



# Dernières nouvelles

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## Australia: Compulsory health assessments found to be unlawful

Australia's Fair Work Commission recently considered whether an employer was entitled to make their employees undertake mandatory health assessments.

In light of a high injury rate, the employer in question had decided to establish a mandatory risk review programme. This required employees in the Distribution Division to undergo a 45-minute health assessment, or face disciplinary action. After the assessment, suggestions were made of health programmes that might benefit the employee and the results of the test were put on the employee's health file. The company had previously introduced other measures to reduce the injury rate, but none of these had been successful.

The trade unions representing the workers affected by this measure contended that there was not enough evidence of a real need for these assessments. The unions stated that the workers were already subjected to regular medical assessments under a national system. They also had doubts as to the employee's

privacy — especially regarding how the information would be used and stored by the company.

The Fair Work Commission agreed with the trade unions and held that it was unreasonable and unlawful for the employer to make its workers attend mandatory health assessments. According to the Commission, for mandatory tests to be acceptable there must be a specific concern that the worker cannot perform their work duties and the assessment must be relevant to the requirements of the worker's job duties. In addition, it stated that privacy is an important consideration when assessing reasonableness. As the company could not guarantee the privacy of the information obtained by the tests, they could not be considered reasonable. [TWU v Cement Australia Pty Ltd [2015] FWC 158 (20 April 2015)]

## India: Plans to amend child employment laws approved

Taking a significant step towards overhauling its child labour laws, the government of India has approved a ban on the employment of children below the age of 14. If approved by parliament, an employer who is

found to be acting in contravention of the new provisions could face up to two years in prison, a fine of up to 50,000 rupees (785 US dollars), or both.

At present there is a prohibition on the employment of children aged under 14 years, but this only applies in 18 specified occupations. Under the proposed amendments to the law, the employment of children under the age of 14 will be banned in all occupations. Exceptions will apply to children working for a family business and those involved in advertising, film, TV and sport activities. Any work performed by children must be done after school time or during school holidays and the work must not be hazardous.

The new law would also introduce a new definition of 'adolescent', which would include all workers between the ages of 14 and 18 years. Adolescents will be permitted to work, but they must not be employed in hazardous occupations, such as in mines.

## **Irish Republic: Bill on industrial relations published**

The Industrial Relations (Amendment) Bill 2015 has now been published in Ireland. The Bill re-establishes a mechanism for registering employment agreements between employers and trade unions and sets out a new statutory framework to establish minimum pay rates for specific groups of workers.

Under the draft law, any party to an employment agreement may apply to the court to have the agreement registered in the Register of Employment Agreements. The court will only register an agreement if all the parties agree that it should be registered and the court believes that it is necessary to have a separate agreement for the specific group of workers concerned. An agreement will also only be registered if the trade union is largely representative of the workers to whom the agreement relates and if it

endorses harmonious relations between the employer and workers. Such agreements will be binding only on the parties to the agreement.

In addition, a trade union or employer's organisation may separately or jointly ask the Labour Court to analyse the terms and conditions regarding the remuneration, sick pay or pension of a specific group of workers. They may request that the court make a recommendation to the Minister on the issue. The court's recommendation may provide for a minimum hourly rate of pay which is above the national minimum wage. The court may also make recommendations on the pay rate for apprentices, overtime, shift work and unsociable hours, and the minimum pension contributions rate for employers and workers.

## **Japan: Measures to combat occupational stress**

Mandatory annual employee stress checks are to be introduced in Japan as part of reforms to the Occupational Health and Safety Law.

Under the planned reforms, all employers with at least 50 regular workers would have to perform stress checks on its employees once per year. These checks would assess stress factors, mental and physical symptoms, and support from other workers. If the stress check shows that an employee is under high stress at work, their employer would have to arrange for a medical consultation with a doctor, if requested by the employee. In order to help an employee dealing with high levels of stress, employers may make changes to an employee's workload, shorten their working hours or relocate the employee to a new workplace.

The law on mandatory stress checks is expected to come into effect in December 2015.

## South Africa: Applications now open for one-stop premium visa service

A new one-stop premium visa service centre has been established in South Africa. This will provide companies that employ a high proportion of foreign workers with a faster and more efficient visa and work permit renewal application process.

In order to be able to use this service, companies must submit a written application and undergo a selection process carried out by the Department of Home Affairs. The selection process will be based on a points system. Points will be awarded based on certain criteria, including: the number of visas needed for key job roles in the next three years; the percentage of visas required for critical skills; the company's efforts to transfer skills to South African workers; and evidence that at least 60% of the local workforce are South African or permanent residents with permanent employment. The scores will be validated by a selected Advisory Committee who will make the final decision as to whether to approve the company for using the service.

