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Chile: Proposed reform of industrial relations system

A Bill aimed at modernising the system of industrial relations has been signed by the Chilean government and sent to the Chilean Congress for review. In total the Bill makes ten proposals.

One of the proposals is that employers should be prohibited from replacing workers on strike — although the trade union would have a duty to provide sufficient workers to meet minimum levels of service.

Additionally the Bill includes provisions to simplify the procedure of regulated collective bargaining, extend the list of issues that can be negotiated and strengthen the rights of working women. The Bill also extends the scope of collective bargaining to include apprentices and temporary workers whilst extending the right of information to trade unions.

France: Equal pay for equal work ruling

France's Supreme Court has ruled that a difference in level of education does not justify a discrepancy in pay

at the point of hire between employees in the same job role. A difference in pay is only justified once a difference in ability has been demonstrated during the performance of the role.

In the case brought before the Supreme Court, an employee had worked for their employer for over twenty years when a new graduate was hired to perform the same role on significantly higher salary. The newly-hired graduate had an engineering degree, unlike the long-standing employee. The long-standing employee brought a claim for violation of the principle of equal pay for equal work.

The Court conceded that a difference in professional ability or work quality may constitute an objective ground for applying different rates of pay to employees who perform the same job. However, an employer will only be able to assess employees' respective abilities in carrying out a role once they have both spent time in the position. The most deserving employee may receive higher wage increases or progress faster through the salary scale once they have begun in the role, but a difference in pay will not be justified at the point of hire. [No. 12-20069]

Hong Kong: Statutory paternity leave approved

An amendment to the Employment Ordinance has introduced a statutory right to paternity leave for private-sector employees in Hong Kong.

Under the amended law, from February 27th 2015 male private-sector employees will be entitled to three days of paternity leave provided they are the father of the child in question, they have been employed under a continuous contract immediately before taking leave and they have complied with the applicable notification requirements. While on paternity leave, qualifying employees will be paid 80% of their average daily wages.

Employers failing to grant statutory paternity leave or pay will be liable to pay a fine of 50,000 Hong Kong dollars (6,450 US dollars).

Italy: Latest on the Jobs Act II

During the Christmas period the so-called 'Jobs Act II' moved quickly through the legislative process in Italy. As such it is expected to become enforceable during the course of the next month. The Act will make a number of changes to Italian employment law, particularly in the area of termination of employment.

Whilst the Jobs Act II does not alter the types of dismissal that are allowed under the law, it does significantly reform the consequences of dismissals. The Act also introduces a new settlement scheme which may be used to solve termination disputes quickly.

Furthermore, the Jobs Act II amends the rules concerning collective redundancies. In the case of breach of selection criteria the redundant employees

will no longer be entitled to reinstatement. Instead, the dismissals will remain valid and the employees will be awarded compensation in the amount of two months' pay per year of seniority. In the case of breach of collective dismissal procedures, dismissals will remain valid as before, however the amount of compensation to be awarded to employees will change.

The Act also repeals both the provision which required a pre-dismissal procedure and the provision allowing judicial fast tracking of the most serious cases of dismissal.

The new rules will only apply to employees hired after the law comes into force. The former rules will continue to apply to all employees hired before the reform. The reforms will apply to all categories of workers except upper management (*dirigenti*). For more information on the details of the Jobs Act II see our [Knowledgebase](#).

Poland: Changes to rules on preliminary medical examinations

As of April 1st 2015, employers in Poland may face lower labour costs as a result of a change to rules regarding preliminary medical check-ups.

Currently, all employees beginning a new job are required to undertake an initial medical test — paid for by the employer — to confirm they are fit to take up the job in question. The only exemption to this rule is if the worker is re-employed with their previous employer in the same position or a position with the same working conditions after a break not exceeding 30 days.

As of April 1st 2015, however, there will be further exemptions to the above rule. If an employee presents a valid medical certificate (obtained through a referral issued by the previous employer) that proves the employee is fit to work, a medical test will not be

required. The same is true if the new employer can confirm that the working conditions of the new job are in line with the employee's previous working conditions.

Initial medical tests will still be mandatory for any prospective employee that will be performing hazardous or high-risk job roles. There will be no change to rules regarding periodic medical examinations.

