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COMMENT*: Greed is good, again

Way back, when I first attended an after-work social gathering in the USA, I did so with a pretty waitress I had asked out to fulfill a dare. The first stranger who came up to me introduced himself with the words "Hi, I'm Jacob. I earn five figures; how much do you earn?". Being rather classically British, my retort was "Good evening, I'm Robin - and what I earn is none of your damn business". Ten years later things had even changed in Britain with the arrival of the Margaret Thatcher era, where money meant everything.

Of course, my new friend at the party was not really to blame. The American dream is largely founded on the selfish and wholly superficial pursuit of material gain. It was only later, in the nineties and post millennium era, that other values began to pervade society and eventually the workplace.

Americans learnt the delights of paid holidays and maternity leave and, in more recent times, that it is possible to enjoy paid sick leave – as long as you earn the right first by staying well long enough each year. Yet, soon enough, US wellness programs were being used not only to encourage healthy life-styles, but also to compromise personal privacy as an employee's health data was shared with commercial sponsors. After all, everything has its price.

The US election has not really ushered in a new era, but reinstated an old one that never really went away. Obama-care, was a glorious anomaly that was always going to be vulnerable to the peevish desires of middle America that resented subsidizing the 15% of Americans who could not afford the high costs of conventional US healthcare insurance. It is all strangely ironic, as what US patriots claim to be the greatest nation in the world cannot even meet the welfare

standards of Europe - or even some third-world countries.

So, in the words of Gordon Gekko, “greed is good” again. It is smart to evade taxes and if your business rivals prove difficult then let it get personal and declare “nothing you can do, folks. Although the Second Amendment people, maybe there is, I don't know.” For it is now OK in America to even threaten violence with impunity. At least if you are loaded, a big enough fan of yourself and say it in a crudely veiled way.

But Europe has its own mini-version of the “you are what you earn” philosophy. One of the biggest complaints made by people in eastern Europe after the fall of the Soviet Union was that social welfare declined when nice capitalism came ambling along and liberated everyone. Those in the UK continue to this day to believe that their national health system is the best in the world, even though it falls far short of systems operating in many European continental countries. Then, whatever happened to workplace childcare? Why is the take-up of parental (even paternity) leave so low amongst men in most countries - even where it is a generous statutory right?

But something will eventually have to give in the world of work, if nowhere else. We are all a decade - maybe two - away from a brave new world where automation will have crept into every corner of the workplace. There will just not be enough jobs to go around and pay will no longer be a valid or practical mechanism for the distribution of wealth in society. I guess those who keep their jobs could continue to rate their status in monetary terms, but for the majority of the populace other values will be necessary if they are to preserve any personal dignity. So

maybe the Trump election marks the death throes of something hopefully outdated and increasingly irrelevant. In that thought I am with the ever-wise Blaise Pascal who once said “All of humanity's problems stem from man's inability to sit in a room alone.” Or maybe, if the Second Amendment people truly take over then - looking on the bright side - we are all dead in the end anyway.

ARGENTINA: Clean up not saving jobs

The third largest economy in Latin America has now plunged headlong into recession. The right-wing government voted into power last December appears incapable of reversing the slide – with 40% inflation and unemployment many times higher than the official figures declare.

It has been estimated by the University of Belgrano that 60% of Argentine's working population is either unemployed or underemployed. A Senate Bill has registered a “social and food emergency”, although both the lower house of parliament and President Macri – who are clearly in denial about the current crisis – could well veto the measure. Similarly back in May, Macri vetoed a bill that imposed huge penalties on companies making mass redundancies.

In an attempt to encourage those involved in corruption to become whistleblowers a new section 41 of the Criminal Code (yet to be enacted) offers persons who provide reliable information a criminal sentence that is reduced by one third of the maximum and one half of the minimum penalty for an offence. Argentina has also just signed a what is curiously called a ‘white-wash’ agreement with Switzerland - allowing the automatic exchange of information on tax

matters. Some 80 major Argentinian companies have accounts in Switzerland and it is the country's sixth largest investor. Argentinian clients of Swiss banks will have to sign a declaration that the money held in Switzerland was obtained legally. If this is found to be untrue, then they will be fined up to 55% of their account holdings.

