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

September 1st 2016

Inside this Issue:

Editorial: Furthering Fa Aslamu**European Union:** Avoiding accrual**India:** Opening up the industry sector**Japan:** Transition pains**UK:** Maternity discrimination**USA:** Prudent funds management**USA/EU:** Get behind privacy shield**China:** Premium pilots**EU/USA:** Talks failed over TTIP**South Korea:** No deal at Hyundai**Turkey:** Foreign executives need permits**International Travel warnings**

EDITORIAL: Furthering Fa Aslamu

The lure of 0% corporation tax has attracted many foreign companies to establish offices in UAE. Yet there are so many laws in the country it is difficult to stay compliant, especially when the authorities are so vigilant. We recently reported to members the dangers of using VPN connections in UAE. The latest law to catch out the unwary foreigner is one that bans the promotion of any charity that is not locally licenced. An Australian, Scott Richards, living in Dubai faces a year in jail simply because he posted a link on his Facebook page to a US charity raising funds for blankets and socks for refugee children in Afghanistan.

Look closely and up pop a host of laws that could pose a trap for the HR professional schooled in the uncivilized west. For instance, detailed checks must be made before hiring staff - as there are hefty penalties if, for example, someone is hired using another

person's visa. Once employed, an employee has the right to take up to 30 days unpaid leave at least once in their employment period to go on a Haj (pilgrimage). Moreover, maternity laws are only applicable to married women and it is in fact a crime for a woman to give birth outside wedlock. Therefore employers should either require a 'haram' woman who becomes pregnant to get married or, if they are a foreign national, arrange for them to go back to their home state to give birth - for 'haya' reasons well before the pregnancy is visible. Their return to the UAE after birth would not be wise if they remain unmarried - as the authorities might well imprison both mother and child.

Health and safety in the UAE is on a totally different dimension from most other countries outside the middle-east. Safety notices must be in Arabic, even if a company employs no Arabic speakers. All accidents must be reported to the police and if any manager is found to be in any way responsible they may be arrested and

subject to criminal prosecution. The injured employee can also claim full pay for at least six months in addition to compensation for any injury.

Last but not least, if the company wins a new order it is best not to do a spin around the office floor with a colleague, as any form of public dancing is a crime. Likewise, if the company faces closure on economic grounds, or simply has any seriously overdue debts to anyone in the UAE, then managers present in the country will no doubt be considered responsible (included a visiting CEO seeking to sort out the crisis), probably be arrested and could well face lengthy prison sentences.

EUROPEAN UNION: Avoiding accrual

Employers are often left with the situation where, prior to retirement, an employee is on long-term sick leave and continues to accrue holiday entitlement for which they may be paid as part of the settlement when their retirement date is reached. However, a recent case before the European Court of Justice (ECJ) has opened up the possibility of another arrangement that would remove this final payment in lieu of holiday untaken.

The Austrian ECJ case concluded that although an employee is entitled to accrue paid holiday rights when subject to sickness absence as a rule, in cases where “a worker whose employment relationship has ended and who, [subject] to an agreement with his employer, while continuing to receive his salary, was required not to report to his place of work during a specified period preceding his retirement, is not entitled to an allowance in lieu of paid annual leave not taken during this period, unless he was not able to use up that entitlement due to illness”. (Case C-341/15)

This means that if an employer - instead of letting the employee remain on sick leave - enters into an agreement with the employee that waives their obligation to attend their workplace and counts some of the time off as leave then there would be no holiday accrual. The one difficulty in such an arrangement is that, in the ECJ case in question, the employee was a civil servant whose employer had no commercial constraints on allowing them to be paid in full during their pre-retirement garden leave. The court may not have necessarily reached the same conclusion if the employer had simply paid the employee their statutory sick pay during the pre-retirement period, even if they received normal pay for their vacation days.

INDIA: Opening up the industry sector

New rules have been brought into force in India that modify the Industrial Disputes Act 1947. These introduce a new facility for hiring fixed-term workers, allow additional overtime hours and relax notice on termination requirements in Indian textile and garment factories. The Industrial Employment (Standing Orders) Central Rules apply to factories with 100 or more employees and the revised overtime limit raises the cap from 50 hours to 90 hours for every 4-month period.

The Indian government has also announced a new scheme that will pay employers' contributions of 8.33% to company pension schemes for a period of up to three years. The funding is only available for employees earning up to INR 15,000 (\$US 223) per month and requires both employers and employees to register with the Employees' Provident Fund Organization of India. Companies in the textiles sector will also be able to claim a 3.67% contribution from the provident fund.