Singapore: Company banned from hiring new foreign workers

Singapore's Ministry of Manpower has prohibited an employer from applying for passes to hire foreign workers for a period of two years. This is the first time that the Ministry of Manpower has taken such action.

On August 1st 2014 the Fair Consideration Framework came into force. The Framework requires all employers to apply fair, merit-based and non-discriminatory employment practices when hiring new employees and to consider Singaporean workers fairly for any job vacancies. All companies must advertise their job vacancies on the national job bank for at least 14 calendar days before applying for a work pass for a foreign worker.

In this case, the Ministry decided to restrict an employer's work pass privileges after finding that the employer had dismissed 13 Singaporean employees and replaced those workers with foreign nationals. The reasons for dismissing the employees were found not to be based on valid grounds and the company's employment practices were found not to give Singaporean workers fair employment opportunities. The company will not be able to apply for new work passes, but will be permitted to renew existing work passes.

Spain: Social security contributions waiver for companies in force majeure situations

The Spanish Cabinet has approved a measure to provide aid to companies who maintain their employee's jobs after a situation of force majeure has occurred, forcing them to cease trading, suspend temporary contracts or reduce working hours. It will only apply in cases of unforeseeable and unavoidable catastrophic events that prevent the continuation of business activity (e.g. a fire destroying a factory).

The aid will be awarded to those companies who suspend contracts of employment or reduce working time instead of dismissing employees. The aid consists of a waiver of up to 100% of employer social security contributions for the affected workers during a period of 12 months. This period may be extended for another 12 months if certain conditions are fulfilled.

To be eligible for this aid a company must maintain the jobs of 100% of the workers affected by the force majeure situation for a period of one year after the suspension or reduction occurred (this does not include workers who have been relocated) and they must reinvest to ensure that the company's commercial activities continue. It is also necessary for the company to be fulfilling all their tax and social security obligations.

UK: Guidance on new Fit for Work scheme

In December 2014 a new scheme was launched in the UK to help employers manage long-term sickness absence. The scheme, known as 'Fit for Work' offers employers free advice about occupational health matters via a website (fitforwork.org) and telephone service. It will also soon offer free occupational health

assessments for employees who have been off sick for four weeks. Following such an assessment the employer may receive a Return to Work Plan containing useful advice and recommendations to help the employee return to their duties as soon as possible.

According to guidance recently issued by the Department of Work and Pensions (see [here](#)), employers have no legal duty to refer employees to Fit for Work or apply any of the recommendations stated in the Return to Work Plan — it is subject to company discretion whether they decide to participate in the scheme. In general, it will be the employee's GP who will refer the worker to Fit for Work, but the employer may also do so if the worker in question fulfils the relevant criteria. The employee must, however, consent to the referral.

From January 1st 2015, a tax exemption of up to 500 pounds (639 euros) per employee per tax year is also available to employers. This covers the cost of medical treatments that have been recommended by Fit to Work professionals or any employer-arranged occupational health service to help the employee return to work after sickness absence. If the employer makes any payments that exceed this 500 pound cap, they will have to pay tax and national insurance contributions on the excess.

USA: Final Rules on union election process published

The US National Labor Relations Board (NLRB) has published its controversial Final Rules on the union election process. The rules, which are scheduled to come into effect on April 14th 2015, will significantly reduce the time between the filing of a trade union election petition and the date of the election. At present an election normally takes place within one to two months after a petition is filed. Under the

NLRB's new Final Rules, however, the time between the filing of the petition and the holding of the elections is likely to be reduced to 10-20 days. As a result, employers will have considerably less time to provide information to their employees about unionisation.

The new rules also state that employers must provide a list of prospective voters, specifying their location, shift and job classification, one business day before the pre-election hearing. Employers will also have to include personal email addresses and phone numbers of employees on the election voter list within two business days (instead of seven calendar days) of the election agreement or the regional director's decision directing an election.

The new Final Rules, together with the recent decision by the NLRB in Purple Communications (see our newswire dated [December 18th 2014](#)) mean that unions will be able to organise employees more easily. The Purple Communications decision may be appealed, however, and the Final Rules are already facing a legal challenge from the US Chamber of Commerce.

