



# Dernières nouvelles

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FedEE News

### COMMENT: Our masks of integrity

Countless experiments make it clear that we all do it, are very poor at detecting it in others and its consequences can be very dramatic. Lying is so much an everyday event that its incidence has been found to average around once every three minutes of speech. It varies little by culture or nationality, although what people regard as lying and the way they betray it in their actions does differ significantly around the world.

The importance of honesty in business places a huge onus on the detection of lies and the avoidance of hiring inveterate liars, yet few of us have a natural capacity to detect lies and generally perform little better than chance when put to the test. Nevertheless, detection is a skill that can be taught and with practice it can be a powerful barrier against those with serious things to hide about themselves from interviewers. For instance, people often betray themselves by hesitation or a change in the pitch and speed of their voice. A person's rate of blinking is

often affected, as is the removal of eye-to-eye contact. Much can be told from a smile. Guilty smiles are normally inappropriate; they frequently only show up on one side of the face, or just the lower face, and do not engage muscles around the eye. However, beware – Japanese people often smile just out of politeness rather than deceit.

A more disturbing phenomenon that can take over a nation and, even more easily, a corporate entity is described in the latest edition of the New York Review of Books by Serbian opposition politician Vesna Pešić. This is a 'culture of total lies' where lying becomes 'dominant in a society, as a result of the reinvention of reality and the denial of facts'. HR needs to constantly undertake a reality check to ensure that they are not feeding management processes that rely on constant fabrications. Mark Twain once said, "If you tell the truth, you don't have to remember anything." Truth is easier and infinitely more efficient, yet it is forever under

siege and if untruths are given space, like a cluster of germs, they will destroy their host.

## **BELGIUM: Proposed wage reform**

The Belgian federal government continues to struggle with a proposed reform of the current Interprofessional Agreement system. Late last year it was proposed that the existing complex system involving two-year reviews of wage competitiveness based on a comparison with neighbouring countries should be modified, in order to prevent the possibility of leapfrogging increases that could damage the economy.

The plan would drop use of OECD forecasts – that are considered inflationary – and bind employers through either a formal collective bargaining-style agreement or a Royal Decree. If employers exceeded the permitted overall increases they would be fined between 250 and 5,000 euros (US\$264 to \$5278) per employee) depending on the margin of excess. Any changes would, however, be outwith the general wage indexation system. The next indexation amount of 2% is likely to be triggered in July 2017.

## **EUROPEAN UNION: Illusive employment**

Unemployment remains a serious issue for governments and employers alike, particularly in the Eurozone countries. In December 2016 the EU unemployment rate averaged 8.2%, whilst the Eurozone rate was 9.6%. The highest rate remained in Spain (18.4%) and the lowest in the Czech Republic (3.5%) and Germany (3.9%). In the latter countries, the rate is close to its effective minimum, given the normal volume of flows between jobs and residual level of people with low employability. By way of

comparison the latest rate for the USA is 4.7% and Japan 3.1%.

Those aged 15–24 who are available to work are the hardest hit group, with the EU average rate at 18.6% and Eurozone rate at 20.9%. Once again, Spain (42.9%) tops the EU jobless league table, with Germany (6.5%) performing the best of all EU countries. Employment of young people is, however, a global problem with the US youth unemployment rate at 10% – more than twice as high as its general rate – and Japan's rate (4.9%), considerably higher than for other age cohorts. Generally young female workers fare better than their male counterparts, with the German rate 0.9% lower than for young workers as a whole. The exception is Cyprus where 35.2% of young female workers are looking for work.

## **GLOBAL: Summary dismissal – case law**

Summary dismissal often arises out of the heat of the moment when an employee is insubordinate, acts violently, is found to have acted dishonestly, or is under the influence of drugs or narcotics. Yet unlike dismissal for blatant criminal behavior, employees will often challenge termination without notice if there are no witnesses to an event and the employer has helped to incite inappropriate conduct.

In the USA, in a case earlier this month (*Gogos v. AMS Mechanical System, Inc.* 7<sup>th</sup> Circuit. 3<sup>rd</sup> February 2017), a court gave backing to a summary dismissal against an employee who had claimed the need for urgent medical attention because they had quarreled with their foreman about production of a sick note. This was in spite of the employee's poor English language skills

and subsequent medical evidence showing that the employee was justified in seeking urgent treatment.

Yet a divisional court case in Canada last autumn (*Caskanette v. Bong Keun DP Corp*) overturned a lower court's decision to allow summary dismissal concerning a dental receptionist. The case revolved around a new employer who did not accept a long-standing practice of not normally scheduling treatments on Fridays. When the only appointment on Friday was cancelled, the receptionist went home and refused to obey an order for them to return. In the Divisional Court's view there is a duty to warn employees before summary dismissal in such circumstances.

