



# Dernières nouvelles

Latest news | Neueste Nachrichten | Ulfime notizie | Últimas noticias | 最新消息

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## Inside this Issue:

**Italy:** Jobs Act decrees approved by Council of Ministers**Europe:** Clarification on rights of posted workers**Australia:** Ex-employee ordered to pay compensation for retaining company data**USA:** Amendments to employers' notice and record-keeping obligations in D.C.**Colombia:** Testing employees for alcohol permitted**France:** Sunday working given the green light**Canada:** New fees and requirements for employers hiring foreign workers**Netherlands:** Tougher rules on variable remuneration for financial sector

## Australia: Ex-employee ordered to pay compensation for retaining company data

The Federal Court of Australia recently ordered an individual to pay their former employer 50,000 Australian dollars (approximately 39,000 US dollars) in damages after they retained company data following termination of employment.

The employee in question had copied large quantities of company data onto an external hard drive which they did not return to their employer after their employment contract had been terminated. Despite this the employee signed a termination checklist in which they dishonestly claimed that they did not have any company property in their possession.

The Court noted that there was no evidence that the employee had disclosed this data or that the former employer has suffered any detriment due to the employee's actions. However, it was clear that one of the main reasons for not returning the data was that it could be valuable for the employee as a reference point in future projects with competitors.

Although employers will be relieved that the decision fell in favour of the employer, the case serves as a useful reminder of the importance of ensuring that contracts and internal rules contain clear provisions about the return of company property — including electronic data — upon the termination of employment. [Leica Geosystems Pty Ltd v Koudstaal (No 3) FCA 1129]

## Canada: New fees and requirements for employers hiring foreign workers

Employers in Canada now face new obligations when hiring foreign workers who are exempt from the Labour Market Impact Assessment process. Such workers include intra-company transferees and professionals under free trade agreements.

Since February 21st 2015 employers are required to present information about their business, complete an offer of employment form and pay a compliance fee before the foreign worker can apply for their employer-specific work permit. The fee is 230 Canadian dollars (184 US dollars) and must be paid online. If it is found that an employer has not complied with these new

requirements, they may have to pay administrative penalties or may even be prohibited from hiring foreign workers. In very serious cases, the employer could face a criminal investigation and prosecution.

The above fee does not apply to employers hiring workers with open work permits, however a new fee of 100 Canadian dollars (80 US dollars) will apply to open work permit applications. This must be paid at the same time as the work permit processing fee, which applies to all work permit applications.

## Colombia: Testing employees for alcohol permitted

According to a recent decision by Colombia's Supreme Court, it is permissible for companies to carry out alcohol tests on their employees.

The Court stated that companies may make use of technical devices to determine an employee's state of intoxication for the purposes of ensuring workers' health and safety and reducing risks in the workplace.

Employees should not refuse when requested by their superior to perform a breathalyser test. If an employee does refuse an alcohol test it may be considered a ground for dismissal. However, if the employee believes that their fundamental rights are being violated, they may refuse to do the test and have their arguments for refusing evaluated by a specialist committee.

## Europe: Clarification on rights of posted workers

In a recent case the European Court of Justice (ECJ) confirmed that, when posting employees to another EU member state, employers must comply with the minimum pay and working condition requirements of the host country.

In this case, a company established in Poland posted 186 workers to their branch in Finland. These employees brought a claim against their employer for failure to pay them in line with the minimum pay rates stipulated in the relevant universally-applicable collective agreements in Finland.

The Court held that the rules in force in the host EU member state will determine the minimum pay rate to be paid to the employees and on what basis this should be calculated — provided these are more favourable to the employees than the rules in the home country. However, the Court did clarify that for the rules of the host country to be enforceable on employers who post their employees there, the rules must be binding, clear and accessible.

As regards what pay amounts should be included in the calculation of the employee's minimum wage rate, the ECJ stated that a daily allowance intended to make up for the drawbacks of being posted away from their normal environment would be included. Allowances intended as a reimbursement of expenditure actually incurred by the employee would not be counted as part of the minimum wage.

