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Australia: Zero-tolerance drug policies strengthened

Zero-tolerance drug and alcohol policies have been strengthened following a decision of the Federal Court of Australia. The Federal Court endorsed the decision of a full bench of the Fair Work Commission (FWC) in refusing to reinstate an employee who had been dismissed after failing a drugs test.

The employee was a ferry master who accidentally drove his ferry into a pylon when working in replacement of a colleague. Following the incident the employee tested positive for cannabis. In line with the employer's zero tolerance drugs and alcohol policy, the employee was immediately suspended. After further investigation the employee was dismissed with pay in lieu of notice.

On first hearing, the FWC found in favour of the employee. It was concluded that, although he had breached the company's policy on drug use, the dismissal was unfair as the drug test did not prove impairment and there was no evidence of a link

between the drug use and the incident. However, a full bench of the FWC overturned this decision on appeal, holding that the zero-tolerance policy was relevant whereas absence of proven impairment was not. The Federal Court found the latter decision to have been validly reached. [Harbour City Ferries Pty Ltd v Christopher Toms [2014] FWCFB 6249;]

Canada: Greater protection against workplace sexual harassment proposed

In its Action Plan to Stop Sexual Violence and Harassment, the government of Ontario in Canada has revealed new plans to tackle sexual harassment in the workplace.

The government proposes amending the Occupational Health and Safety Act to include a specific definition of sexual harassment. Currently only 'workplace harassment' is defined under the Act. The government also wishes to include a provision that explicitly imposes an obligation on employers to make every reasonable effort to protect workers from sexual

harassment in the workplace. Employers would be expressly required to investigate and address complaints of workplace sexual harassment.

In addition, the government proposes establishing a Code of Practice to help employers develop more robust sexual harassment policies. It also envisages establishing a special team of inspectors to deal with complaints of workplace harassment — including sexual harassment — and to enforce the provisions of the act across the province.

Europe: Report on fathers' take up of parental leave across Europe

According to a new report by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the proportion of fathers taking parental and paternity leave is increasing in most EU Member States, although it is still fairly low.

Paternity and parental leave systems in Europe vary significantly. In 14 EU states, parental leave can be shared by the parents. In 12 EU states, there is an individual entitlement to leave that cannot be shared between the parents. In Portugal, Sweden and Norway, parental leave is divided into two: some leave can be shared and some leave cannot be shared.

Interestingly, the law in the Czech Republic allows men to take parental leave under equivalent conditions to women. Despite this, men only represent 1.8% of the total number of people taking parental leave. This percentage has not really changed over the past five years. In Finland, the number of men taking parental leave has grown by 50% between 2002 and 2012, although fathers taking parental leave still represent less than 9% of the total uptake of parental leave.

In Portugal, the number of cases where parental leave is shared by both parents has increased significantly in

recent years — between 2005 and 2013 the proportion of fathers sharing parental leave rose from 0.5% to 28.5%. In Sweden, there has also been an increasing trend for fathers to take parental leave. In 2013, fathers took nearly 25% of the total parental leave in Sweden — more than double the figure in 2000.

Eurofound's research has highlighted that the reasons for taking parental or paternity leave depends on numerous factors such as the duration, compensation and flexibility of the leave schemes in place. It also depends on the accessibility and flexibility of childcare facilities and the employee's fears of being marginalised from the labour market whilst on leave.

France: Guidelines for employers on 'Bring Your Own Device' policies

The French data protection authority, CNIL, has published best practice guidelines regarding the use of personal computer equipment. The key message is that employers must strike a balance between key interests — mainly legitimate security concerns and employees' privacy.

CNIL reminds employers that, under labour law, they are required to provide their employees with all the equipment necessary to fulfil their employment obligations. The use of personal computers for business reasons does not override this requirement.

Employers are accountable for the security of personal data, therefore it is vital to have safeguards in place to manage any risks to the integrity and confidentiality of data. Risks can be reduced by implementing encryption solutions, controlling remote access through a strong user authentication system, requiring the observance of certain safety measures and having a procedure that deals with the failure or loss of a personal device.