JAPAN: Transition pains

Japan's complex personal tax system reflects a past social system where jobs were for life and women were not expected to have careers. Last year a common method of tax evasion was removed by changes to the rules on the tax deduction for dependent relatives (Fuyo shinzoku) other than spouses. This had allowed many Japanese taxpayers to claim a tax deduction for multiple dependants living abroad. However now governmental attention has turned to the tax allowance for a dependent spouse (Haigusha kojo).

As things stand the spousal tax deduction reduces the taxable annual income of the household's main earner by ¥380,000 (\$US3,800) if the dependent spouse is earning ¥1.03 million (\$US 10,292) or less a year. Therefore, many spouses – who are typically wives – opt for part-time jobs to ensure their income does not rise above the threshold. But although the majority of men oppose reform, women generally support it and the tightening labour market is making it imperative for the female activity rate to rise. Over the year to June 2016, for instance, the population fell by 1.0%, but employee numbers grew by 1.1%. The proportion of the labour force classified as “family worker” also declined by 6.1% and the proportion of unemployed workers fell by 6.7%. The only significant reserve labour force in the country to sustain a rising full-time employment market - other than Japan's dwindling pool of unemployed (but employable) workers - is the current 20 million or so people in “non-regular” jobs who are mainly women, working part-time.

Prime Minister Shinzo Abe has done a great deal to make it easier for companies to dismiss non-performing permanent workers and put temporary workers into positions once reserved for those with permanent contracts. This has achieved a measure of success, although it has

not led to either the economic growth that he sought, or put an end to the country's deflationary miasma. Tax is not the only change that is necessary in this still highly traditional society, but the increased spending power of having more workers on full-time incomes would give a welcome boost to the economy.

UNITED KINGDOM: Action necessary on maternity discrimination

A recent report published by the UK Women and Equalities Select Committee recommended individual risk assessments to help reduce the 25% of women who currently leave their jobs because health and safety concerns that pregnancy and maternity were not being met.

According to a joint study the Spring by the Department for Business, Innovation and Skills and the Equality and Human Rights Commission, 77% of pregnant women and new mothers currently experience discrimination at work, compared with 45% ten years ago, and also 11% lose their jobs or feel obliged to resign.

Member of Parliament are urging the government to publish a plan within the next two years to deal with maternity discrimination, especially for those in casual, agency and zero hours jobs. This could follow the practice in Germany, where there is a dismissal ban that prevents pregnant women being dismissed or made redundant, except in extreme cases - such as gross misconduct or where there is a mass redundancy.

USA: Prudent Funds Management

When someone becomes a company pension fund trustee they do not expect to be held accountable for every investment decision they make or is made for them by their financial advisers. But that is precisely what is happening due to a class action by 60,000 US employees of Morgan Stanley (MS). The action was filed on August 19th 2016, in the U.S. District Court in Manhattan, New York claiming compensation of around \$US 150 million as damages suffered by current and former employees, for mismanagement of their retirement fund.

The claimants state that investments in assets that were managed by MS between 2010 and 2014 were into allegedly less successful funds than others that were available, whilst fees were being charged at a higher rate than other company's clients with the same amounts of investment. The representing counsel pleaded that these decisions were contrary to the Employment Retirement Income Security Act and a breach of fiduciary duties.

The MS case is the latest in a series of class actions filed by other organisations (i.e. Deutsche Bank, Yale University, American Century Services Ltd) based on similar grounds. Judgements in respect to these cases will be of huge importance to company pension committees. It may be the case that the fiduciary duty levels are raised to a higher standard or even impose personal liabilities for the decisions made by individual trustees. It is therefore a good time to review existing decision-making practices and the legal liabilities involved.

USA/EU: Get behind privacy shield

Approval has now been given by the European Commission to the mechanism of the "Privacy Shield" as a replacement for the safe harbor rules. Companies operating in Europe can therefore now move ahead to ensure that their transatlantic transfers of personal data are legally compliant under the new data protection regime.

One of the cornerstones of the Privacy shield is self-certification. Although this is not compulsory, compliance with the rules certainly is and it could take a long time for companies to ensure that everyone in the chain of communication is bound into a unified structure of compliance. This will include not only IT processors, but data centres, advisors, agents, recruiters, security firms, suppliers, customers and contractors and numerous other service providers.

The Commission has offered companies the added bonus that if they can file their self-certification documentation to the US Department of Commerce (DOC) by September 30th 2016 they can take advantage of a 9-month grace period during which they can establish the necessary contractual arrangements with third-party processors. The clock begins on the nine-months from the day the organization self-certifies – so it will pay to file near month end.