Finally the Court ruled that a trade union in Finland was able to represent the employees in their claim before the Finnish courts. Although such representation is not possible in Poland it is allowed under Finnish procedural law which in this case was the law that applied to the posted workers. [C 396/13]

## France: Sunday working given the green light

Ministers in France have voted in favour of a law that will relax the rules on Sunday working. The so-called Macron Law (named after the Minister of Economy, Emmanuel Macron) will allow mayors to permit shops

to open on up to 12 Sundays per year instead of the current maximum of five.

Furthermore, the law provides for the creation of special 'tourist areas', 'commercial areas' and 'international tourist areas', in which Sunday work will be authorised throughout the whole year. In 'international tourist areas' shops would also be allowed to open every day until midnight. These areas, which are to be defined by decree, will be found predominantly in Paris, but also in Nice, Cannes and Deauville. Specific wage conditions will apply to work on Sundays and evenings.

The law still requires approval by the Senate in April. The Minister of Economy has stated that most of the law's provisions should enter into force in July.

## **Italy: Jobs Act decrees approved by Council of Ministers**

On February 20th 2015 the Council of Ministers in Italy approved a number of decrees which make up Matteo Renzi's 'Jobs Act'.

The decree that amends the law on dismissal (il decreto sul contratto a tempo indeterminato a tutele crescenti) was given final approval without the details of the law being changed. As a result, once the decree has been published in the Official Gazette, employees will no longer be entitled to reinstatement when their dismissal has been found to have been unjustified, except in the case of discriminatory dismissals and disciplinary dismissals based on non-existent facts. Instead, employees will be entitled to increased compensation. As regards collective redundancy, employees will no longer be entitled to reinstatement in cases of breach of selection criteria rules. However these rules will only apply to employment contracts entered into after the law's entry into force — which is expected to occur on March 1st 2015. For more

information on the changes that will be made to dismissals please see our [HR Knowledgebase](#).

In addition, the Council of Ministers approved the decree on parenthood. This decree — which still needs to receive final approval — provides for the extension of the period in which employees may take parental leave. Under the decree paid parental leave would be available to working parents until their child reaches six years of age, instead of three years as the law currently stands. Unpaid parental leave, which may currently be taken until the child reaches the age of eight years, would be available until the child reaches the age of twelve. The same rights would also be granted to parents of adopted children and those fostering children. In these cases the period of parental leave would commence from the date the child enters the parent's care.

The Council of Ministers also approved the abolition of project collaboration contracts (i contratti di collaborazione a progetto) and the limitation of the use of coordinated and continuous collaboration contracts (collaborazione coordinata e continuativa) from January 1st 2016, although this decree also requires further approval.

## **Netherlands: Tougher rules on variable remuneration for financial sector**

The Act on the Remuneration Policy of Financial Undertakings entered into force in the Netherlands on February 7th 2015. The law places new limits on the amount of variable remuneration and severance pay a financial undertaking in the Netherlands may grant its employees. It also introduces additional administrative obligations on such establishments.

The Act, which applies to all financial undertakings currently regulated by the Dutch Financial Supervision Act that have their statutory seat in the Netherlands,

fixes a cap on variable remuneration at a rate of 20% of an employee's fixed remuneration for that year. Higher bonus caps may apply to employees who work abroad, however. Severance payments for day-to-day policymakers are capped at 100% of the employee's fixed annual salary.

The law also states that all financial undertakings must have a written remuneration policy that clearly states the list of criteria on which variable remuneration is based. Financial undertakings are strictly not permitted to have a guaranteed variable remuneration scheme in place. In addition, applicable employers must lower or reclaim variable remuneration in the event that an employee did not meet the appropriate standards or is accountable for actions that led to the financial situation of the undertaking weakening substantially.

Most of the rules will apply to subsidiaries, irrespective of whether they are in or outside the Netherlands. In order to give companies time to comply with the new rules, transitional rules will apply.

## **USA: Amendments to employers' notice and record-keeping obligations in D.C.**

The Council of the District of Columbia in the US has approved emergency amendments to several employment laws, which make changes to the notice and record-keeping duties of all employers based in the District of Columbia.