Although the South African Labour Relations Act specifies being under the influence of alcohol and narcotics as a form of workplace misconduct, there is, in practice, a high threshold for resulting conduct before a court will accept such a condition as justification for dismissal. The employee must generally be found to be incapable of performing their duties, unless there is already a zero tolerance policy in place with the punishment predetermined.

Similarly, in Australia a zero tolerance policy is commonly used to deal with alcoholism and drug abuse. In *Clayton v. Coles Group Supply Chain Pty Ltd* (2016), the Fair Work Commission found a forklift truck driver was not instantly unfairly dismissed when he was found to be under the influence of cannabis at work. This was because of the nature of his work, the fact that he had been given an opportunity to respond to allegations and had been allowed to bring someone to support him during the disciplinary interview.

But misconduct can result in summary dismissal even if its purpose is in the employer's interests. In another Australian case, *Jeong v. Alpha Flight Services Pty* (2016), the Fair Work Commission accepted that an employer had acted lawfully when they instantly terminated an employee who had altered a medical certificate so that they could return to work a day earlier than their doctor had authorised. This was despite the employee having three years of service and a satisfactory work record. The FWC also ignored the fact that the employee had an ongoing workers' compensation claim against the company, which may have been the real basis for the termination.

These cases demonstrate that courts in the jurisdictions we have covered do not follow any consistent or proportional patterns when assessing summary dismissal actions. Ulterior motives of employers can be readily ignored, the gravity of misconduct exaggerated and miscommunication problems set aside. What is important for employers is to have in place clear zero-tolerance policies wherever they can be justified, and to offer employees a chance to respond to allegations and be accompanied by someone in support of them to a disciplinary interview.

## **USA: Costly class actions**

Although the incidence of employment class action cases declined across the USA last year, their total value has trebled over the last two years. Legal costs alone can run into millions of dollars and end the careers of HR professionals whose misjudgments have led to the litigation.

Wage and hour cases are likely to proliferate in the future - in spite of a temporary block on

the FLSA overtime rule made by a federal judge in Texas last December. Not only did the FLSA reform double the threshold value for employees entitled to overtime pay, but pay and hour submissions may be certified for class action status relatively easily and cheaply.

By way of example, a number of important class action claims have been winging their way through the US courts recently:

\*In an action by security guards, the California Supreme Court has banned employers of non-exempt workers from requiring them to be on-call while taking their mandatory ten-minute rest breaks every four hours (*Augustus v. ABM Security Services*). The court did, however, concede that in genuine exceptional circumstances an employer could reschedule a rest period or pay a premium for its loss.

\*A US\$50m claim for unpaid overtime has been filed before the federal court in Hartford, Connecticut, with an application for it to be treated as a class action. It has been made by a former employee of MetLife Inc on behalf of claim specialists working in different US offices who processed long-term disability insurance claims. It is alleged that these employees were required to work up to 60 hours a week without overtime pay.

Meanwhile, the US Supreme Court has put off until the autumn a hearing involving three consolidated cases that seek to establish whether employers can force employees to give up their right to pursue work-related class-action claims.

## **USA: The shape of things to come**

In the words of an English Jacobean play by John Webster, 'poisoned near the head death and disease through the whole land spread'. During the 1920s and 30s it was anti-Semitism; today it is Islamophobia. In both eras, at the forefront of intolerance we find business leaders and a disturbing thread emerging in jurisprudence. The recent repeated attack by a top businessman against a Muslim employee wearing a hijab at the Delta airlines lounge at Kennedy Airport brings home the changing nature of race relations in America. During the attack, the President of a Massachusetts metals company (who has now been charged and bailed by a court for assault and threatening behaviour) announced, "Trump is here now. He will get rid of all of you."

The willingness of courts to excuse discrimination has also been well illustrated in a recent New Jersey case. An employer was found, on appeal, to have lawfully dismissed an employee for wearing a hijab (head scarf used to take attention away from femininity) at work. The female employee concerned was a prison officer with 13 years' service. Although New Jersey has a law against discrimination, the court decided that the wearing of a hijab would cause an 'undue burden' on her employer because of 'safety concerns' and the possibility that items could be concealed in the garment.

The tables have, however, been turned in a closely related case involving the New York Police Department (NYPD). Here, a female police officer is suing the force for harassment, civil and human rights violations because of alleged repeated verbal and physical attacks by fellow police officers, and



the failure of the NYPD to deal with problems after repeated complaints over several years.