Pay, Tax and Benefit Trends

CHINA: Chinese airlines are offering substantial salary premiums to attract foreign pilots. Faced with escalating domestic demand, Chinese carriers have a shopping list of 100 pilots a week that could stretch on for the next two decades. Even smaller companies such as Qingdao Airlines and Sichuan Airlines are offering over \$US 300,000 a year, compared to Delta which typically pays \$US209,000. There are also extra perks - like offering to pay the Chinese income tax bill, signing bonuses and free flights home.

FINLAND: The deadline is fast approaching in Finland for retirement reforms. From January 1st 2017 the earliest age when those born in 1955 or later may retire will begin to rise in stages from 63 to 65. Statutory pension insurance will have to be arranged from age 17 and its upper limit will extend progressively to age 70 for those born on or after 1962. In fact, if an employee continues working after the minimum retirement age they will no longer receive a fixed pension benefit of 4.5%, but earn 0.4% more for each month they continue working without drawing their pension. Furthermore, new partial early retirement pension will also be introduced which allows an individual to carry on working without any earnings or hours limitations.

FINLAND: An experiment into what is being called “basic income” is being planned in Finland for 2017-18. It will not, however, be a scheme providing the population as a whole with a monthly allowance, but a new way to distribute social security funds. The current system contains a number of incentive traps which a unified benefit-for-all approach to claimants would potentially overcome. It is postulated by the government that basic income will “promote employment” – although

the logic behind this claim is far from obvious. Far more effective would be the Chinese practice of requiring every able-bodied person out of work to do a socially useful activity on a full-time basis. That is why roads in China are generally so litter free.

JAPAN: From October 1st 2016 Japan's average minimum wage will rise by JPY 25 (\$US 0.25) to JPY 823 (USD 8.20) an hour. Minimum wages in Japan are set locally and this average reflects practice in all 47 prefectures. In reality, the minimum hourly wage will only be JPY 714 (\$US 7.01) in Okinawa, but JPY 932 (\$US 9.15) in Tokyo once the increases take effect.

GERMANY: A two-year collective agreement has been reached between the German utility company RWE and the trade union IG BCE, which reflects the low level of electricity demand in Germany's sluggish economy. This gives 11,000 employees a basic wage increase of 1% on Jan. 1, 2017, and again on Jan. 1, 2018. This largely mirrors a similar deal reached recently between the company and the trade union Verdi. However, Verdi members also received a one-off bonus of 1,000 euros. But staff at RWE Generation SE and RWE Power AG represented by IG BCE will instead qualify for a new early retirement scheme.

LUXEMBOURG: A number of proposed tax changes are before Luxembourg's national parliament which would make it marginally more attractive as a location for companies, but not for individuals. The draft changes include a reduction in corporation tax from 21% to 19% next year and 18% in 2018. A slight increase would also be made to investment tax credits. On the downside, it is tabled that legal accountability for a company's payment of VAT should fall directly and individually upon all managers in the business concerned. Although the thresholds for income tax brackets would be

increased, the total number of tax levels will rise from an already excessive 19 to 23. There will be new 9% and 11% rates to bring low paid workers into the tax system and also new 41% and 42% bands for those earning over 150,000 euros (\$US 168,000) and 200,004 euros (\$US224,00) per annum respectively.

NEW ZEALAND: Soaring profits over the last year at Air New Zealand have led to an increased bonus for its 8,200 staff. Last year the payout was \$1,400 (\$US1,014), but a 42% profit gain has increased the bonus to \$2,500 (\$US1,811). The company is 50% state-owned so public coffers will receive \$260 M in dividends.

SOUTH KOREA: The world's fifth biggest automotive company, Hyundai Motor, thought last week that it had reached agreement with the Korean Metal Workers Union. The deal was set to increase basic monthly remuneration by KRW 58,000 (\$US 52), plus a one-off payment to each employee of KRW 3.3M (\$US 2,940). This was a significant reduction compared to last year's settlement, but in the face of dwindling demand in the automotive sector it appeared to be a realistic deal. However, the agreement was soundly rejected by a vote of Hyundai employees. Now the company faces a continuation of the strikes and walk-outs that have beset it all summer.

UNITED KINGDOM: The UK government proposes to remove income tax and National Insurance (Social Security) exemptions from all notice payments in lieu with effect from April 2018. The current £30,000 tax exemption applies where there is no express provision for an employer to make an in lieu of notice payment in an individual's employment contract. The exemption will continue only in respect to genuine severance payments arising from such situations as unfair dismissal or redundancy - although excluding any relevant additions such

as bonus payments that apply in the notice period. Employers, but not employees, will also be required to pay National Insurance on severance payments above £30,000.