The application window opened on May 12<sup>th</sup> and will close ten working days following this date. Companies wishing to make use of this service should therefore apply immediately.

## Spain: Collective redundancy laws in breach of EU law

The European Court of Justice (ECJ) has held that the definition of collective redundancy used in Spanish legislation is contrary to EU law. This is because it uses 'undertaking' instead of 'establishment' as the only reference unit for determining whether a dismissal should be regarded as collective.

By using 'undertaking', rather than 'establishment' as the only reference unit, the ECJ held that Spanish law had the effect of impeding the information and consultation procedure set out in EU law. This is the case when a dismissal would have been considered a collective redundancy if 'establishment' had been used as the reference unit rather than 'undertaking'. It was considered that Spanish law violated the EU Collective Redundancies Directive as it could be detrimental to workers' rights to consultation and information.

The ECJ went on to say that the individual termination of fixed-term employment contracts, when those terminations occur on the date of expiry of the contract or on the date on which the task was completed, do not need to be considered when assessing whether or not there is a collective dismissal situation. [Case C-392/13]

## Sweden: Proposal to prevent the abuse of temporary employment

Following criticism from the European Commission, the Ministry of Labour in Sweden has proposed amendments to the Employment Act to help prevent the abuse of temporary employment. The proposals would increase the number of instances in which temporary employment agreements would automatically be converted into permanent employment agreements.

Currently, if an employee is engaged on one or more fixed-term contracts with the same employer for a total period of more than two years during a five-year period, their contract will automatically become one for an indefinite period. Under the Ministry's proposals, automatic conversion to an indefinite contract would also occur if the total period of employment with one employer exceeded two years under a fixed-term contract and there was a gap of 180 days or less between any kind of temporary work (fixed-term,

temporary or seasonal work) performed by that employee for the same employer.

Workers over the age of 67 years would be exempted from these rules. The Ministry has proposed that the amendments would come into force on May 1<sup>st</sup> 2016.

## **UK: Time spent in union meetings amounts to working time**

According to the UK Employment Appeals Tribunal (EAT), time spent by trade union representatives attending trade union meetings at the workplace does count towards working time for the purposes of the Working Time Regulations. As such, employees attending these meetings in their capacity as trade union representatives must have a minimum rest break of 11 hours after the conclusion of the meeting and before starting their next shift.

Overturning the ruling made by the Employment Tribunal, the EAT stated that in order for an activity to be considered working time there is no requirement that it must relate solely to the carrying out of their duties under their employment contract. Where an employer has required an employee to be in the workplace at a specific place and time (i.e. to attend a committee meeting) and it is for the benefit of the employer (i.e. to maintain good industrial relations), this time will constitute working time. [Edwards and another v Encirc Ltd UKEAT/0367/14]

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

**CZECH REPUBLIC:** Last month the Czech Republic's biggest car maker, Skoda Auto, reached an agreement with trade unions to increase wages by 3.5%. The deal will affect approximately 24,600 employees. Many trade unions and even members of the central bank are currently urging employers to increase wages given

the country's recent economic growth. It is estimated that manufacturers saw turnover increase by 8% in 2014 whilst wages in the manufacturing sector increased by only 3%.

**DENMARK:** All employers in Denmark are now entitled to support to help retain older workers. The so-called 'senior package' provides financial support and guidance to employers to enable them to implement a series of meetings, mapping and clarification activities in order to retain employees aged 55 and over. The package, which was launched in 2013, was previously only available to small and medium-sized businesses. 2015 is the last year companies can apply for funds under the senior package. Funds are allocated on a first-come-first-served basis.

**GERMANY:** According to the Federal Statistical Office, in 2014 the average cost of labour in Germany was 31.80 euros per hour. Based on these statistics, Germany has the 8th highest labour costs in the EU. As regards the manufacturing industry specifically, Germany has the fourth highest labour costs in the EU — average labour costs in this industry were 37 euros per hour in 2014.

**KENYA:** On May 1st 2015, the President of Kenya, Uhuru Kenyatta, increased minimum wages in the country by 12%. Average minimum wages in urban areas are now between 13,592 Kenyan shillings (146 US dollars) and 17,199 Kenyan shillings (179 US dollars). Before this latest increase, minimum wages last went up in Kenya in 2013.