So, taking Webster's wise counsel, HR should maybe note that 'though some of the court hold it presumption to instruct princes what they ought to do, it is a noble duty to inform them what they ought to foresee'.

## Pay, Tax and Benefit Trends

**CHILE:** The Chilean mining industry faces significant disruption over coming weeks because of a strike by workers at Escondida Copper – the world's largest copper mine operated by BHP Billiton Ltd. During recent negotiations the company had stuck to a pay freeze, with reduced benefits. This was in response to union demands for a 7% increase in basic rates and a hefty one-off bonus. At the end of 2016, workers at Codelco's Chuquicamata mine signed a 27-month deal that effectively froze their basic rates but provided a US\$6,700 signing bonus. Moreover, a strike at El Penon gold-silver mine in Chile recently ended when the Canadian owners offered a US\$20,000 bonus plus small annual increases over the next three years.

**EUROPE:** Nine European countries have formed an 'Alliance du Routier' (road transport alliance) in order to combat 'social dumping' practices involving lorry drivers. The countries – Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Norway and Sweden – will jointly seek to strengthen their laws and legal enforcement methods to ensure that decent wages, terms and conditions are applied to drivers of vehicles passing through their territories.

**EUROPEAN UNION:** The European Parliament has voted in support of a report calling for all EU countries to have a national minimum wage, although they blocked a proposal that national minimum wages guarantee at least 60% of the median income in each country. Sweden, Denmark, Italy, Cyprus, Austria and Finland do not currently have a minimum wage and a pan-EU wage has already been ruled out by EU Social Affairs Commissioner Marianne Thyssen. However, Thyssen has not ruled out the application of strict minimum pay and working condition rules to the whole of the emerging EU gig economy.

**GERMANY:** Deutsche Bank has revealed that only 10% of its bankers and traders will receive a bonus payment this year and that the payout will be spread over the next five years. This cut back follows a US\$7.2bn settlement with the US Department of Justice over the bank's mis-selling of mortgage securities and net corporate losses amounting to US\$8.75bn last year.

**GUATEMALA:** An article in Guatemala's constitution currently states that if an employer hires a worker for less than the amount of 'established working days', they will be entitled to be paid for the entire week. This has made part-time employment an unattractive option and reduced many employment opportunities, especially for women. As a step towards rectifying this anomaly, the Chamber of Deputies has just passed a law ratifying ILO Convention 175 on part-time work. This now awaits the signature of President Jimmy Morales and will have legal effect once published in the official journal.

**HONG KONG:** The minimum wage in Hong Kong has remained unchanged at \$32.5 (US\$4.19) an hour since May 2015. However, the Executive Council has decided that it should be raised to \$34.50 (US\$4.45) on 1<sup>st</sup> May 2017. The minimum wage is very low relative to the cost of living in Hong Kong and therefore applies to a small number of people. More significant as a guide is the fact that it increases wages by 6.2%.

## Other Global HR News in Brief

**ARGENTINA:** Although the laws of many countries prevent employers from discovering – or seeking to discover – spent or lower-level criminal convictions of job applicants, it may well pose a problem if the employee has to visit countries where a clean criminal record is a requirement for entry. The latest country to apply a ban against anyone who has served a term of imprisonment is Argentina. The President has just signed a decree banning foreigners who have "once been sentenced or [are] currently serving a sentence, or having a criminal record or a sentence under appeal" in Argentina or abroad. It also requires the deportation of foreigners with serious criminal records already residing in the country.

**ARMENIA:** The Armenian parliament has passed an amendment to the law on citizenship and administrative offences. This removes the financial penalty for failing to report to the police that a citizen also holds citizenship of another country. It is estimated that over 100,000 residents in the country hold two passports, with the most common second citizenship being Russian.

**AUSTRALIA:** A bill has passed the Australian House of Representatives that will give the Immigration Minister broad powers to revalidate the criteria for issuing visas on any criteria that the Minister chooses. Examples in the bill include country of origin, states or regions within a country, countries that an individual has visited or any other basis "in the public interest". The bill is now before the Senate where it will be subject to strong opposition.

**AUSTRIA:** Austrian natural and adoptive fathers' rights are subject to the Family Times Bonus Act. With effect from 1<sup>st</sup> March 2017, they will be entitled under the Act to between 28 and 31 days paid leave at a flat rate of €22.60 (US\$23.85) per day. This payment will be covered by local health insurance funds. To be eligible, a father must have 6 months prior continuous employment. Whilst on leave, their jobs will be protected and if they opt to share – at least on 60/40 basis – their leave with the mother's parental leave they will qualify for a €500 (US\$528) bonus.