Pay, Tax and Benefit Trends

CUBA: The Cuban government has approved a new wage policy for workers in joint ventures and wholly foreign-owned companies. Previously, all employees had to be paid in line with the salary scale approved by the government. Now, the wages of these employees may be agreed through individual agreements taking into account wages paid for similar job roles in the same industry or geographical area as well as the country's wage scale and other payments laid down in law.

CHINA/NETHERLANDS: A new double taxation treaty between the Netherlands and China now applies to all income received on or after January 1st 2015. As one

of the most favourable tax treaties with China it is likely to have a very positive impact on investments between the two countries.

LITHUANIA: A number of changes have been made to the Lithuanian Labour Code in an attempt to tackle the issue of illegal employment and to ensure that workers are fairly paid. Under the amended law, if a worker is found to be employed illegally their employer will be obliged to pay the worker the agreed amount of salary, which cannot be less than the legal minimum wage, for at least three months (unless it is proven that the illegal employment was being performed for a different period of time). The law also states that any dispute between the illegally employed person and their employer concerning payment should be resolved by individual employment dispute settlement procedures.

MEXICO: In December the minimum wage commission in Mexico agreed to increase the general minimum wage by 4.2% as of January 1st 2015. As a result the minimum wage in Zone A is now 70.10 pesos (4.81 US dollars) per day and the minimum wage in Zone B is 66.45 pesos (4.56 US dollars) per day.

SLOVAKIA: Under an amendment to the Law on Income Tax, companies investing in research and development activities in Slovakia may now take advantage of significant tax benefits. As of January 1st 2015, companies in Slovakia may claim a 25% tax relief for costs related to research and development activities and a 25% tax relief on wages paid to new graduates.

SPAIN: The national monthly minimum wage in Spain has been increased to 648.60 euros per month (21.62 euros per day) for 2015. This represents a 0.5% increase from the rate in 2014. The minimum wage was frozen in 2012 and 2014, but was increased by 0.6% in 2013.

TURKEY: Following the conclusion of a deal between the government, employers and trade unions, the gross national monthly minimum wage in Turkey increased to 1,201.50 Turkish lira (423 euros) on January 1st 2015. The new rate will apply for six months before increasing again to 1,273.50 (449 euros) for the second half of 2015. Approximately 5 million employees will be affected by these increases.

UK: According to the Deduction from Wages (Limitation) Regulations 2014, which came into force in the UK on January 8th 2015, Employment Tribunals may only consider backdated claims for unauthorised wage deductions — including shortfalls in holiday pay — where these deductions occurred no more than two years before the claim was lodged with the tribunal. This applies to claims brought before an Employment Tribunal on or after July 1st 2015. The law also now explicitly states that the right to paid holiday is not incorporated into the employment contract.

USA: As per the ObamaCare Employer Mandate, companies in the USA that employ 100 or more full-time workers now have to provide affordable health insurance to at least 70% of their employees. This will be increased to 95% of employees in 2016, at which time the obligation will also apply to companies employing between 50 and 100 employees. Companies not complying with this obligation will have to pay substantial fines.

Other Global HR News in Brief

AUSTRALIA: Australia's federal government has asked the Productivity Commission to review the Fair Work Act. The review will analyse the whole workplace relations system. In particular it will assess the ability of employers to manage their employees flexibly. Recommendations and a final report are expected later in the year.

BELGIUM: On January 1st 2015, the age for early retirement in Belgium was increased from 60 to 62. As a transitory measure, however, workers who reach the age of 60 before December 31st 2016 will still be able to retire at the age of 60.

DENMARK: The Danish Parliament has adopted a reform of international recruitment to make it easier for companies to hire highly-skilled employees from non-EU states. One of the 26 initiatives adopted involves the creation of a new fast-track system for work and residence permit applications made by pre-approved employers. The reform will enter into force on January 1st 2015 although residence permits will only be issued under the fast-track scheme from April 1st 2015.

GERMANY: Germany's Federal Labour Court has clarified that an employee who changes employers in the middle of the year must be able to demonstrate that they still have outstanding annual leave if they wish to claim it from their new employer. The previous employer is required to provide the employee a certificate of service upon termination of employment which confirms whether or not the employee has any unused or unpaid annual leave remaining. Pursuant to the Federal Holidays Act, a worker may not claim a double holiday entitlement (e.g. they may not claim full entitlement of leave with their new and old employer in the same calendar year). [Az: 9 AZR 295/13]

INDIA: The High Court of Kerala in India has held that female employees who have had a baby using a surrogate mother are entitled to post-natal maternity leave and should not be discriminated against for not giving birth to the child themselves. The court made it clear that such mothers should be treated on an equal footing with mothers who have given birth, however they do not have the right to maternity leave granted for the purpose of physically recovering from the birth.