**ROMANIA:** Romania's highest court, the High Court of Cassation and Justice, recently ruled that treating certain employees more favourably than other employees in response to a court ruling does not amount to discrimination. In this case, certain drivers of a company had higher salaries than other drivers performing the same job. However these higher salaries were the result of a court decision which



increased the drivers' base salaries. The Court ruled that this did not amount to discrimination where the other drivers had not been granted increased salary rights by a court order. [High Court Decision No.2 of 19 January 2015]

**SINGAPORE:** According to Singapore's Minister of Manpower, Lim Swee, the Ministry of Manpower took action against 645 employers for salary-related offences in 2014. Of these, 49 employers were prosecuted in court for serious offences. This is four times the number of prosecutions in 2013. The penalty for failure to pay wages was recently increased making the minimum fine for first-time offenders 3,000 Singaporean dollars (2,246 US dollars) and the minimum fine for repeat offenders 6,000 Singaporean dollars (4,492 US dollars). Officers of the Ministry have also been given greater powers which allow them to enter workplaces to carry out inspections and arrest employers who they believe are guilty of not paying their staff.

**SPAIN:** After months of negotiations, employers and trade unions in Spain have come to a preliminary agreement on wages. The country's two largest trade unions, CCOO and UGT, and employer organisations CEOE and CEPYME, agreed to a wage increase of 1% in 2015 and 1.5% in 2016. They also agreed to the inclusion of a wage guarantee clause. This would be triggered if prices rise above 2.5% between 2015 and 2016, in order to compensate for the loss of employees' purchasing power. The agreement acts as a recommendation to companies and workers when negotiating wage increases during the next year and a half.

**SWITZERLAND:** In 2014, average nominal wages in Switzerland increased by 0.8%, according to the Swiss Federal Statistical Office. This was very similar to increases made in previous years (0.7% in 2013 and 0.8% in 2012). The increase in real wages negotiated under collective bargaining agreements was 0.8%. This

affected more than half a million people employed in 2014.

**USA:** A law that allows employers to pay their employees through credit to a payroll card account has come into effect in the US state of Georgia. Previously, employers could only pay their employees by cheque, cash or a direct deposit (with the consent of the employee). Employers wishing to pay their employees through credit to a payroll card account have to fulfil certain obligations — for example they must provide their employees with a written statement explaining all relevant fees.

**VENEZUELA:** The national minimum wage in Venezuela is currently undergoing a 30% increase. On May 1st the minimum wage increased by 20% to 6,746.98 bolivars (1,063 US dollars) per month. On July 1st the rate will increase by the remaining 10%, taking the minimum wage up to 7,421.68 bolivars (approximately 1,169 US dollars) per month.

## Other Global HR News in Brief

**CHINA/HONG KONG:** To mark 70 years since the victory of the Second World War, China has announced a one-off public holiday on September 3<sup>rd</sup> 2015. The working day on Friday, September 4<sup>th</sup> will be moved to Sunday, September 6<sup>th</sup> in order to provide employees with three consecutive non-working days. Hong Kong has also announced that it will be submitting a Bill to the Legislative Council to make September 3<sup>rd</sup> a public holiday in 2015.

**EUROPEAN UNION:** In 2014, 14% of all employees in the European Union were engaged on fixed-term employment contracts, according to a labour force survey published by Eurostat. The countries with the highest proportion of fixed-term workers were Poland (28.4%), Spain (24%), the Netherlands (21.7%) and Portugal (21.4%). The countries with the lowest

proportion of employees on fixed-term contracts were Romania (1.5%), Lithuania (2.8%), Estonia (3.2%) and Latvia (3.3%).

**FRANCE:** In France, the draft law on growth and activity, known as the 'Macron Law', has been passed by the Senate. The draft law that was approved is much changed from the version that first arrived with the Senate. On May 28<sup>th</sup> the draft law is due to be put before a joint committee. If the representatives of the two houses cannot agree on the details of the law it will return to the National Assembly where a final decision on the law will be taken. The Macron Law deals with a number of employment-related issues of which the rules on Sunday working have proven to be the most divisive.

**HONDURAS:** The Supreme Court of Honduras has approved the final draft of the Labour Procedure Code and presented it to Congress for their approval. This draft Code is the result of years of discussion and consultation. The legislation aims to establish clear procedural rules in cases when the employment relationship is terminated.

**IRISH REPUBLIC:** On May 12<sup>th</sup> 2015 the Republic of Ireland launched its Trusted Partner Initiative. The aim of the initiative is to enable fully vetted companies to fill job vacancies quickly and easily by reducing the administrative burden imposed on them when employing non-EEA nationals. Employers can apply to the Irish Department of Jobs, Enterprise and Innovation to acquire Trusted Partner status. If successful, the status will be valid for two years and the company will be able to use simplified applications forms, which will reduce processing time and paperwork. All required forms to register onto the initiative can be found [here](#).