However, employers should also be aware of an employee's right to privacy — in particular if they have security measures which impose limits on the private use of a smartphone. Any restrictions should be proportionate. The employer is allowed to apply a remote wipe tool which captures the employee's remote access to corporate resources, but if they wish to remotely wipe any data that is saved on the employee's device they must first acquire consent from the employee.

India: High Court considers ownership of employee inventions

The High Court of Bombay in India recently confirmed that a patent for an invention made during the course of employment can belong to the employee.

The case reviewed by the Court involved an employee who had made an invention whilst working as managing director of a company. The employee filed the patent for the invention in his own name but the company claimed that, as he has made the invention using the resources of the company, the patent should have been filed in the company's name. The Court found that the employee had no obligation to register the patent in the name of the company as there was no evidence that he had a duty to invent as part of his role.

Under Indian copyright law, the employer is the first owner of a copyright created by an employee during the course of employment. However, Indian patent law provides that inventions created by an employee can belong to the employee as the inventor of the invention; the rights will normally be determined by the terms of the employment contract.

This case highlights the importance of clearly stating in the employment contract whether or not the employee

is under a duty to invent and which party has the right to ownership of the patent when an invention is made during the course of employment. [Darius Rutton Kavasmaneck v Gharda Chemicals Ltd & ors (2014) SCC Online Bom 1851]

Spain: Court awards enhanced severance payments for unfair dismissal

In a recent case, the Spanish Supreme Court disregarded legislation by awarding an employee a higher rate of severance pay for unfair dismissal than that provided for under the legislative reforms of 2012.

The 2012 labour reform established two rules for calculating severance pay in the case of unfair dismissal, depending on whether the service took place before or after February 12th 2012. The amount of severance pay applicable to service before February 12th 2012 will be calculated at 45 days' salary per year worked, up to a maximum of 42 months. Severance pay applicable to service after this date will be calculated at 33 days' salary per year of service, up to a maximum of 24 months. If an employee worked both before and after February 12th 2012, the resulting severance amount may not exceed 720 days' salary — unless the calculation of the period prior to the 2012 law gives a higher number of days, in which case this figure will apply as the maximum severance amount, without exceeding 42 monthly payments.

The employee in this case had worked for their employer for 22 years and five months. The Supreme Court awarded the worker the full severance payment of 42 months despite the fact that he had not worked sufficient years to generate this right. [No case reference available]

UK: What constitutes a reasonable disciplinary investigation?

The UK Court of Appeal has held that an employer does not have to investigate every argument of defence presented by an employee in order for a disciplinary investigation to be considered reasonable. Instead, the investigation should be evaluated as a whole.

In this case, an employer discovered that one of their employees had fraudulently over-claimed his mileage costs. They dismissed the employee on the grounds of gross misconduct. The employee provided numerous explanations — including parking difficulties, one-way systems and road closures, but the employer did not investigate every single journey or every single explanation offered by the employee. The employee brought a claim for unfair dismissal alleging that the investigation was deficient.

The Court was clear that although the investigation was not comprehensive, it was reasonable considering all the circumstances of the case. As such it rejected the claim for unfair dismissal. [Shrestha v Genesis Housing Association Ltd (2015) EWCA Civ 94]

USA: New rules for spouses seeking work permits

The spouses of certain highly skilled immigrant workers will soon be allowed to apply for work permits in the USA, thanks to a key US immigration reform.

The reform, which comes into force on May 26th 2015, applies to spouses of holders of the H-1B visa who have already been approved for permanent residency or who have been granted an extension to stay beyond the H-1B visa's usual limit. At present, the spouses of such workers are not eligible to work in the US.

It has been estimated that approximately 180,000 individuals will be eligible to apply for work authorisation under this scheme in the first year and about 55,000 each year thereafter.

Pay, Tax and Benefit Trends

AUSTRALIA: Figures released by the Australian Bureau of Statistics show that the seasonally adjusted Wage Price Index rose 0.6% in the December quarter 2014 and 2.5% through the year to the December quarter 2014. At the industry level, rises in the original indexes through the year ranged from 1.9% for Professional, scientific and technical services to 3.4% for Education and training and Arts and recreation services.