CHINA: Employment law update

New rules on employer labour violations will be introduced in China on January 1st 2017. Those found to be breaking certain employment obligations will be named and shamed on the labour authority website, in TV bulletins, national newspapers and magazines – including the names of the HR manager or CEO. The details will also be put on the company's credit record and shared with other government departments. The offences include 'seriously' failing to pay sufficient remuneration or social security, violating working time or holiday laws, breaking rules on the protection of female or young workers, employing child labour and causing industrial unrest because of legal infringements. Employers will be given an opportunity to appeal, but only after the publication has gone ahead.

Employers with operations in Hunan Province must now (effective November 15th) give pregnant mothers 60 days additional maternity leave. Payment during this period will be at their normal salary and there will be no contribution from the Maternity insurance fund.

In Jiangsu Province changes will be introduced from January 1st 2017 concerning the classification of work-related injuries. In future, injuries arising during the journey to

and from work will be classified as workplace injuries, including any detours that may be made to buy food, pick up or drop off children, going to a parental home or the separate home of a spouse.

EUROPE: Calling time on bid rigging

European Union officials are becoming increasingly concerned about bid rigging after it was revealed that in 30% of EU governmental calls for tender received just one bid each last year. The public procurement market by the EU and member states was worth 1.9 trillion euros. The low level of tenders is partly a consequence of the sheer size of some contracts and the speed of response required. But undoubtedly some collusion is taking place and much of this is between corrupt officials or politicians and "preferred tenderers".

The problem is not only confined to the EU. A recent report by 'transparency international' has warned that corruption is rife in non-EU countries such as Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey. Moreover, there are no institutional means to investigate and hold those responsible to account.

Although, for instance, Macedonia passed an anti-corruption law over a year ago there has been no political will to implement it. Likewise, a whistleblower protection law that was due to be passed by the national parliament on October 20th remains in political limbo.

Multinational companies operating in these countries will remain subject to anti-corruption laws in their home state – such as the US Foreign Corrupt Practices Act of 1977 (FCPA). Even so, great diligence by senior

managers and HR oversight will be necessary because of the strong expectations of officials and other business contacts that bribes and inducements will be paid or deals worked out to hold back on one bid in return for a quid pro-quo on another. If HR wishes to keep out of the line of fire when these practices come to light it must be proactive in maintaining a strict anti-corruption policy, training all commercial staff on how to avoid giving or taking bribes and briefing colleagues on the risks of disclosure and huge penalties that will follow.

GLOBAL: It can pay to be unionized

Heralded as a victory for employers, the recent decision of a District Judge in Texas to issue a permanent injunction against a US Department of Labour (DOL) rule on fair dealing in labour relations appears so much like a backward step for labour relations. The DOL rule required that employers should disclose that they had hired union busting lawyers to advise them, or consultants to persuade employees against union membership.

But then there remains such a huge divide between the USA and Europe on attitudes amongst employers towards trade unions. During the last 50 years in Europe, particularly in Scandinavia, at an EU level and even in the UK since mid 1990s, a view had been cultivated that trades unions are “social partners”. Labour relations advanced on the basis of consensus and cooperation. This was how significant amounts of flexibility were achieved to the point where in Denmark even labour laws could be minimized – as most issues were dealt with through collective bargaining. Some Swedish unions have also grown to become more like welfare

and lifestyle bodies offering cut-price home insurance and discount holiday deals to members.

Unionization is on the decline in all European countries except Belgium, Italy and Spain and likewise days lost due to industrial action in Europe has fallen from 82 per 1000 employees in 2002 to 28 per 1000 employees in 2015. However, union strength, or at least their perceived strength, is nothing to do with union membership. France has the lowest union density (at 7.7%) in Europe, but unions continue to exert a huge impact upon government policy. In the USA union density has fallen to 10.7%, but there remains a deep concern amongst employers – fostered by chambers of commerce - about becoming unionized. This is in spite of a right by employers in the USA to replace striking employees on a permanent basis and negotiate binding no-strike collective agreements.