**KUWAIT:** Companies in Kuwait wishing to hire foreign workers are now required to have a 250 Kuwaiti dinar bank guarantee. Under the new rules, employers must make a deposit of 250 Kuwaiti dinars (828 US dollars)

in a bank account and obtain a letter of guarantee from the bank. This, along with other supporting documents must then be submitted to the Ministry of Labour before they may file a work permit application for a foreign worker in the private sector.

**ROMANIA:** An amendment to Romania's Labour Code, which clarifies the provisions regarding weekly rest periods, has now come into force. The Labour Code now states that employees are entitled to a weekly rest period of 48 consecutive hours, usually Saturday and Sunday. The prior wording, although similar, was considered ambiguous, leaving room for interpretation that could be harmful to employee interests.

**UAE:** The United Arab Emirates has entered into a historic Schengen visa-waiver deal with the European Union. As a result, citizens of the UAE are now entitled to travel to 34 European countries for stays of up to 90 days within any 180-day period, without needing to obtain a visa. The UAE is the first Arab country to have negotiated such a deal.

**UK:** In a recent case on whistleblowing, the UK's Employment Appeals Tribunal (EAT) confirmed that non-protected disclosures cannot be converted into a protected disclosure by considering them altogether. Following previous case law, the EAT stated that each disclosure must be considered separately. [UKEAT/0041/14/DXA]

**USA:** On May 13<sup>th</sup> 2015, new legal provisions concerning sick leave came into force in Philadelphia, USA. A notification poster has been issued for employers, clearly setting out the key details of the new rules. The poster can be accessed [here](#). According to the poster a new enforcement body called the 'Philadelphia Sick Leave Agency' will be established in September 2015. This agency will provide a forum for employees to file their grievances against employers who do not comply with the law.

## Dates for your diary:

**June 1<sup>st</sup> 2015:** In **Belgium**, the extended list of products and services that can be acquired with eco-cheques comes into force.

**July 1<sup>st</sup> 2015:** The national minimum wage in the **Netherlands** increases to 1,507.80 euros per month.

**July 1<sup>st</sup> 2015:** **Venezuela**'s minimum wage rises to 7,421.68 bolivars per month.

**July 1<sup>st</sup> 2015:** In **Russia**, applications for 2016 work permit quotas for non-highly qualified specialists and non-CIS nationals must be filed before this date.

**July 1<sup>st</sup> 2015:** From this date, companies in the **UAE** will be able to issue shares as part of an employee share scheme.

## Latest news for business travellers:

The **UK** is facing its biggest rail strike in over 20 years. Train signallers, maintenance staff and station workers are set to walk out on Bank Holiday Monday (June 25th) at 5pm. Talks to prevent the strike are currently taking place, but if the dispute cannot be solved, it is likely that all train routes will be affected and that there will be widespread disruption.

The Belgian trade union of train drivers (SOHC) has announced that there will be a national work stoppage in **Belgium** from May 27th at 10pm until May 29th at 3am.

The 'Coca' local airport in the Orellana province in **Ecuador** will be suspending its operations until May 24th 2015. The UK government is advising its travellers to arrange direct road transport to Coca.

Following an attempted military coup on May 13th 2015, **Burundi** is experiencing civil unrest and violence. As a result of the precarious security situation, the legislative elections scheduled for May 26th have been postponed to June 5th.

**Niger**'s Ministry of Public Health has informed the World Health Organisation that there has been 6,179 suspected cases of meningococcal meningitis between January 1st and May 12th 2015. The number of suspected cases has been increasing quickly. In the last few months, there have been 423 deaths.

Travellers to **Brazil** should be aware that the number of dengue fever cases in the country has increased considerably in 2015, particularly in the south-east and central-west.

## FedEE news:

**WHISTLEBLOWING EVENT:** The second of our 'criminality and the workplace' live video interviews will be taking place on June 2<sup>nd</sup> at 1.15pm (BST). During this session two leading lawyers from Baker &

McKenzie will be discussing with Robin Chater the way the law deals with whistleblowing in the UK and Canada. This event can be accessed from any device anywhere in the world and participation is free. For more information on how to participate, please contact us on [admin@fedee.com](mailto:admin@fedee.com).

**NEW COMPARATIVE GUIDES:** New country comparisons on the topics of [paternity leave](#) and [compulsory retirement](#) are now available in our HR Knowledgebase. Comparisons of maternity leave and whistleblowing protection around the world will also soon be available.

**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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