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

March 16th 2017

Inside this Issue:

Comment: Missing the point

European Union: Pension reforms

European Union: Visa waiver

Global: Tougher on smokers

India: Maternity leave update

South Africa: Majority principle sways

United Kingdom: Zero-hour popularity

USA: The privilege of absurdity

FedEE Travel Warnings

FedEE News

COMMENT: Missing the point

Doaa Elghobashy was the first Olympic athlete to compete in a hijab last year, whilst Nike has announced it will be launching its own version of the sports hijab next year. This week secular Turkey has even agreed to let female soldiers wear the hijab. However, this week also has seen the announcement by the European Court of Justice (ECJ) that it is not directly discriminatory for an employer to ban the wearing of a harmless hijab (which they incorrectly call a ‘muslim scarf’) at work.

The ECJ has also devised a form of words so that an organisation has a defence if it is accused of indirect workplace discrimination. Yet, in a less reported French case heard in conjunction with the widely reported Belgian one, the court also found that “the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining

occupational requirement within the meaning of the directive”. In other words, a customer’s prejudice against an employee for wearing something they disapprove of does not give the right to an employer to condone their customer’s intolerance by removing them from a client-facing role.

The ECJ is wrong in declaring any dress code as neutral if it adversely affects someone because of their culture or freely held belief. The purpose of discrimination legislation is to encourage a more inclusive and tolerant society, and permitting disproportionate reactions to modest variations from dress codes only reinforces xenophobic tendencies and increases the marginalisation of those with Middle-Eastern origins. The hijab is the female equivalent of the keffiyeh and originates from daily life in a hot, desert climate. Moreover, today it is a mark of personal modesty rather than a potent religious symbol. Judgements made in ignorance are a dangerous thing and we should not let institutions like the ECJ escape

reprehension when they unfairly seek to dignify disdain.

EUROPEAN UNION: Pension reforms

A new European Union (EU) Directive relating primarily to workplace pensions is now in force and must be incorporated into national legislation by 13th January 2019.

One of the main changes for workplace schemes will be a requirement to communicate a greater amount of information to scheme members. Trustees will also have to take environmental, social and governance factors into account more when making investment decisions and member states will have the option to incorporate a requirement for the appointment of a 'custodian' with oversight of trustee and asset management activities.

Cross-border transfers of schemes will be made easier, but must still be approved by scheme members and regulators in each jurisdiction. It will not be necessary for transferred schemes to be fully solvent, but if they have a deficit they must put a recovery plan in place for a reasonable, specific period. Those in charge of schemes do not need to be professionally qualified, but they must be suitable persons and their remuneration will have to be published every three years.

A new provision covers 'key functions'. Internal auditors must be an independent party, whilst risk management and actuarial assessments can both be carried out by one person, provided they are not be undertaking such activities for the 'Client' employer.

It remains uncertain if the terms of the new Directive will apply to the UK under the Brexit arrangements. As the UK's departure from the EU is likely to be after the implementation date, then the UK may decide to introduce the necessary legislation. However, unless the terms of the exit negotiations envisage the UK remaining in the broader EEA (like Norway and Iceland), then the UK government could easily just ignore the Directive altogether.

EUROPEAN UNION: Visa waiver balanced

The European parliament's civil liberties committee has voted to block visa-free travel by US citizens to EU countries in the Schengen zone. This follows the refusal of US immigration authorities to allow visa-free travel for citizens of five EU countries: Bulgaria, Croatia, Cyprus, Poland and Romania.

The vote will not, in itself, reintroduce visas, but the European Commission is obliged to act on the resolution within two months. At that point, however, the Council of Ministers could object to any chosen measures – thus delaying any decision until a US-EU ministerial meeting on 15th June.

If the Council did not object to a proposed Commission measure to reintroduce visas (or the production of equivalent travel documents), then it would mean that US citizens will have to apply in advance to travel to the EU Schengen area (but not the UK) for the 12 months after the order is made.

