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COMMENT: If you can ...

How many times does the tired expression get wheeled out when disaster strikes that “lessons must be learned”? It is particularly a favourite mantra in the public sector because it deflects blame and loss of face from those that would otherwise deservedly face criticism. But, of course, it means nothing - as those who are disaster-prone always seem to remain as vulnerable as ever. Just like a cracked teapot can never mend its own spout.

Incompetence is inherent in organisations that do not generate wealth, that do not survive by their own wits, where people seek careers because they value job security rather than a challenge. Government administrations, public health services, former state-owned enterprises (such as utilities), and even top-heavy business sector corporations with established markets all suffer from this “lessons learned” mentality. That is why organisations with records of cyber attack, data loss, labour court or

tribunal case fines, and employee fraud continue to suffer from variants of the same malpractices and mishaps. They are easy targets for the unscrupulous, and inattentive about obvious errors like leaky passwords, poor email security, the absence of managerial control, and failure to monitor legal compliance.

Let’s look, for instance, at major data breaches over the last 20 years. The same organisations appear repeatedly – Yahoo (4), Sony (4), AOL (3), Citigroup (3), AT&T (2), The US Army (2), The University of California (2), JP Morgan (2) and, of course, the UK’s NHS (2). Breaches have also hit organisations that certainly should know better, like the US Department of Homeland Security, the US Democratic party, and Philippines Commission on elections. Also, frighteningly, breaches have taken place in such sensitive establishments as a German nuclear power plant last year. It is unfortunately not lawful to dismiss someone

simply for using a “lessons learned” variant. Two decades ago the industrial mantra was “right first time” and certainly there should be scope for visible and tangible penalties in every organisation when things go wrong. At the very least managers should adopt what I have always held key to the concept of accountability – that mitigation should only be accorded if those with responsibility take safeguards that are reasonable and keep their cool, take effective evasive action, and accept blame when such measures still do not turn out to be good enough. Over a century ago Rudyard Kipling wrote [“If”](#) and every word of the poem remains as valid and fresh now for HR professionals outside the “lesson’s learned” camp as when he penned it.

ARGENTINA: Economic turnaround

The Argentine government has been introducing several measures over the last 18 months to increase employment opportunities and eliminate the grey economy – which now accounts for one third of all jobs in the country.

One of the biggest barriers to job growth are additional payroll overheads. The fiscal burden on company payrolls is higher in Argentina than any other country in Latin America. This is largely because social security and healthcare contributions amount to an average of 27% for the employer and 17% for the employee. Mandatory life and accident insurance cover then add a further 4% to payroll costs each year.

Adjustments to the income tax law last December have done much to encourage people back into the formal economy. For years the government had not adjusted progressive tax band thresholds and many

salaries, especially when not covered by a collective agreement, had not been able to keep pace with price inflation. Not only were tax thresholds adjusted by an average of 23% with effect from 1st January, but from 2018 they will be adjusted each year in line with declines in real net spending power.

The First Job Promotion System and Employment Formalization Bill remains in the pipeline, but may be agreed this Summer. It introduces an exemption from employer social security for an employer giving a first job to a young person and extends for the first 36 months of their initial work experience. Employers are also to be given an amnesty if they declare workers who have previously been engaged informally and not been subject to the social security system. Coupled with this measure is another currently being drafted that will give employees further incentives to enter the formal jobs market.

One field where rapid employment growth can be expected in the near future will be the oil and gas sector. Vaca Muerta in the Province of Neuquén has the world’s second largest shale gas and fourth largest shale oil reserves. The government has been working with energy companies and the oil union to open it up and has agreed licencing, state investments, and concessions conditional on a reduction in normal sector pay rates of 30% and productivity guarantees. This has set a framework for an estimated ten-fold rise in employment within this sector over the next five years.

AUSTRALIA: New visa regime

As announced in a [previous newswire](#), the old 457 immigration programme will be replaced by several new visa categories

under the Temporary Skill Shortage scheme. These will come into effect during March 2018 and will operate under totally new skilled occupational lists.