Under the amendments, employers will be required to provide all their employees with written notice of their wage information, to include the employer's details as well as the employee's normal pay rate, their overtime pay rate and their regular pay day. This must be provided immediately for new hires and within 90 days of the law becoming effective for existing employees. If

any of the wage details subsequently change, the employer must issue the employee an amended notice. The Mayor is to provide a template of the wage notice for use by employers. This will be in English but translations into other languages will also be available. Generally, employers will have to provide the wage notice to employees in English — but they may also have to provide it in another language if a notice template is available in this other language and the employer knows that this language is the employee's primary language or the employee has requested the notice in this language.

As regards record keeping, the amendments mean that employers will be required to retain employee records for a minimum of three years unless the federal government has a greater prevailing standard. The amendments also clarify that employers need only keep working time records for their non-exempt employees. Currently employers are required to do this for both exempt and non-exempt employees.

These amendments will come into effect on February 26th.

## **Pay, Tax and Benefit Trends**

**BULGARIA:** In Q4 2014, average gross monthly wages in Bulgaria increased by 4.7% when compared to Q3 2014. According to the National Statistical Institute, the average gross monthly salary was 841 levs (430 euros) in October 2014, 833 levs (426 euros) in November 2014 and 865 levs (442 euros) in December 2014. Therefore the average gross monthly salary for Q4 2014 was 847 lev (433 euros).

**DENMARK:** Changes to the rules on severance payments came into force in Denmark on February 1st 2015. All employees are now entitled to severance pay equivalent to one month's salary if they are dismissed by their employer after 12 years of employment —

even if they are entitled to an old-age pension or employer-funded pension. Employees who have been employed by the same company for 17 years or more are entitled to severance pay equivalent to three months' salary.

**FIJI:** A new national minimum wage is due to come into force in Fiji on July 1st 2015. On this date the minimum wage will increase from 2 Fijian dollars (1 US dollar) per hour to 2.32 Fijian dollars (1.14 US dollars) per hour.

**IRISH REPUBLIC:** An Irish Labour Court has recommended that an employee be reimbursed for unpaid maternity pay, despite the fact that she gave birth in 2014 and the company's paid maternity scheme was suspended in January 2013. The Court took into account the organisation's financial difficulties and how the employer had given its employees 12 months' notice of the suspension of paid maternity leave benefits. However, it noted that the employee's terms and conditions of employment, entered into in 2000, included a provision that the employee would receive paid maternity leave. As such, they recommended that the employee should receive payment.  
[Recommendation no. LCR20906]

**NETHERLANDS:** Views are being sought in the Netherlands on a draft law that regulates the influence of works councils on certain agreements affecting pensions and pay. The draft law proposes that works councils in companies with more than 100 employees should receive more information about pay differentials within the company. It additionally proposes that works councils should have more influence when it comes to pension schemes. At present works councils have no right to consent to an amendment to a scheme administered by a pension fund. The consultation process will close on March 17th 2015.

**ROMANIA:** The government of Romania has announced plans to reduce social security

contributions for both employers and employees.

According to the draft of the new Tax Code, employers' contributions would be reduced from the current 15.8% of an employee's gross salary to 13.5%. Employees' contributions would be cut from 10.5% gross salary to 7.5%. These reductions would apply from January 1st 2017.

**SINGAPORE:** Employers in Singapore who from January 1st 2014 to December 31st 2014 had 12 or more employees are reminded that they now have a legal duty to submit their employees' income information electronically to the Inland Revenue Authority by March 1st 2015. Full-time resident employees, part-time resident employees, non-resident employees, pensioners, company directors and employees who have left the company during the year all count as employees.

**UK:** From April 6th 2015 there will be new statutory compensation rates in the UK. Under the Employment Rights (Increase of Limits) Order 2015, the maximum amount of compensation that the Employment Tribunal may grant for unfair dismissal claims will increase from 76,574 pounds (104,210 euros) to 78,335 pounds (106,600 euros). The maximum threshold for one weeks' pay for the purposes of calculating redundancy payments will increase from 464 pounds (631 euros) to 475 pounds (646 euros).

**USA:** Philadelphia has become the 17th city in the USA to introduce obligatory paid sick leave. On February 12th, Mayor Michael Nutter signed a Bill that requires all companies with 10 or more employees to allow their workers to accrue up to five days' paid sick leave per year. Under the new law, employees will earn one hour of paid sick leave for every 40 hours worked. This law will come into effect in May.