GLOBAL: Getting tough on smokers

Smoking bans in workplaces have been enforced by most major employers in Europe, Australia and North America, backed up by legislation at a national and local level. Although there are now 50 countries around the world with extensive indoor smoking bans, smoking remains legal in places like small bars and restaurants in many countries. Tobacco continues to kill over six million people a year, of which half a million are non-smokers exposed to other people's tobacco fumes. The latest countries to toughen up their laws are China and Cyprus but Japan continues to resist change.

On 1st March a ban was introduced in Shanghai against smoking in all enclosed public areas, which includes all public indoor spaces and work places, along with some outdoor spaces such as sports and arts venues, as well as areas near kindergartens and bus stops. Individuals found to have violated the ban will be subject to a fine of between 50 and 200 yuan (US\$7 to \$29) and enterprises breaking the law will be subject to a fine of between 2,000 and 30,000 yuan (\$290 to \$4,360).

A Bill prohibiting smoking and the use of certain electronic cigarettes in workplaces and public spaces has been passed by the Cyprus parliament. However, it has been heavily diluted by clauses that qualify the restrictions. In particular, smoking would be allowed in areas adjacent to controlled areas if 30% of the smoking area is open to the outside. Employers will have to comply with the new law or face administrative fines up to 850 euros (US\$897).

The Japanese parliament is due to debate an anti-smoking law in June, but the measure has already been heavily amended following pressure from the strong pro-smoking lobby. Individual companies often operate strict staff no-smoking rules. However, with 30% of the adult population being regular smokers and a general toleration of covert rule-breaking, employers nevertheless find it hard to enforce their policies.

INDIA: Better deal for working mums

The much-heralded changes to India's maternity provisions were finally approved by the national parliament earlier this month. They will become law once signed by the President and published in the official gazette. However, extended maternity leave provisions in the Employment Insurance Act have already come into force.

The Maternity Benefit (Amendment) Act increases maternity leave from 12 to 26 weeks and introduces 12 weeks adoptive and surrogacy leave. There will also be an obligation upon employers with 50+ staff to establish a workplace crèche and to allow mothers to visit children placed in it at least four times a day. Employers will be obliged to offer Women returners the opportunity for home working if their job tasks can be performed remotely. This will be on such terms as it will be possible to mutually agree between the parties. Last, but not least, it will be an obligation on employers to notify in writing, by email or online every woman who is newly appointed about the benefits available under the new Act. Further details about arrangements for remote working and how childcare facilities may be provided (and their costs met) will be published by the government once the Act becomes law.

SOUTH AFRICA: Majority principle sways

South Africa's Constitutional Court has decided that a controversial section of the Labour Relations Act is not unconstitutional. The trade union leading the case – the Association of Mineworkers and Construction Union (AMCU) – contended unsuccessfully that 23(1)(d) which allowed employers to extend coverage of collective agreements to minority unions that were not party to negotiations led to the “unrestricted exercise of a public power by private bodies”. They also put forward arguments which the court also dismissed about the meaning of ‘workplace’ under the Act. AMCU maintained that each operation of each company should be considered a separate workplace for purposes of the Act.

The implications of this decision are that once unions representing a majority of employees in a company have agreed to the terms of a collective agreement, employees represented by minority unions could not legitimately take strike action in support of any claim. The court's acceptance that the term ‘workplace’ could apply to all operations of a company, irrespective of geographical separation, means that there will be an underlying assumption in all union-management relations that all agreements relate to a company, or association of companies, in general.

UNITED KINGDOM: Zero-hour popularity

The re-analysis of Labour Force Survey statistics from last year has been widely reported in respect to the growth of employees on zero-hour contracts. Such employees have grown from 108,000 between October and December 2004 to

903,000 between April and June 2016. But is this trend a disturbing increase of precarious and exploitative work or some other phenomenon?

If we examine the trends more closely, it is clear that such contracts are a frequent route into employment for immigrant workers. However, they are equally popular amongst students who need employment income to pay for their high university fees, but cannot always work regular hours. Such jobs are also held by people who are already in employment but seeking a secondary source of income when a suitable opportunity arises.

In fact, only 12% of those on zero-hour contracts stated that they wished to leave their present job and 69% did not wish to do more hours in their present job. Therefore, the growth of such jobs is as much a response to the demand for flexible employment opportunities that do not commit an individual to set hours, as a wish on the part of employers to save money by not paying for slack time.