AZERBAIJAN: In January 2015, employees in Azerbaijan earned an average monthly nominal wage of 444.40 manat (approximately 423.81 US dollars). According to the data from the State Statistical Committee, average monthly wages were higher in the following industries: mining; finance and insurance; information and communication; professional, scientific and technical; and construction.

GERMANY: The Berlin Labour Court in Germany has confirmed that additional annual leave pay and bonuses should not be included in the calculation of the minimum wage. The Court held that the minimum wage should pay for the services actually performed by the employee. Any bonuses paid cannot count towards this amount and should be paid in addition to the minimum wage. [Judgment of 04/03/2015, Ref. 54 Ca 14420/14]

IRISH REPUBLIC: A public consultation on the national minimum wage rate has been launched by the Republic of Ireland's newly-established Low Pay Commission. All views on this issue should be

submitted by 5pm on April 13th 2015. The Commission will provide its first report by July 15th 2015.

ITALY: Following in the footsteps of Germany, Italy is intending to introduce a national minimum wage. The exact amount has not yet been decided, but it is likely that the wage will be within the region of 6.30–7.00 euros. This wage would apply to all employees whose pay is not governed by a national collective agreement. Italy is only one of a few countries in Europe that does not have a statutory minimum wage.

PHILIPPINES: Last month a law was passed in the Philippines to increase the employee tax exemption ceiling on 13th month payments and other bonuses. The ceiling was raised from 30,000 Philippine pesos (approximately 670 US dollars) to 82,000 Philippine pesos (approximately 1,830 US dollars) and applies to both public and private sector employees from January 1st 2015.

SLOVENIA: A scheme that was introduced in Slovenia in 2013 to encourage the employment of unemployed young people has been extended until the end of 2015. Under the scheme, employers are exempted from the payment of employer social security contributions for the first 24 months of employment when they hire — on an indefinite-term employment contract — a worker under the age of 30 who has been unemployed for at least three months.

UK: It was revealed in the UK Budget 2015 that employer national insurance contributions will be abolished for employees under the age of 21 in April 2015, and for young apprentices in April 2016. It was also revealed that corporation tax will be cut to 20% from April 2015 and the national minimum wage will be increased to 6.70 pounds per hour in October 2015.

UK: The UK government has announced that businesses with more than 250 employees will soon be legally required to publicly reveal the difference in the

average pay of its male and female employees. This requirement should be introduced within the next 12 months. Recent research has shown that despite more than 200 companies voluntarily signing up to the 'Think Act Report' scheme, which encourages employers to report gender pay data, only five companies have actually published their pay data.

USA: A report by the US Bureau of Labor Statistics has shown that, on average, private sector employers in the US spent 31.32 US dollars per hour on total employee compensation in December 2014. The costs borne by private sector employers for paid leave benefits were, on average, 2.16 US dollars per hour worked and the cost of legally mandated benefits was 2.50 US dollars per hour worked.

Other Global HR News in Brief

CHINA/CANADA: Canadian business travellers making frequent trips to China are now able to benefit from 10-year multiple entry visas. Although China has only just agreed to the issuing of these visas to Canadian travellers, the same visas have been offered by Canada to Chinese travellers since 2012.

CHINA: In an attempt to ease the pressure on the country's pension fund, the government of China has announced that it will be increasing the official retirement age. The increase will, however, occur gradually and progressively. The initial plans will be submitted for review in 2016 and specific details will be officially released in 2017. At present, the statutory retirement age is 60 years old for male employees and 50 years old for female employees. For more information on retirement and pensions in China please see our [HR Knowledgebase](#).

EUROPE: Iceland has officially withdrawn its European Union accession bid. The country's Foreign Minister, Gunnar Bragi Sveinsson, has stated that it will not be

continuing the application process. Meanwhile, Bosnia Herzegovina has strengthened its economic and political ties with the EU. EU foreign ministers have agreed to a Stabilisation and Association Agreement with the country. This agreement is considered the first step towards possible future membership of the EU.

FRANCE: A special committee has been set up in France to review the so-called 'Macron law'. According to the president of the committee, the Senate wishes to amend the law to allow companies to agree to derogate from the 35-hour basic working week. In addition, the Senate would like to increase the employee threshold at which companies must have an employee delegate — from 11 employees to 21 employees. They would also like to introduce a three-year transition period for companies when they cross the 50-employee threshold before they are legally required to set up a works council. A formal vote on the proposals will take place on May 6th 2015.