UNITED KINGDOM: Revised guidelines on setting board-room remuneration have just been issued jointly by a group of company secretaries in FT100 companies and the Investors Group. Ever since 2008 the salaries and benefits of company directors in medium to large companies in the UK have been subject to detailed regulations setting out their authorization and how they are reported. Schedule 8 of regulations published in 2013 went on to define in great detail what should appear in the annual directors' remuneration report and what the remuneration policy must contain and how it should be approved. The [new guidelines](#) reflect the experience of companies over the last three years, which has been a period in which shareholders have increasingly questioned top management reward policies and the decisions of remuneration committees.

Other Global HR News in Brief

CANADA: Prime Minister Justin Trudeau has asked immigration minister John McCallum to develop a three-year plan that will focus on attracting highly-skilled workers from China. The previous government's "express entry" initiative has not succeeded in achieving applications from Chinese nationals for jobs where there are no available Canadian workers. To improve entry opportunities Canada is also seeking to double the number of visa application centres in China. Trudeau will also attend the G20 summit in Hangzhou, China on September 4th and 5th where previously strained relationships between the two countries will no doubt be improved.

EU/USA: Germany's Economics Minister Sigmar Gabriel has revealed that talks between the European Union and US government over a Transatlantic Trade and Investment Partnership (TTIP) free trade agreement have broken down. This is because EU negotiators have refused to give way over US demands, especially in respect to agricultural goods. The dispute mechanisms envisaged would also potentially allow US companies to sidestep EU regulations and even sue governments for taking actions that might damage their businesses. The Brexit vote also removed much of the attraction for US companies as the UK was one of the greatest advocates of the TTIP deal.

GLOBAL: According to the International Labour Organisation youth unemployment across the world is set to rise again this year to 71 million, the first increase in the last three years. Moreover, 37.7% of those aged under 25 who are in work are in extreme or moderate poverty, compared to 26% of working adults aged 25-54. The highest willingness amongst young people to move abroad in search of a presumed "better life" is in sub-Saharan Africa, Latin America and the Caribbean (38%), followed closely by Eastern Europe (37%).

ISRAEL: A new regulation has come into force in Israel's West Bank which requires Palestinians who wish to take legal action against their employers to lodge a financial deposit in the labour court when making their claim. If their case is subsequently lost this deposit will be forfeited. Ever since a Supreme Court decision back in 2007 Palestinian workers in this territory have been able to claim protection under general labour laws. However, few Israeli employers heeded this obligation and many Palestinian workers have challenged their lack of an employment contract, compliance with minimum wage rates and the

absence of holiday rights. The new regulation may well find its way back to the Supreme Court to tests its legal legitimacy.

RUSSIAN FEDERATION: Nationals of countries outside the Eurasian Economic Union residing in the Oblast around Russia's third most populous city - Novosibirsk – are now banned by a local decree from employment in 16 occupations. The ban covers sectors such as education, accountancy, translation, public transportation and financial services, with a timeframe of 3 months for implementation. It is estimated that around 4,000 people will be forced to leave their current jobs - with the majority of them being employed in human resource function positions.

SINGAPORE: New requirements will be introduced next year for operators of dormitories for foreign workers. Singapore's Ministry of Manpower (MOM) has laid down a number of conditions that must be met before a licence will be granted. These include a personal locker for each worker, a sickbay, contingency plans for dealing with infectious diseases and the provision of wifi throughout the premises. As employers can be held liable for substandard housing provided as part of their arrangement with foreign workers they hire, it is essential that HR carries out independent checks and asks for documentary evidence MOM rules have been complied with.

SOUTH AFRICA: There are serious concerns amongst employers in South Africa that industrial action may not only lead to strike action, but also sabotage. The recent dispute between the telecoms company Telkom SA and the Communications Workers Union (CWU) has resulted in strikes affecting many parts of the country. It has also coincided, however, with damage to telephone cables and equipment in a number of cities, including the

capital, Pretoria. The CWU denies that it has been responsible, but landlines are extremely difficult to monitor across their entire length and therefore culpability is very difficult to prove.

TURKEY: It has in the past been uncertain whether certain senior executives entering Turkey require a work permit. This has now been clarified by an international Labour Force Law that has replaced the former 'Law on Work Permits of Foreigners'. This requires most foreign senior executives to apply for work permits, although they may do so now through "authorized intermediaries". There is, however, one exception - board members of joint stock companies who do not reside in Turkey. Nevertheless, the individual must prove their status by applying to the Ministry of Labor and Social Security for a work permit exemption certificate.