USA: The privilege of absurdity

Back in 1791, when the USA passed its second amendment, many countries around the world gave citizens the right to bear arms in public. It suited the times, as throughout the nineteenth century all of North America suffered from a chronic state of lawlessness. The difference is that America never updated its constitution when others did so. Thus, there was no law, like the UK's Firearms Act 1920, that dealt with the new forms of mindless and retaliatory gun crime infecting modern societies.

Until now, the right to bear arms at work has been an eccentricity of Texas and a few other southern US states. But Ohio is in the process of loosening its gun laws, and the State Senate Bill 199, passed just before Christmas, goes further to give the right to employees to carry guns in cars parked in company parking lots.

Only in America will a debate that even countenances the carrying of a hand-gun – even in private – be taken seriously. Elsewhere in the world it is the talk only of criminals and the deranged. Yet now US employers are having to contend with the prospect that if a workplace disagreement takes place, or an individual is dismissed, the employee will return from the company parking lot with a lethal weapon and probably use it in a self-righteous impulse against a fellow employee or the HR manager who has dismissed them.

Fortunately, the final draft of the Ohio Bill removed clauses allowing individuals to carry weapons into libraries, city halls, recreation centres and even childrens' nurseries. However it still allowed the carrying of concealed handguns into the vicinity of schools. As there are no apparent penalties for denying the exercise of Senate 199, companies may wish to consider the introduction of policies that specifically ban all firearms on their premises on health and safety grounds, with spot search rights if violations are suspected. Unfortunately, there is no guarantee that a US court would uphold this course of action if it was challenged.

Pay, Tax and Benefit Trends

ARGENTINA: With national elections later this year and consumer price inflation already down to half the 40% rate experienced last year, Argentina's President Macri is hoping that wage deals can be kept to around 12% in the coming year. However, last month bank employees reached an annual settlement, increasing average pay levels by 24.3%. Now teachers are taking strike action in support of a 35% salary demand. There is little scope for pay to catch up with prices until the economy begins to grow again. Last year the economy contracted by about 2.3% and although the monthly falls in output are getting smaller and the national debt appears more in control, there is still a long way to go before sustained growth can be achieved. In the meantime, pay rises will remain at around 20%, which will continue to fan the flames of price inflation.

HUNGARY: A two-year collective agreement has been agreed between Audi Hungary and the AHFSZ Union covering their 11,000 employees in the western city of Győr. The initial payment of 30,000 Forints (US\$102) a month is backdated to 1st January this year. A further flat-rate sum of 30,000 Forints will be paid from 1st January 2018. There will also be an unspecified 'loyalty bonus' paid from July of this year. The Audi deal follows an agreement covering Daimler workers in Hungary concluded in December 2016. This gave a pay increase of 10% this year and again in 2018.

SLOVAKIA: Over the year to Q4 2016 the average gross monthly earnings in the Slovak Republic rose by 3.6% to 990 euros (US\$1050). The sectors with the highest earnings were information and communication (1892 euros/US\$2007) and finance and insurance (1789 euros / US\$1898). The lowest earning sectors were accommodation and food services (613 Euros / US\$650), other services (662 euros /US\$702) and construction (689 euros / US\$731). The local labour market producing the highest average monthly earnings was Bratislavský kraj (1235 euros/US\$1310) and the poorest area was Prešovský kraj (798 euros/US\$847).

SWEDEN: An amendment to the Posted Workers Act (1999) has been proposed by the Swedish government in order to protect its labour market from widespread job posting, particularly in the construction sector. This would require all workers posted to Sweden automatically to be subject to the terms of collective agreements applicable in the sector to which they are deployed. This requirement has effectively existed since the ECJ's Laval ruling was incorporated into Swedish law in 2010. However, the difference is that under the proposed change, although employers would not be obliged to sign a collective agreement formally covering the posted workers, unions could, in future, take strike action concerning the use of such workers – even though their terms are in line with the those of an applicable agreement. The Act would also require employers to provide copies of posted worker contracts translated into Swedish and provide authorities with copies of individual pay slips. It is expected that the proposal will become law this summer.