**ECJ:** The European Court of Justice has recently been ordered by its own General Court to pay compensation of €47,064.33 (US\$49,680), plus costs, to a company because of undue delays in hearing a case. The period involved was around 5 years and this had breached Article 47 of the European Charter of Fundamental Rights (T-577/14 French version alone available).

**FRANCE:** Following the Rebsamen reforms of 2015, the time is fast approaching when employees in small companies will achieve representation. From 1<sup>st</sup> July 2017, joint regional inter-professional commissions will be established to represent employees in

companies with less than 11 employees. They will listen to complaints and make representations to employers as an indirect equivalence of the staff delegates that are elected in companies with 11+ employees.

**GEORGIA/EU:** The European Parliament has approved a visa waiver resolution for citizens of Georgia. If approved by the EU Council of Ministers, it will allow Georgians with biometric passports to visit EU countries, Norway and Switzerland (but not the UK or Ireland) without a visa for periods of up to 90 days.

**INDIA:** Leave policies provided by PayPal in India have been enhanced. Paid maternity leave has been doubled to 12–26 weeks and paid paternity leave raised to 5–10 days. Women adopting a child are also now entitled to 16 weeks paid leave. PayPal has operated a software development centre in Chennai since 2007, and in 2012 decided to treat India as an ‘incubation area’ for employee engagement policies.

**JAPAN:** An anti-passive smoking bill is currently before the Japanese parliament. This would ban smoking in public indoor spaces, although some allowance may be given in respect to rooms set aside for smokers, provided that they have their own ventilation systems.

**RUSSIAN FEDERATION:** From 1<sup>st</sup> July 2017, fines for violation of data protection law will be substantially increased in Russia. The data protection authority, Roskomnadzor, will also enjoy new powers to prosecute offenders without first gaining authorisation from other state authorities.

**SINGAPORE:** Those companies operating with senior foreign personnel possessing an employment pass should take care when appointing such employees from one of their group entities to sit on the board of another group entity. Before doing this, it is now necessary to seek prior permission from the Ministry of Manpower. It is also likely later this year that companies will be required to maintain a register of the beneficial ownership of the enterprise and associated entities.

**SWITZERLAND/CROATIA:** The EU/Swiss protocol on free movement of persons has now been extended by Switzerland to citizens of Croatia. However, work permits are subject to a strict quota. Service providers in Croatia may send workers to Switzerland for periods of up to 90 days per year, but only if they comply with pre-notification procedures. Croatians working in Switzerland but living in an adjacent country may also now apply for a border commuter permit.

**UNITED KINGDOM:** Although companies generally try to steer a wide path around matrimonial disputes involving employees, they are often drawn in when settlements are made involving payroll deductions and allocations. Pension sharing is also frequently an issue for trustees and administrators. However, a recent case has shed light on the rights of individuals to foreign pensions. In a High Court ruling (*Goyal v. Goyal* [216] EWFC 50) it was decided – on advice of the Appeal Court – that UK courts had no powers under the Matrimonial Causes Act 1973 to make orders on overseas pensions. Therefore, if a company operates an overseas pension

scheme there is no right to split its proceeds in favour of a divorcing partner.

**USA:** The Seattle City Council has approved a new paid leave policy for city employees, expanding leave for new parents from 4 to 12 weeks and creating a new 4-week family leave policy for employees who need to care for sick family members. Employees will become eligible for the new provisions after working for the city for 6 months. The new policy also applies to placements of children into homes through adoption, foster care and legal guardianship. The new benefits apply retroactively to January 1st 2017.

**USA:** The Americans with Disabilities Act entails a rather broad definition of what constitutes disability. More often than not, legal ambiguities may result in employers having to pay compensation to employees. A

disability is defined as any condition that substantially limits major life activities. In *Bethscheider v. Westar Energy*, a District Court in Kansas (16-4006: 13<sup>th</sup> January 2017, ongoing) ruled that migraines can be regarded as a disability that require special accommodation by employers, depending on the circumstances. The plaintiff had to remain at home when she was suffering from migraine attacks, but she always covered for her lost working hours. There is no final reconciliation of this case but as things stand, the court is likely to require the employer to accommodate the condition by offering a quiet, low-light location at, or close to, the workplace.