ISRAEL: Employers in Israel should be aware that immigration authorities are intensifying the number of audits carried out on multinational employers to prevent illegal employment. These audits may occur without prior notice being given. During the audits, HR managers may be asked to provide certain documentation — including copies of a worker's visa, payslips, employment contract and time sheets. Employers found to have breached the law may face fines and criminal sanctions.

NETHERLANDS: Statistics Netherlands has revealed that, in 2014, nearly four in every 100 female employees in the Netherlands held a position in management. The proportion of men holding managerial positions in 2014 was nine in every 100. Approximately 20,000 full-time working mothers hold

management positions, as against more than 130,000 full-time working fathers, however this works out as almost the same percentage of full-time workers for each gender as significantly fewer women work full-time.

PERU: According to Peru's National Institute of Statistics and Information, the number of foreigners arriving in Peru to work in January 2015 was 19.5% higher than in January 2014. Of those arriving to work, 20.4% came from Colombia, 20.0% came from Spain, 11.3% came from Chile, 8.5% came from Argentina and 6.2% came from Brazil.

SINGAPORE: The government of Singapore has declared an additional one-off public holiday on August 7th 2015 in celebration of 50 years of independence. This will create an extended weekend from August 7th to August 10th 2015. The government's press release states that employers should pay their employees for this public holiday as they would for any other public holiday.

SLOVENIA: A resolution has been passed in Slovenia for the introduction of quotas for the less represented gender on management and supervisory boards of companies. The Ministry of Labour will now begin preparing the relevant legislation.

UK: Employers in the UK should be aware that applications to extend leave under the Tier 1 (General) category of migrant worker will no longer be accepted after April 6th 2015. For applications received before this date, leave will be extended for the longer of either three years or the length of time required to extend the total leave period to five years. The Tier 1 category will fully close on April 6th 2018 when applications for indefinite leave to remain will no longer be accepted.

Dates for your diary:

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

April 5th 2015: Last date to make an application to extend leave under the Tier 1 (General) category of migrant worker in the **UK**.

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

April 13th 2015: All views on the national minimum wage in the **Irish Republic** should be submitted to the Low Pay Commission by 5pm.

May 26th 2015: Certain spouses of H-1B visa holders may apply for a work permit in the **USA**.

Latest news for business travellers:

Following a terrorist attack that killed 17 foreigners in **Tunisia** on March 18th, many governments are reminding their citizens of the risk of violence and kidnappings in the country. Travellers to the country are advised to remain vigilant and avoid trips to the central, southern and border regions.

Governments around the world are advising their citizens not to travel to **Yemen** and to leave the country immediately if already there. A number of armed clashes between Houthi and government forces have taken place across the country in recent days.

At midnight on March 25th **Nigeria** closed its land and sea borders. They will re-open at midnight March 28th. This is to ensure the elections, which will take place on March 28th, run peacefully. Originally due to be held on February 14th and February 28th, the elections were postponed to March 28th and April 11th due to security concerns. It is possible that there will be outbreaks of violence around this time.

The UK Foreign Office has been made aware of alerts concerning possible threats to locations in Kampala, **Uganda**, including hotels.

Business travellers in southern **Norway** should be prepared for delays in road and air travel as snow falling overnight on 25th March has made travel conditions very dangerous.

FedEE news:

FEDEE FELLOWSHIP: The next Fellowship meeting will take place in London on May 21st 2015. If you are a Fellow and have not yet booked your place, contact us now on +44 (0)117 975 8611. For more information about Fellowship and our Fellowship meetings, please contact Cassandra on cassandra.lu@fedee.com.

NEW COUNTRY COVERAGE: Full knowledgebase entries for [India](#) and [Singapore](#) are now available in the [non-European law](#) section of our HR Knowledgebase.

NEW LAW PROGRAMME PRESENTATIONS: New audio-visual [Law Programme](#) presentations covering employment law in [Mexico](#), [Venezuela](#) and [New Zealand](#) are now available in the FedEE Members' Area. Updated presentations on employment law in [Germany](#) and [Poland](#) are also now live.

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