minimum wage be increased again by 50% with immediate effect. He also announced his intention to crack down on economic speculation in an attempt to control prices. The latest wage hike follows a 60% rise little more than a month ago in a country where consumer price inflation is expected by the IMF to hit 721% this year and 2069% next year. As a consequence, the government has been forced to issue citizens with a monthly food bag containing essentials such as rice, milk, pasta, and beans. Meanwhile, cities across the country are in chaos and since April, over 80 civilians taking part in street protests have been shot by the military police.

Other Global HR News in Brief

CANADA: A number of companies, particularly in the transportation sector, have sought to introduce regular health checks for key staff. These have sometimes included policies allowing for random checks. Trade unions have generally opposed such policies. One such employer is the Toronto Transit Commission (TTC). However, Ontario's Supreme Court of Justice has recently refused an application for an injunction to prevent this practice. This decision has given some support to employers who wish to avert safety problems in a proactive way.

DENMARK: Companies seeking to employ individuals from abroad are now able to do so under the Pay Limit Scheme, which uses a fast track procedure and guarantees a residence permit for job holders with a minimum annual remuneration of 408,800 DKK (US$54.975). The downside is that all salaries must be paid into a Danish bank and benefits such as housing expenses, payments in kind, and even a company-supplied mobile can no longer be included in the qualifying remuneration.

GERMANY: The next time your computer system receives spyware, the source could be legal – at least in Germany. A new law in Germany makes legitimate the implanting of a trojan horse by the German security services to monitor WhatsApp. The social media company, now part of Facebook, has refused to reveal the encryption codes to government surveillance agencies and therefore Germany is just the first to licence itself to openly invade web users' privacy.

GLOBAL: According to a recent report from the International Labour Organization (ILO), the global labour force participation rate for women now stands at 49%, around 27% below the rate for men. The only two regions of the world where participation rates have fallen in the last two decades are Eastern and Southern Asia. The ILO estimates that if the gap could be closed then it would unlock US$5.8 trillion in GDP and also – if growth was in the formal economy – generate substantial increases in tax revenues. [World Employment and Social Outlook (WESO): Trends for Women 2017.]

HONG KONG: The legislative council is currently debating a government Bill that proposes to increase the penalties for overcharging by employment agencies. The current limit to charges on workers that can be made for finding them a job will remain at 10% of their first month's salary. But agencies overcharging jobseekers could soon face a fine of HK$350,000 (US$45,000). The maximum penalty for agencies operating without a licence would also increase from HK$50,000 (US$6,400) to HK$350,000 (US$45,000) with imprisonment for agency executives for up to three years.

MEXICO: The medical use of marijuana has now been made legal in Mexico. It now joins Canada and 29 US states in legalising this drug on prescription. This move makes it increasingly difficult for employers who wish to ban its use, as marijuana can be ingested orally through food as well as smoked. The chemical compound that produces the drug's high is THC – a substance that not only generates memory loss and difficulty with problem solving, but longer term is associated with mental illness and coronary heart disease. Its use in the workplace poses a huge health and safety risk. The legalizing of marijuana means that Mexican drug barons can now operate with impunity and even freely export the substance to the USA through the NAFTA free trade arrangement without paying duty.

NEW ZEALAND: A proposed law currently before parliament would allow those earning over $150,000 (US$109,000) to opt out of a right to pursue personal grievance claims, including discrimination and harassment. However, the Employment Relations Amendment Bill (allowing higher earners to contract out of personal grievance provisions) would still allow those individuals subject to an opt-out to pursue claims under the Privacy Act and Human Rights Act.

RUSSIAN FEDERATION: The European Court of Human Rights has found that the Russian government had violated Articles 10 and 14 of the European Convention when it introduced and enforced a law against the promotion of homosexuality. This is unlikely to affect the anti-gay policies of the government in a country where homosexuality was not removed from the official list of mental diseases until 1999. In particular, there remains no law protecting LGPT people from workplace discrimination and Article 19 (2) of the Russian constitution does not specifically refer to sexual orientation.

USA: Outside obvious war zones, three countries continue to vie for first place in the league table of the least safe areas to walk the streets – Brazil, South Africa, and the USA. One good thing about a gunshot is that it can generally be heard and the police called. This is no longer the case in Tennessee, where it is now legal to carry a firearm with a fitted silencer. What's more, a new state law gives citizens a right to challenge any local ordinance, resolution, policy, rule, or other enactment on firearms that is preempted by state law concerning the carrying of a handgun. This presumably includes any policy relating to carrying a handgun on company premises.