UNITED KINGDOM: A new 'dashboard' performance management system has been developed by British Airways for its 8,800 cabin crew. This will involve a continuous process of designating individuals according to a red, amber or green rating. However, the system has met with strong resistance from the British Airlines Stewards and Stewardesses Association (BASSA), which is affiliated to the Unite union. They believe it is a backdoor way to phase out less well performing older staff and have secured 91% support in a recent ballot of members for industrial action 'if necessary'. BA has been quick to reassure

everyone this does not mean strike action, but BASSA is currently in talks with the company.

USA: The Securities and Exchange Commission (SEC) has in the last few days filed civil charges against two companies that required their employees to undertake, in severance agreements, that they will not accept government rewards for whistleblower actions. Further subpoenas are being issued against companies in a general clampdown on such practices. The latest challenge has cost the company concerned \$US 340,000 to settle the case.

USA: A sometimes overlooked feature of the forthcoming US presidential election is the addition of local referendum questions to the ballot. This time round it will mean posing a total of 149 questions in 35 US states. A high proportion of these questions are of immediate relevance to HR practitioners – including a proposal to raise the minimum wage in Colorado, Maine, South Dakota and Washington and mandating sick leave in several others. One of the most radical proposals is Initiative 124 in Seattle. This involves a wide range of new health and safety, hiring and healthcare requirements in the hospitality sector.

Dates for your diary:

September 29th 2016: **Canada** to introduce mandatory Electronic Travel Authorization (eTA) for all visa-free eligible nationals (excluding US citizens) arriving by air.

September 30th 2016: **USA/EU** deadline for filing self-certification under the privacy shield to obtain a 9-month grace period.

October 1st 2016: **Brazil** CRS international tax transparency rules take effect.

November 8th 2016: **US** Presidential Election

December 1st 2016: FLSA new overtime rules become effective in the **USA**.

April 6th 2017 Introduction of apprenticeship levy for large **UK** employers.

April 23rd and May 7th 2017: **French** Presidential Election.

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

Travel Warnings

Ethiopia: The US State Department has issued its own warning to citizens visiting certain regions of Ethiopia due to violent clashes during **anti-government protests**. This has disrupted phone lines, mobile communications and internet connections, largely due to the government seeking to impede the organization of protest activities.

India: Heavy **monsoon rains** have ended two successive drought years in India with the Ganges river and its tributaries rising above danger levels. This has led to the evacuation of thousands of people across **eastern India** and blocked roads and rail lines.

Italy: Aftershocks are still being registered around the town of Norcia in the Umbria Region, central Italy following an **earthquake** that killed at least 290 people.

Japan: The danger of a **measles** outbreak has been issued by the Disease Control and Prevention Center (DCC). This arises from the case of an infected man who returned from Indonesia recently with the disease. Measles is highly infectious and potentially fatal.

Nigeria, Chad, Cameroon and Niger: Are all at risk from **terrorist attack** due to insurgents from Boko Haram. The latest attack last Sunday was in northern Cameroon where a suicide bomber on a motorcycle killed three people and injured 26 in a crowded marketplace.

Pakistan: Heavy rainfall has affected Pakistan's southern Sindh province, including the port city of Karachi, giving rise to widespread **flooding**.

Singapore: Several countries have advised pregnant women to avoid Singapore as a travel destination after an outbreak of infection involving over 50 people caused by the **Zika virus**.

South Africa: A high level of **violence** is taking place in many parts of South Africa, particularly in the **mining towns** in the platinum belt north of Johannesburg. Women, in particular, should not venture into these areas due to the risk of abduction and rape.

USA: Flash floods have been disrupting communications **south of Chicago**. The main counties affected are Ford, Grundy, Kankakee, LaSalle, Livingston and Will in Illinois, and Jasper, Lake and Porter in Indiana.

FedEE News

Global Employment Law Forum in Chicago: the Multilaw Employment Group will be hosting a Forum on 22 September. This will involve employment law experts from Russia, China, Mexico, Canada, UK and Netherlands. If any FedEE Member would like further details please contact the Membership Secretary on admin@fedee.com. There will be no charge for attending the event.

FedEE Publications: This year our **Pay in Europe Reports** have been discontinued as all the data is now available in our **JEAPS** service. **JEAPS** itself will be updated on October 1st 2016 and each Autumn thereafter, but with a difference. The figures in it will contain projections through to the following June. Later this month we will publish a new comprehensive **Multinational Salary Planning Report**. This will contain pay data for key countries worldwide, plus a completely new approach to salary planning and determination.

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