Other Global HR News in Brief

BERMUDA: Citizens of Bermuda with a passport issued after 31st May 2016 are experiencing problems when entering the USA because the new passports contain a code that the US authorities do not accept under visa waiver rules. The citizens should not be treated as those from other British Overseas Territories, but the printing of passports in Britain rather than in Bermuda has led to a change in coding from BMU to GBD without prior notification to the US authorities.

CANADA/CHINA: Negotiations remain at their early stage on a proposed free trade agreement between Canada and China. One reason for its importance is that China is now Canada's second most important trading partner (after the USA) and another major driver is the demise of the US-led Trans-Pacific Partnership. Canada's Prime Minister, Justin Trudeau, has been consulting provincial governments and industry about the terms of such an agreement. Companies are understandably very keen to make progress, but opinion polls suggest that the general population is evenly split on the prospect.

EUROPEAN UNION: A European Court of Justice's Advocate-General has issued their opinion on the interpretation of regular weekly rest breaks in the road transport working time regulation 561/2006. Article 8(6) of the regulation provides that "in any two consecutive weeks, a driver shall take at least two regular weekly rest periods, or one regular weekly rest period and one reduced weekly rest period of at least 24 hours". However, some confusion has existed about

where weekly rest periods can be taken and in some cases road transport companies have allowed them to be taken in the vehicle. It is now likely that the court will follow the opinion of the Advocate-General and declare that regular weekly rest periods must be taken by drivers away from their vehicle.

HONGKONG: Nationals of Cambodia may now apply to enter Hong Kong for employment as professionals, foreign workers or domestic helpers, as well as for investment, training, study and under several other immigration programmes.

MOZAMBIQUE: A new law on contract work passed at the end of last year is now in force. This introduces the concept of indefinite employment contracts and places responsibility for a construction contract and any problems that may arise (such as workplace accidents) on the principal contractor rather than individual subcontractors.

POLAND: Changes to the law on temporary employees are currently being debated in the Polish parliament. A major proposal is to limit the period when a user organisation can utilise the services of an agency worker. This would be limited to 18 months in any period of 36 months. There would also be a ban for the performance of any work by a temporary worker--if the tasks concerned were performed by any permanent employee in the last three months who had been made redundant. Moreover, in future, the placement of an individual by an agency to work abroad must be directly to the end user in the other country.

SPAIN: Port workers in Spain are taking strike action in protest of new legislation that will end the existing pre-entry closed shop, whereby employers may only hire workers on union controlled 'pool company' lists. The legislation is in response to an ongoing fine of 134,000 euros (US\$142,000) a day for contravention of a 2014 European Court of Justice order declaring current labour practices unlawful under section 49 of the EU Treaty. Unions rightly claim that ILO Convention 137 justifies current practices, although ILO measures are 'soft law' and frequently reflect the huge union bias in ILO measures. In a typical side-stepping move, the ruling People's Party has declared that it does not have the necessary majority to carry the legislation through and must rely on opposition votes to pass the law.

SWEDEN: The number of sick days per employee in Sweden's business sector rose over the year to Q4 2016 by 19.5%. Men increased their instance of absenteeism slightly more than women, although women still took 21% more sickness leave than men. There was also an increase in the frequency of separate instances of sickness absence. Overall, in Q4 2016, the lowest number of sick days in the economy as a whole were amongst male workers in central government and the highest amongst women in municipalities, who took 240% more sick leave than their male civil service counterparts.

TUNISIA: A new law to protect whistleblowers against retribution by applying criminal sanctions to those who penalise disclosers of fraud, has been passed by Tunisia's parliament. The country has suffered from widespread corruption, even after the fall of president Zine El Abidine Ben

Ali. The current Prime Minister, Youssef Chahed, has made the eradication of corruption his greatest priority and his government has begun to publicly honour whistleblowers.

UAE: Companies in the UAE should warn foreign employees about draconian laws applicable to acts that would be regarded as private and innocent within western civilisation. The latest illustration of the dangers involves a single South African man and single Ukrainian woman. The woman, Iryna Nohai, 27, attended a hospital with stomach cramps only to discover she was pregnant. She and her boyfriend were then promptly arrested and both could now face long jail sentences under harsh, prudish laws that forbid intimate relations before marriage. Neither the Ukrainian, nor the South African authorities have been able to intervene because it is a clear offence under UAE domestic legislation.