What has primarily changed has been the skill set of HR to deal with unions. Labour relations specialists were always a tough breed apart, with human relations skills far removed from those necessary for the general HR role. Without them, companies can so easily feel exposed - yet the decline in union membership is not encouraging the hiring or development of such specialists. One reason for confusion and indecision is that union membership has changed its nature. In many countries women members outnumber men and throughout the west white-collar unions now dominate the scene. Thus more female specialists are required with tough professionalism, mixed with intellectual sophistication.

Central to the opposition of employers to unions is also a pervasive myth, that union

organized workers cost far more than non-unionised workers and that this is largely due to higher benefit levels enjoyed by unionized workers. This is certainly the case in the public sector and amongst the dwindling population of blue-collar workers. But, according to the US Bureau of Labour Statistics the employee cost difference for sales and office staff is very marginal and for managerial, professional and related employees there is a \$3 salary differential in favour of non-unionised staff.

Handled effectively trades unions can provide a huge advantage for companies in reducing the incidence of litigation in individual disputes and improving communicating with employees. It may come at a price in terms of wage rates, but it can ironically also have the effect of driving companies to automate their more costly manual operations far more rapidly than they would otherwise do - and therefore reduce overall labour costs per unit of output.

USA/EUROPE: Privacy minefield

The demise of 'safe harbor' as a procedure for facilitating the transmission of personal data between Europe and the USA last year was largely due to concerns about the vulnerability of such transfers to snooping by the US National Security Agency. Now the biggest threat to data privacy lies in Europe itself. Last month the UK's 'investigatory powers tribunal' ruled that the UK intelligence agencies have been unlawfully collecting personal data without necessary oversight for around 17 years. Then, last week, royal assent was given to a new "Investigatory Powers Act' that gives the UK police and secret intelligence community the strongest surveillance powers in the western world.

But, it is not only personal privacy that is at stake, but also commercial secrecy. Agencies such as MI5, MI6 and GCHQ are not publically accountable for what they do and the UK will continue to freely share "intelligence" with a US government that will soon be operating primarily to shore-up the personal business interests of a nepotistic president, together with all his dubious associates.

Meanwhile, the US Department of Commerce has been busy approving 500 applications for data transfers under the new "privacy Shield" - and has another 1000 yet to process. This amounts to around 5% of all the applications that shall be necessary if all companies covered by the rules are to be compliant.

The future validity of Privacy Shield also remains in some doubt due to two separate challenges before the European Court of Justice. Applications under Article 263 of the Lisbon Treaty to annul the EU decision to go ahead with Privacy Shield have been made by privacy rights groups in Ireland and France. The French challenge claims that the US Ombudsman appointed to oversee the process of data transfer lacks sufficient independence and authority to undertake the role.

Pay, Tax and Benefit Trends

INDIA: Prime Minister Modi has banned the use of 500 and 1000 Rupee notes. They can now only be exchanged or deposited via banks. The purpose of this decision is to determine who possesses such notes so that a comparison can be made against their income tax returns. The banks will monitor transactions between November 10th and December 30th 2016. In a further move, the Indian tax department has begun to introduce a system that automatically calculates tax due and reports them to individuals and their employers via a text message when their quarterly tax deductions have been made. It is being introduced on a voluntary basis and will gradually be extended across the entire country.

REPUBLIC OF IRELAND: The private sector committee of The Irish Congress of Trade Unions (ICTU) has recommended to all affiliated trade unions that they seek 4% pay deals during 2017. ICTU believes that price inflation will be around 2% next year and productivity increases amount to 1.5%. Meanwhile, in the public sector, trouble is brewing in a number of sectors such as Bus Éireann and train drivers, the Gardaí (police), doctors and nurses and civil servants. The General Secretary of the SIPTU union has given the government until November 24th to agree to talks or will authorize strike ballots.

SRI LANKA: The Colombo government's 2017 budget contains a number of important tax changes. The current flat-rate corporation tax rate will be converted to three rates – 14%, 28% and 40%. Capital gains tax at a rate of 10% will be introduced and taxes on dividends increased from 10% to 14%. A new 24% maximum rate of income tax will

apply and all workers will be entitled to LKR 100,000 (\$US 676) per month tax free.