## Dates for your diary:

**March 15<sup>th</sup> 2017:** **Dutch** general elections

**April 1<sup>st</sup> 2017:** **New Zealand** minimum wage rises to 2729.48 NZ dollars (US\$)

**April 6<sup>th</sup> 2017:** Introduction of apprenticeship levy for large **UK** employers.

**April 16<sup>th</sup>** Catholic and Orthodox Easter

**April 23<sup>rd</sup> and May 7<sup>th</sup> 2017:** **French** Presidential Election.

**June 24-25<sup>th</sup> 2017:** **Muslim** Eid al Fitr

**October 22<sup>nd</sup> 2017:** Federal elections in **Germany**

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



## Travel Warnings

**AUSTRALIA:** A number of intense and extensive bushfires are raging across rural areas of New South Wales due to the heatwave in recent weeks. Meanwhile heavy storms in Queensland has resulted in power blackouts in parts of Brisbane.

**CAMEROON:** Protests are taking place in across the English-speaking areas of northwest Cameroon. This is resulting in police violence that has recently left 4 dead and ten seriously injured after police opened fire on a crowd.

**CANADA:** A public warning has been issued over random attacks in Vancouver's Stanley Park in recent months. Visitors to the city should not venture into the park after nightfall.

**DR CONGO:** Visitors to all parts of the country are at risk from street violence, particular during demonstrations ahead of the elections expected in December 2017.

**EL SALVADOR:** The United States has stiffened its travel warning for El Salvador, urging its citizens to carefully consider the risks of travel to El Salvador due to the high rates of crime and violence. El Salvador has one of the highest homicide levels in the world and crimes such as extortion, assault and robbery are common.

**FRANCE:** Demonstrations are taking place in Bobigny on the outskirts of Paris, Marseille, Toulouse and Orleans objecting to police violence. They are generally peaceful, but are highly volatile.

**INDIA:** Travel should be avoided to the NE state of Nagaland due to widescale, violent protests.

**JAPAN:** The Chinese embassy in Japan has issued a travel warning following the discovery by the Tokyo Electric Power Company (TEPCO) that inside of its crippled nuclear plant in Fukushima the radiation level has risen from 73 sieverts per hour to 530 - a potentially lethal dose.

**MALAYSIA:** Large rallies are expected in Kuala Lumpur on Saturday 18 February. Locations may include Padang Merbok and Taman Jaya Park - but this could change. Visitors should avoid crowds and monitor local media for updates. It is illegal for foreign nationals to take part in demonstrations under Malaysian law.

**NORTH KOREA:** The U.S. State Department has just issued a fresh alert warning travelers to avoid North Korea due to the serious risk of arrest and long-term detention.

**PHILIPPINES:** A strike of workers on Manila's metro services has affected some parts of the city. Now the union concerned is planning more widespread strike. A hot spot for piracy by islamic fundamentalists over the last year is the Sibutu passage separating the Philippines and Malaysia. The seas around Malaysia and Indonesia have also accounted for 62 kidnappings over the last year. Travel by sea in this region is high risk, as kidnappings are almost always for ransom and failure to pay will have fatal consequences for the victim.

**TURKEY:** 749 minor earthquakes have taken place in the Çanakkale Province in the Marmara region of western Turkey since February 6<sup>th</sup>. A professor at the Faculty of Mines at Istanbul Technical University has warned of a major quake of magnitude 6+ in the next 2-3 weeks.

**UNITED KINGDOM:** A further labour dispute will affect travelers on the London underground next week. The strike will suspend services on the Central and Waterloo and City Lines from 9pm on Tuesday, 21st February to 9pm on Wednesday, 22nd February. It will affect 800,000 commuters. Four-day strikes of British Airways cabin staff in the company's mixed-fleet business is due to begin on Friday 17<sup>th</sup> February and a further four-day strike to commence later next week. However, the company is leasing alternative aircraft so that both delays and cancellations may not occur.

**USA:** More than a foot of snow has fallen across parts of New England and winds of up to 60mph (100km/hr) are affecting communications in many areas. The National Weather Service has reported an avalanche warning for an area of Mount Washington. The 6,288-foot (1916 metres) summit had picked up 16 inches (41cm) of snow with more snow falling. Travel is not recommended in this terrain. Similar avalanche dangers may exist outside of the warning area.

## FedEE News

**LAW PROGRAMME:** New-style law programme presentations are in preparation for India and Japan. They will be available next month. The video presentations will gradually replace the powerpoint format modules and focus primarily on the major jurisdictions. The online certification system is back up and working after being subject to some technical issues arising from updates on our server. When applied to the new-style law programme the tests will also take into account information contained in our accompanying ebook/pdf law guides for each country.

**MINIMUM WAGES:** We have now completely updated our two minimum wage tables covering [Europe](#) and the [rest of the world](#). Very substantial changes have been made to rates in Venezuela and Ukraine in recent months.

**TRAVEL WARNINGS:** These are now available in real time online at <http://www.fedee.com>. The FedEE website is already mobile-friendly and if you are traveling we recommend you check out our warnings before you depart.

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