ITALY: A decree providing for the entry of 17,850 non-EU workers into Italy for non-seasonal employment and self-employment has been approved and is awaiting publication in the Official Gazette. Employers may apply for work permits for non-EU workers on the website of the [Interior Ministry](#).

JAPAN: A draft law regarding the employment of young workers has been submitted to the Diet in Japan. The law aims to improve the employment situation of young people by establishing a system of certification for employers who actively hire, train and retain young workers. Such companies will receive subsidies or be given the right to carry a certification mark on their products or services in acknowledgement of their employment of young people.

SINGAPORE: In the first half of 2016 it will become mandatory for employers in Singapore to issue key employment terms to their employees in writing. Guidelines on how this should be done have now been published by the Ministry of Manpower in the hope that they will encourage employers to follow this good workplace practice even before it becomes mandatory. According to the guidelines employers should provide the written particulars before commencing employment or, if this is not possible, within 14 days of the employee starting work. The terms that should be in writing include the name of employer and employee, the job title and description of duties as well as working time.

SLOVENIA: According to Slovenia's official statistical office, employees worked 0.9% more hours in Q3 2014 than in Q3 2013. The total number of hours worked by employees increased by 15.8% in administrative and support service activities and 12.1% in the transport and storage sector. However, the number of hours worked in the water supply, sewerage, waste management and remediation sector decreased by 10.1%.

Dates for your diary:

February 27th 2015: From this date, eligible male private-sector employees in **Hong Kong** will be entitled to three days' paternity leave under statute.

April 5th 2015: Eligible parents of children due to be born or adopted on or after April 5th 2015 will be entitled to share parental leave and pay in the **UK**.

Latest news for business travellers:

Travel warnings have been issued in the **UK** due to snow and icy conditions. The Met Office has issued an amber alert in some parts of the country, therefore all motorists, bus and train passengers should expect travel disruptions and delays in the next few days.

In light of the attack in Paris, France of the satirical publication Charlie Hebdo, many countries in **Europe** are on high terrorism alert.

After the President's residence was attacked in Banjul, the capital of Gambia, at the end of 2014, a number of checkpoints have been put in operation. All travellers to **Gambia** should be prepared for their vehicles to be searched if stopped by security forces.

Following a suicide attack that killed three border guards close to the Arar crossing point on the border with Iraq, the Australian government is advising its citizens to reconsider their need to travel to **Saudi Arabia**.

Travellers to **Malawi** should be aware that serious flooding, particularly in the south of the country, has affected key infrastructure including roads.

Volcanic ash from a volcano in **Tonga** is currently causing disruption to flights in the South Pacific.

FedEE news:

NEW HONG KONG OFFICE: We are pleased to announce the incorporation of FedEE Global in Hong Kong. Our new Hong Kong office is expected to be fully operational within two weeks and details of the new address and telephone number will be posted on our website shortly.

NEW MEMBERSHIP SECRETARY: We would like to take this opportunity to welcome our new Membership Secretary, Cassandra Lu, who has taken over from Angelika Rivero. All enquiries concerning membership should now be directed to Cassandra at cassandra.lu@fedee.com or on +44 (0)117 975 8611.

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.

NEW GUIDANCE NOTES: We recently published two new guidance notes on [trade unions](#) and [trade union trends](#) around the world. These are accessible in our [guidance notes section](#) of the Knowledgebase. You will also find in this area of the Knowledgebase a recently updated guidance notes on [post-termination non-compete clauses around the world](#).

NETWORK WITH OTHER FEDEE PROFESSIONALS — AND MORE: FedEE's new face-to-face networking community (called butN) is now 'live' and both members and non-members have started signing up for it around the world. This is a good opportunity to meet other professionals — particularly during business trips. The community also needs your support to make it thrive. Join up today at <http://www.but-n.com>.

FOLLOW US: Follow us on [Twitter](#), [Facebook](#) and [LinkedIn](#) for news on upcoming events and discussions on global employment law and HR issues.

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