USA: Delta Airlines have informed flight attendants, ground workers and reservation attendants that they will receive a 6% pay rise in April next year, plus enhanced contributions to their superannuation scheme. This move follows a proposed pay deal for pilots that would give them over 30% during the next four years, partly to compensate them for taking past pay cuts.

Other Global HR News in Brief

AUSTRALIA: A Notifiable Data Breaches Bill has now before the Australian parliament. This requires larger employers to notify individuals at the earliest opportunity if there has been a security breach in respect to their personal data and it could result in serious harm. If it is not clear whether a breach has actually taken place, employers will have 30 days to investigate the incident. No notification will be necessary if a breach has been discovered, but rectified before the data could be accessed by any third party.

CANADA: The Court of Appeal in British Columbia has ruled that an employer may claim damages from an employee, in some circumstance, if they quit their job without giving notice. But the temptation to take legal action may be curtailed by the net benefits of doing so. In *Consbec Inc vs Walker* a court of first instance awarded the company substantial damages. However, the Court of Appeal limited the claim to only those additional costs directly associated with the failure to give notice. As the replacement employee cost less than the saving made by employing the departing employee no actual damages were due.

EAST AFRICA: A deal worked out by the trading block - “the “East African Community” (EAC) - to set up a free movement of labour zone has now been implemented by Kenya, Rwanda and Uganda. However, work permits are still required by Burundi, South Sudan and Tanzania for EAC foreign nationals. Tanzania has recently moved some way towards the policy by reducing the cost of work permits from \$US2,000 to \$US500 and cross border business establishment permits from \$US3,000 to \$US1,500. All firms in the research, law, architectural and real estate sectors are also allowed to offer cross-border services for Clients in other EAC member states.

EUROPEAN UNION: According to Eurostat, over the period from 2005 to 2015 the expected working life of people in the European Union grew by 1.9 years. Moreover, women’s working life expectancy has grown by 2.6 years, but by only 1.2 years for men. The longest average working life is in Sweden (41.2 years), Netherlands (39.9 years), Denmark (39.2 years) and the United Kingdom (38.6 years – but is only 30.7 years in Italy, 32,1 years in Bulgaria and 32.3 years in Greece.

FRANCE: The French data protection authority (CNIL) has issued two new types of authorizations for use by organisations which use biometric data for security access purposes. Where the data subject (employee) has the possibility of verifying the accuracy of the data then the authorization AU 052 will apply. If it is not possible for such access to be made then an alternative authorization will have to be applied (AU 053). This requires data processors to introduce special safeguards such as the encryption of data when it is transmitted, the deletion of data in

the event of unauthorized access, the training of persons authorized to use the equipment and complete traceability in all systems. As a first step, however, the CNIL requires processors/employers to consider whether they can avoid the use of biometric data by, for instance, just issuing name badges or giving entry access alpha-numeric codes to employees.

GERMANY: Data protection authorities in ten different German Lander (states) are currently undertaking a coordinated investigation into 500 large companies to determine how they handle data transfers to countries outside the European Economic Area (EEA). Companies that have established transfer procedures that are compliant with data protection laws in another EEA state may find that they do not meet strict German compliance requirements. This is because there has to be a powerfully legitimate reason to transfer data, especially to another country – even if it is another EEA state. This contravenes EU internal data freedom laws, but as the restrictions would need to be challenged at the European Court of Justice, defending a free data movement position could involve significant legal costs.

GREECE: A review of the Greek bailout programme has resulted in its creditor organisations suggesting that it introduces Danish-style labour laws. This is characterized by a basic legal framework within which much is achieved through social dialogue. They are also proposing an increase in the proportion of the workforce that can be made redundant before it is classified as a mass layoff, as the necessity to consult has led in the past to company closures. In addition they are insisting on a more effective programme to combat

undeclared work, greater labour flexibility, changes to the structure of the minimum wage, an end to general longer-term pay increases and a focus on collective bargaining at a company rather than sectoral level.