UKRAINE/GEORGIA: Agreement has been reached in two separate negotiations with the EU over visa-free travel between Georgia and Ukraine to EU countries. When implemented, citizens of both countries will be able to enter the EU for up to 90 days in any 180-day period without seeking prior clearance through a visa. The deals still have to be formally approved by the EU parliament and adopted by the EU Council.

USA: The US Citizenship and Immigration Service has announced that from 3rd April it will temporarily suspend the issuing of fast-track (premium) H-1B visas – the category of

visa commonly used by foreign companies sending staff to work in America. The suspension is likely to last for at least 6 months. Although the annual quota for all H-1B visas is 65,000, in practice over 200,000 are issued, due mainly to a high volume of extensions. Although the reasons given for the suspension concern the backlog in current applications, there is a strong chance that the visa system will be radically reformed over the coming year to reduce the inflow of foreign skilled and professional workers.

VIETNAM: A free trade agreement between Vietnam and the EU is making very slow progress through the EU institutions, largely because of human and labour rights concerns. The EU is Vietnam's third largest trading partner and many European Companies would like to take advantage of the rising spending power in this 93-million strong, albeit communist, country. Vietnam is also a route into the 10-member country ASEAN economic community. Even if a deal is done it would still have to be ratified by each EU member state and so there will be the possibility of individual vetoes just when the demise of the Trans Pacific Partnership is opening up new opportunities for cooperation between Europe and Asia.

ZAMBIA: Effective from 6th March 2017, Zambia's Department of Immigration has issued a revised schedule of fees for immigration permits and visas. An employment permit has risen from ZMW3000 (US\$312) to ZMW6000 (US\$624) and a temporary employment permit from ZMW3000(US\$312) to ZMW4500 (US\$468).

Dates for your diary:

April 7th 2017: Final date for commencement on **New York** paid family leave proposal

April 16th 2017: Catholic and Orthodox Easter

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

May 28th 2017: **Italy** referendum on labor issues

June 05-17th 2017: **ILO** Annual Conference

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

October 22nd 2017: Federal elections in **Germany**

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

Travel Warnings

AUSTRALIA: The Australian Transport Safety Bureau (ATSB) has issued a warning about the dangers of using battery-powered devices on flights, after a woman's headphones caught fire and exploded.

AUSTRIA: The Special Olympics World Winter Games are taking place in Styria until the 25th of March 2017. Visitors should expect enhanced security at host venues and local travel delays.

AZERBAIJAN: It is reported that the government of Azerbaijan has started criminal proceedings against several foreign citizens for entering Nagorno Karabakh without the permission of the Azerbaijani authorities. This constitutes a criminal offence according to Azerbaijani legislation.

BAHAMAS: The US Overseas Security Advisory Council has warned visitors to Nassau to "avoid being alone with strangers, jet ski, taxi, or scooter operators. Be particularly cautious on secluded beaches; criminals target such isolated areas. When traveling, use only clearly marked buses or taxis, as unlicensed taxi drivers have been linked to a variety of violent crimes".

BOLIVIA: All those visiting Bolivia must have a yellow fever vaccination card. If they do not possess one they will be given 15 days to obtain the vaccination and demonstrate proof of it.

BRAZIL: Due to a major transport strike, buses and the metro are being disrupted in Sao Paulo.

ECUADOR: The second round of presidential elections will be held on Sunday, 2nd April 2017. Visitors should avoid all large gatherings.

GEORGIA: Violent clashes between police and protestors in the city of Batumi on the evening of 11 March injured around 30 people. The unrest continued until early morning on March 12. Visitors are advised to take caution and avoid large crowds.

GERMANY: A failed multiple suicide attack in Essen is likely to lead to alternative targets being attacked unless the extremists are apprehended. Visitors should avoid large shopping centres in Germany for the coming week.

ITALY: Taxi drivers have announced an official nationwide strike, scheduled for March 23rd, between 8am and 10pm, in protest over perceived perks for Uber and over unofficial car-hire services. Taxis will still be available to the elderly, disabled and invalids during this time.