**VENEZUELA:** The Venezuelan government has once again decided to increase the national minimum wage. The 15% increase, which takes the national minimum

wage to 5,622.48 bolivars (approximately 885 US dollars) per month, has been given retroactive effective from February 1st 2015. This latest increase follows three minimum wage increases in 2014.

## Other Global HR News in Brief

**AUSTRALIA:** An employer in Australia was recently found to have breached the terms of an employment contract by failing to follow the investigation procedure established in their harassment and discrimination policy. Although at first instance the court found that the policy was not incorporated into the contract of employment because the language was too vague, the appeal court found otherwise. The appeal court held that the policy did form part of the contract because the contract required the employee to observe the company's policies at all times, the policy was issued at the same time as the offer of employment, and training on the policy was regularly conducted for employees. As a consequence the employer was ordered to pay damages to the employee. [Romero v Farstad Shipping (Indian Pacific) Pty Ltd [2014] FCAFC 177]

**CANADA:** Two corporate directors in Canada have been sentenced to 25 days in prison for failings in health and safety that led to the death of a worker. Various violations of the Ontario Health and Safety Act were found by the Ministry of Labour, including a lack of training and lack of fall protection equipment and railings. The company was also fined 250,000 Canadian dollars (200,321 US dollars).

**EUROPE:** According to the European Agency for Safety and Health at Work's second European Survey of Enterprises on New and Emerging Risks, over three quarters of establishments in the EU conduct regular risk assessments. The survey, however, reveals significantly varying figures by country: in Italy and Slovenia 94% of establishments regularly carry out risk

assessments whereas in Luxembourg the figure is just 37%. The main reasons given by those establishments who do not regularly carry out risk assessments are that they are already aware of the occupational risks and hazards (83%) and that there are no major problems (80%).

**GERMANY:** Germany's Federal Labour Court has decided for the first time that a trainee may be summarily dismissed if there is a strong suspicion that they committed a fundamental breach of duty. This is despite the fact that, under law, trainees enjoy special protection against dismissal. In this case, an apprentice at a bank was suspected of stealing 500 euros from a safety deposit box. When called into a meeting to discuss the matter, the trainee appeared to confirm information that only the culprit could have known and was therefore dismissed. [6 AZR 845/13]

**GERMANY:** The Higher Labour Court of Düsseldorf in Germany recently found that a works council had no right to influence the setup of an employer's social media page. In this case, the employer had established a company Facebook page and users of the page were able to post comments and suggestions. Although, according to the employer, the page was intended as a marketing tool, the works council believed that it was being used to monitor employees and therefore argued that it should be deactivated. The Court held that employee monitoring and surveillance was only possible through the page if the users of it made a complaint. As the page could not produce information or records on employees automatically, the page was not an employee monitoring device and the works council had no right to codetermine it. [9 Ta BV 51/14]

**MEXICO:** The Senate of Mexico has approved an amendment to the country's Federal Labour Act that will give protection to employees with disabilities. If the law passes the full legislative process, employers will have a duty to make the workplace accessible to

disabled workers by adapting work facilities or redesigning the workplace. Employers will have a duty to ensure that disabled employees' working conditions are not, for any reason, inferior to those established in law.

**PHILIPPINES:** An employer was recently ordered by the Supreme Court of the Philippines to reinstate an employee whose employment was terminated after she informed her employer that she had cancer. For a disease to be considered a justified ground for termination the employee must be suffering from a disease that cannot be cured within six months and their continued employment must be either banned by law or considered detrimental to the employee's health or to the health of their colleagues. In this case, the employee had not been given the opportunity to present medical certificates and had signed the contract to not renew her contract involuntarily. The employer was also ordered to back pay wages, annual leave pay, 13th month and other bonuses.

**RUSSIA:** Proposed amendments to article 261 of the Labour Code of the Russian Federation have been submitted to the State Duma for review. The draft law proposes the introduction of employment protection for employees who are on leave to care for a dependent child, equivalent to the protection already offered to pregnant employees. Under the proposed amendments, an employer would not be permitted to dismiss an employee who was on leave to care for a dependent child except in the event of the company's liquidation. If an employment contract were to expire during an employee's period of leave to care for a

dependent child, the employer would be obliged, upon the employee's written request and production of proof of the employee's situation, to extend the contract until the end of the leave period.