JAMAICA: According to replies sent to a UN Human Rights Committee by the Jamaican government, there is no need to amend anti-discrimination laws relating to sexual orientation because “there is no legal discrimination against persons on the basis of their sexual orientation”. Moreover, an Act passed on disabilities discrimination in 2014 has still not been fully implemented. The Act contained a requirement to set up a Jamaica Council for Persons with Disabilities (JCPD) as a corporate entity. However, it has not been incorporated and hence “legal authority to formally investigate cases of discrimination” does not yet exist and “there is no formal reporting of discrimination”.

JAPAN: The incidence of Karoshi (death by overwork) is becoming headline news in Japan following a number of suicides and heart attacks by many talented young professionals. The underlying problem is a culture that encourages hard work, dedication and gratitude for a job. This is backed by labour laws, such as Article 36 of Japan's Labour Code, which leaves decisions on overtime hours and rest days to local agreements with often compliant trade unions - or “with a person representing a majority of the workers where no such trade union exists”. A report published last month found that 22.7% of 1,743 companies surveyed admitting having workers undertaking over 80 hours of overtime a month. This has led the Prime Minister to set up an advisory panel which is likely to

recommend new statutory overtime limits – possibly limited to certain sectors.

NORWAY: A six-week strike of railway engineers in Norway has been called off following a joint invitation by both parties for the Transport Minister to step in. At issue has been the insistence by the rail union, Norsk Lokomotivmannsforbund, that the state railway operator NSB should introduce competency standards and incorporate them into employment contracts. The union is fearful that foreign railway companies will take over parts of NSB under current government privatization plans. They want the standards to be a requirement after any transfer of operations. However, the NSB claimed that standards could only be introduced by the state itself. Government intervention now makes it possible for the new standard to be introduced.

SWEDEN: The Swedish government has set up a special enquiry to examine the way that the renewal of work permits is handled. This arises after a number of high profile cases where immigration rules were applied to the letter rather than interpreted in the light of changed external circumstances. This is because currently a renewal can only be made if all the conditions that led to the issue of the original permit continue to be met. The enquiry will be completed in the Spring of 2017.

PAKISTAN: A recent meeting organized by Pakistan's Institute of Labour Education and Research has highlighted the problems facing the country's trades unions. Less than 1% of the working population are members of trade unions and there is no formal guarantees on freedom of association. Participants were also concerned about a lack of health and safety inspection and

protection provided by federal and provincial governments. There is apparently little expertise across the country in occupational medicine and few facilities to conduct medical examinations of workers. The meeting also considered the current status of the minimum wage. Although it remains very low (Rs 14,000/\$US 134), an estimated 80% of workers do not even receive the wage as there is no effective mechanism to police it.

THAILAND: New specialised Appeal Courts were established in Thailand last month to relieve the caseload of the Supreme Court. From now on, cases related to labour, tax, bankruptcy and family issues will be appealed to the Specialized Court of Appeals, although a second appeal can be made to the Supreme Court. However, the Supreme Court can refuse a second-level appeal if the action is deemed to be unfounded.

UAE: According to an announcement by the Minister of Human Resources and Emiratisation, National Day and Commemoration Day holidays for the private

sector will this year be on Thursday, December 1st and Friday December 2nd.

USA: Conducting a background check may be a routine HR policy for many companies, yet in some occasions it entails potential exposure to litigation. A Federal Court in Florida granted a compensation of US\$ 3.6 million (€3.3 million) including US\$250,000 (€229,567) loss of wages due to repeated misidentification of the plaintiff as a past criminal - with the consequence that their career suffered. Although, the litigation was against a screening company, there is now a higher chance that an employer could directly suffer a similar outcome.

USA: A Federal judge in Texas has issued a temporary national injunction suspending a regulation issued by the US Department of Labour that doubled (to \$47,476) the salary threshold under which workers receive time-and-a-half pay whenever they work more than 40 hours a week. The new Threshold was due to be introduced on December 1st.

Dates for your diary:

November 29th 2016: **Mozambique** introduces new immigration regulations. These will impose severe limitations on the use of foreign labour.

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

December 4th 2016: **Italian** referendum on constitutional reform.