USA: From the 31st of October 2017, it will be an offence in the city of New York for any employer to enquire during a job interview about an applicant's salary history, or to rely on salary history to determine their salary and benefits package. A similar law took effect in Philadelphia in May and will come into force in Massachusetts next July.

Dates for your diary:

July 28th 2017: New public holiday in **Thailand**

September 24th 2017: Federal elections will be held in **Germany**

October 1st 2017: Burqa ban comes into force in **Austria**

January 1st 2018: **New York** paid family leave law effective

January 1st 2018: New **Swiss** Citizenship Act comes into force

March 1st 2018: **Israel** data security regulations come into force

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

March 31st 2019: **Brexit** negotiation deadline

Travel Warnings

ALGERIA: Terrorist groups remain active in some parts of the country. Visitors should avoid traveling to remote areas.

BURUNDI: Visitors should exercise extreme caution throughout the country due to political tensions, criminal violence, and the potential for civil unrest.

CHINA: Dozens of flights at airports serving major cities in a region embracing Chengdu, Changsha, Guangzhou, and Shenzhen have been canceled or delayed due to heavy rains. Trains also have been halted, and roads have been cut off to many towns and villages in the region.

CONGO: Several towns in South Kivu province of eastern Congo, including Fizi, are being attacked by – or have come under the control of – armed groups. Visitors face a high risk traveling to these areas and are advised to make all but essential travel to the cities of Goma and Bukavu.

DOMINICAN REPUBLIC: There have been armed robberies in the country on roads close to the border with Haiti. Visitors should exercise extra caution.

INDIA: Soon Foreign visitors can book train tickets on Indian railways 360 days in advance from abroad, instead of the present 120 days for certain journeys and travel classes. These include first AC, second AC and executive class of mail express trains and in Rajdhani, Shatabdi, Gatimaan and Tejas trains. The facility is not available for sleeper and third class AC.

JAPAN: Typhoon Nanmadol made landfall in Nagasaki on the south-western main island of Kyushu. Dozens of flights have been grounded. Visitors should expect flooding and landslides in Fukuoka and Oita prefectures.

KENYA: On the 5th of July 2017 a police station in Pandanguo, Lamu County was attacked by an armed group. Visitors should exercise great caution in the country and comply with the curfew that is in place in Mandera County from the hours 6:30pm to 6:30am.

MALI: Visitors should avoid travelling to Mali due to ongoing terrorist attacks, criminal violence, and potential political instability.

MALAYSIA: The local authorities have imposed restrictions on travel by water in some coastal districts of eastern Sabah and in the coastal waters off eastern Sabah, including a night-time curfew.

OMAN: SalamAir flights have been rescheduled for operational reasons. Visitors are advised to check their flight status before leaving for the airport.

PHILIPPINES: Ninoy Aquino International Airport is currently closed for emergency repairs.

SRI LANKA: The spread of deadly dengue fever has killed a record 215 people this year, over 71,000 people have been infected. Dengue is an infection caused by a virus. Symptoms include a high fever, headaches, joint and muscle pain, vomiting, and a rash.

THAILAND: Visitors to Thailand should take extra precautions against mosquitoes as there have already been 136,000 dengue fever cases registered in Chiang Mai province this year – the highest level in 20 years. There is no inoculation against dengue, visitors are advised to protect themselves by using mosquito repellents.

USA: Visitors should expect enhanced security screening for all commercial flights to the US.

UK: British Airways (BA) cabin crew are to stage a further two weeks of strikes from the 19th of July 2017.

UKRAINE: Visitors should continue to avoid all travel to Crimea and the eastern regions of Donetsk and Luhansk due to political tensions in the area.

VENEZUELA: Rutaca Airlines has resumed domestic operations after its suspension by the Venezuelan civil aviation authority. International services remain suspended.

FedEE News

LEAVE IN CHINA: Detailed tables covering all provinces and metropolitan areas of China are now available in our knowledgebase. These are presented in both English and Chinese. The tables relate to minimum monthly wages, minimum hourly wages, Maternity, paternity and parental leave.

EMPLOYMENT LAW PROGRAMME: The latest addition to our new-style video training modules covers Germany This has now been posted on-line. The next two additions will cover the USA and Nigeria.

LUGGAGE TAGS: Please contact us for our attractive full-sized FedEE flag and also for our new extra-safe FedEE luggage tags. All are free of charge to member companies and their nominated users.

LEGAL HELPLINE: Members wishing to enjoy extended access to our telephone helpline can purchase a bundle of six additional enquiries at a significantly discounted price. Each enquiry may take up to 1.5 hours of a legal expert's time and unused enquiries may be carried forwards to future subscription periods - provided that the organization remains a member of FedEE.

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