**SWITZERLAND:** The Swiss government has unveiled a Bill that would impose new quotas on EU workers from February 2017. The draft law requires employers in Switzerland to demonstrate that no Swiss worker qualifies for a position before they may obtain a work permit for a non-Swiss national to fill the role. This would affect all EU citizens who remain in Switzerland for a period exceeding four months. The Bill comes one year after Swiss voters decided in a controversial referendum to introduce immigration quotas and effectively challenge the EU-Swiss free movement agreement.

**UK:** A recent case which went before the UK Employment Tribunal has emphasised the importance of including provisions on electronic cigarettes in workplace smoking policies. In this case, an employee of a school had been caught smoking an e-cigarette on school premises in full view of pupils. She was called in for a disciplinary hearing as smoking was not allowed on school premises, but resigned before the meeting. The employee's claim for constructive dismissal was dismissed by the Tribunal. However, the Employment Judge stated that as the school's smoking policy did not prohibit the use of e-cigarettes, the school could have faced a claim for unfair dismissal had the employee been dismissed rather than resigned. [Insley v Accent Catering ET/3200687/2014]

## Dates for your diary:

**March 1<sup>st</sup> 2015:** The decree amending the law on dismissal in **Italy** is expected to come into force.

**March 15<sup>th</sup> 2015:** A law prohibiting Sunday working in the retail sector will come into force in **Hungary**.

**April 1st 2015:** The monthly minimum wage for Moscow in **Russia** will increase to 15,000 rubles (198 euros).

**April 7th 2015:** A law amending the **Massachusetts** Maternity Leave Act will come into effect in the USA.

## Latest news for business travellers:

A three day strike scheduled by unions to take place from February 27<sup>th</sup> to March 1<sup>st</sup> may cause disruption to flights with the **French** airline Corsair International.

Partial strikes held by metro workers in Lisbon, **Portugal** on February 27<sup>th</sup> are likely to affect travel in the country's capital.

For the second time in 10 days, an erupting volcano has forced several flights to be cancelled at Puebla International Airport in **Mexico**. It is likely that further disruption to flights will be caused by the volcano.

Travellers to **Bangladesh** are advised to remain vigilant at all times during the current period of civil unrest in the country. Cases of violence, arson, vandalism and the use of explosives and firearms have become more frequent. A nationwide blockade of road, rail and river transport enforced by the parties opposed to the government also remains in force and strikes are regularly taking place.

The US Department of State is warning its citizens to exercise caution when travelling to **Nigeria** during the country's elections. Originally due to be held on February 14th and February 28th, the elections have been postponed to March 28th and April 11<sup>th</sup> due to security concerns. It is possible that there will be outbreaks of violence around this time.

Travellers to **Uganda** should be aware that there has been an outbreak of typhoid in the capital city of Kampala.

## FedEE news:

**FEDEE FELLOWSHIP:** The next Fellowship Meeting is due to take place this Spring. Individual Fellowship is open to HR Directors and their first reports and seasoned employment lawyers who have been in practice (or acted as an in-house counsel) for at least five years. If you are interested in becoming a Fellow, please contact Cassandra on [cassandra.lu@fedee.com](mailto:cassandra.lu@fedee.com).

**NEW COUNTRY COVERAGE:** A full knowledgebase entry for **India** is now available in the non-European section of our HR Knowledgebase. A full entry for **Singapore** is currently under construction and is expected to be completed in the next couple of weeks.

**ADVICELINE ENQUIRY FORM:** Please note that all enquiries on matters of employment law, pay data or other HR-related issues must now be submitted via our new [Adviceline Enquiry Form](#) which can be found on the top toolbar in the Members' Area.

**FEDEE LAW PROGRAMME UPDATE:** We are currently updating our FedEE Law Programme. 2015 versions of our European country presentations — as well as new Latin American presentations and a presentation for New Zealand — will shortly be available in the [Members' Area](#) of our website.

**NETWORK WITH OTHER FEDEE PROFESSIONALS — AND MORE:** Don't forget that FedEE's face-to-face networking community (called butN) is now 'live' and available for free to both members and non-members. This is a good opportunity to meet other professionals — particularly during business trips. Join up today at <http://www.but-n.com>.

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