January 28th 2017: **Chinese** New Year

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

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

June 24-25 2017: **Muslim** Eid al Fitr

July 25th 2017: **Indian** Presidential elections

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

Travel Warnings

BURUNDI: All travel to this African state should be delayed until the current turmoil in the country dies down. Extreme violence following the country's controversial elections and an attempted coup d'état, have also encouraged general lawlessness. Armed criminals are ambushing vehicles, particularly on the roads leading out of Bujumbura.

CHINA: Following incidents of unrest resulting in fatalities and injuries involving ethnic minorities in Myanmar, close to the borders of China, the Department of Security in China has issued an official warning stating that the country's army is on high alert.

DOMINICAN REPUBLIC: Heavy rains have caused widespread flooding across the Dominican Republic and displaced over 20,000 people. Travel across the country will be affected for up to two weeks.

GERMANY: Pilots employed by the German airline Lufhansa are carrying out a series of 24-hour strikes in a long-standing dispute about pay. This is affecting a high proportion of European flights.

INDIA: Rail services are still seriously affected in the northern area of Uttar Pradesh following last Sunday's major rail accident.

INDONESIA: Extreme caution should be maintained when travelling to Indonesia due to a high risk of terrorist attack, particularly in Bali.

LIBYA: No travel should be undertaken to Libya due to extreme risks of terrorism, violence aimed against foreigners and a high incidence of crime.

NEW ZEALAND: Extensive damage, especially to communications, remains after a severe 7.8 magnitude earthquake hit south Island on November 14th. There have since been a number of severe aftershocks. Moderately powerful earthquakes are also affecting some parts of north island.

PANAMA: Extreme caution should be maintained whilst traveling anywhere in the country. No travel should be attempted through the Darien Gap, beyond Yaviza. Travelers from Bolivia, Brazil, Colombia, Ecuador, Peru or Venezuela will be required to present a valid yellow-fever certificate.

PERU: The Canadian government has issued extensive travel advisories concerning many areas of Peru, especially along its border with Colombia and Ecuador. Non-essential travel should be avoided.

SOUTH AMERICA: Several volcanoes are becoming active in the Andes chain – throwing ash over a wide area, plumes high into the upper atmosphere where jet aircraft travel and also giving rise to earthquakes. These include Sabancaya in Peru and Nevados de Chillán in Chile.

TAIWAN: A warning has been issued by the Centers for Disease Control (CDC) in Taiwan concerning the spread of severe complicated influenza (SCI) and the need for vaccinations before the onset of winter. SCI arises where patients already suffer from another underlying health condition. In one recent case a 36-year old man died only one day after flu had been diagnosed. Employers that identify the possible incidence of flu in employees should send them home immediately and advise them to avoid contact, particularly with elderly people.

TANZANIA: An outbreak of cholera – a water born virus – has been identified in Mwamza, Tanzania. It is highly likely, if not treated properly, for the virus to spread all over the country. It is recommended for visitors to be extra careful with sanitation and potable water.

UNITED KINGDOM: London underground workers have voted for strike action over staffing and safety. This could affect services during the run up to Christmas. Strike action on Southern Rail will continue over the next few weeks with walkouts planned for the 7/8th December, 22/24th December and 31st December to January 2nd 2017. Flooding is still affecting many parts of the UK – especially in the south-west.

USA: Several states in the USA – including Arkansas, Iowa and Missouri - have reported an increasing number of mumps infections. The virus is classified as highly contagious yet treatable within days after diagnosis, with symptoms common to flu including fever, tiredness, muscle aches and headache.

FedEE News

FedEE's next Fellowship Meeting will be held on Thursday, 12th January 2017, at Adam House, 7-10 Adam Street, The Strand, London WC2N 6AA, UK. The Fellowship Meeting is great opportunity for all HR Managers and Executives to discuss – off the record - the latest employment legislation and caselaw, in an attempt to establish good practices and policies. The meeting will have an open agenda, with topics suggested by participants. For further details and information about this event, please email us at admin@fedee.com.

* Comment by Robin Chater, FedEE Secretary-General. All views expressed are those of the author and not necessarily those of the Federation.

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