JORDAN: The Arab League Summit will be held in Jordan at the King Hussein Convention Center at the Dead Sea from the 29th to 30th of March. The Dead Sea resort area (northern part of the Dead Sea) and the main highway next to dead sea hotels, will be closed to the public during this time. Visitors should expect many checkpoints along that road, and therefore it would be best to avoid the area altogether.

MADAGASCAR: Tropical Storm Enawo has left a death toll of 78 people, with around 380,000 affected by destruction in Madagascar. The scale of the damage is massive and visitors should exercise caution as fallen trees, landslides and widespread flooding hamper access to some of the worst hit areas.

MOZAMBIQUE: A cholera outbreak in parts of Mozambique has infected 1,200 people, killing two people this month following heavy rains. Four of Mozambique's 13 provinces have been affected since the infection spread from the capital Maputo in January. Cholera causes severe vomiting and diarrhea and is often lethal if not treated swiftly. Visitors should exercise great caution, only drink boiled water and practice strict hygiene.

NIGERIA: Nnamdi Azikiwe International Airport, which serves the capital, Abuja, will be temporarily closed until the 18th of April for repairs to its dilapidated runway.

QATAR: The local Civil Aviation Authority has announced that all those traveling to Doha - including people with business visas - must present a round-trip ticket, or risk being denied entry to the country.

ROMANIA: The Romanian National Institute of Public Health has reported over 3,000 confirmed measles cases, including 17 fatalities. Travelers to Romania who are not fully immunized against measles are at risk.

SOUTH KOREA: Travel connections between South Korea and China are being rapidly reduced following political tensions concerning the deployment of US missile defence systems in South Korea. China's state tourism organisation has verbally advised tour operators to stop selling

package trips to South Korea. Business travel between the two countries will become increasing difficult and Chinese nationals may not be permitted to board aircraft bound directly for Seoul.

SRI LANKA: Almost 20,000 suspected cases of dengue fever have been reported between January and 8 March 2017. Visitors should avoid being bitten by mosquitoes.

TURKEY: Nationals of Denmark, Germany and the Netherlands are advised to avoid all but essential visits to Turkey because of the dangers of retaliation following the refusal of leaders from all three countries to accept visits from Turkish government ministers. Demonstrations and riots are taking place in Istanbul and Ankara - particularly against the Netherlands.

USA: Winter storm Stella is bearing down on the north-east USA, bringing heavy snow and flooding to New York, Philadelphia and other adjacent states. Schools are closed, thousands of flights have been cancelled. The storm could dump up to 60cm of snow by early Wednesday, according to the National Weather Service.

FedEE News

ON-LINE TRAINING: The second in our series of new employment law programme videos will be available in our members-only area tomorrow. This covers employment law in Japan. It joins the first in this new series which focuses on China. The third training video will cover India and be available in 10 days time. Online certification for the new programme is in preparation and certification for the old programme is now fully functional again after experiencing technical problems.

FEDEE RADIO: We shall be making test transmissions of our on-the-hour news programmes over the next two weeks. It is planned to launch an IOS App when we begin transmissions for the first time next month. This will be a free download in the Apple store.

PUBLIC HOLIDAYS 2018: Dates for public holidays in 60+ countries for 2018 are now available in the FedEE knowledgebase. We shall be updating them in line with governmental announcements during the course of this year.

CODES OF PRACTICE: We have now ended consultation on our code of practice concerning the use of personal data by multinational employers in EEA operations. We have also drawn up a code of good HR policy and practice which will be subject to consultation until the end of May 2017. The latter code will form a useful framework of minimum standards for any company seeking to harmonize its policies on a global basis. Both codes are available in our knowledgebase at <http://www.fedee.com/kb/hr-data-protection-codes-practice/> and those deciding to adopt either code may display an attractive and distinctive kite mark on their literature. The kite marks will be sent to members adopting either code and are available in three sizes.

Please send views and comments on our HR code and requests for the kite marks to admin@fedee.com.

FEDEE FLAG: Member companies of the Federation will soon be able to display a full-size FedEE flag on their company flagpoles. This will include our distinctive logo in full colour. They will be available on request from next month and will be free of charge. Those renewing membership will automatically be mailed a flag.

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