The first step towards introducing the new system will be an increase in visa fees and employment levies. These are already expensive and from the 1st of July 2017 the employer nomination and regional sponsorship visas will cost \$3,670 (\$US2,729). On top of this, a foreign worker employed by a company with annual turnover in excess of \$10M will have to pay an annual levy of \$1,800 (\$US1,338.6) and such employers sponsoring permanent skilled visas will have to pay a \$5,000 (\$US3,718.8) one-off levy.

The Australian government has also announced a new temporary sponsored parental visa scheme. If passed by parliament, this will allow naturalised Australians to sponsor their parents to stay in Australia for up to five years at any one time upon payment of \$5,000 (\$US3,719) for a 3-year stay and \$10,000 (\$US7,438) for a 5-year stay.

GLOBAL: Culpable practices persist

The right of every individual to maintain their personal privacy and be free from any disadvantage due to their lawful actions or beliefs is a central principle of all democratic societies, yet – in practice – this is being undermined by often informal processes, many of which are related to business activities.

Back in the 1990s employee blacklists in the UK were commonplace. Their legality was questionable, but organisations such as the “economic league” (later called the

Consulting Association) in the UK kept lists of “troublemakers” and union activists largely for the construction and manufacturing sectors. Even after the Information Commissioner’s Compliance Officers had raided the Consulting Association’s Offices, an organisation called Action Against Business Crime (now called the NABCP) had set up its own National Staff Dismissal Register. Not until 2010 was employee blacklisting in the UK made specifically unlawful by the Employment Relations Act 1999 (Blacklists) Regulations. However, even so, at least one dubious private blacklisting system continues to operate – with the seeming endorsement of several police authorities.

In 2007 the Netherlands Retail Association set up its own blacklist of workers who were believed to have committed fraud or pilfered goods. The Dutch Data Protection Agency at the time did not object to the listing process – only to its indiscriminate nature. In fact, today, the authority does not ban blacklisting per se, but actually licences it through a special register. There are, in fact, thirty registered blacklists, including fifteen in the retailing sector. Not all of these relate to employees, but some clearly do.

In the USA the First Advantage Corporation’s Esteem database holds personal records - principally on perceived criminal activity by former employees in the retailing sector. The data includes mere accusations, which, of course, may be false and actually a device for excluding union activists. Those on the list often do not know why they cannot obtain a job, let alone have the opportunity to check and rectify their personal records. The Federal Trade Commission has effectively blocked a previous blacklist operated by Hire

Right and also accepted a settlement from Lexis Nexis, amounting to \$US13.5 million following a class action by 31,000 people who accused the firm of selling background check data to debt collectors.

Blacklisting can also affect companies as well as individuals – such as the New York Governor’s blacklisting of firms that support an embargo on doing business with Israel. His actions infringe the first amendment, but constitutional concerns now seem to be further down the pecking order of public concerns. In Germany too, the federal government is busy establishing a “commercial register” that will blacklist companies that have committed criminal or administrative offences. But this is not just a central listing of corporate wrongdoing, as individuals too may be on the register if they have acted unlawfully on behalf of the organisation.

It has also perhaps passed by the attention of German legislators that the register may become a look-up for all employers who may tarnish anyone who has worked for a company on the register, however innocent they may be. The same concerns apply to China’s anti-corruption blacklist in the health sector, where infringements can be included that were considered too minor to act upon by public prosecutors.

TAIWAN: Overtime trends

The Labour Department of Taipei City government has recently issued their second annual report based on a programme of inspections in the city’s finance sector. This was undertaken in the Autumn of 2016 – just before the latest labour law reforms that introduced a standard 5-day week and new

overtime rules for rest-day working. Thirty-two institutions were examined by seventy labour inspectors. They found that although the number of labour law violations had been reduced by half - compared with 2015 - two-thirds of employers infringed overtime pay rules and just under half of them exceeded maximum daily and monthly overtime hour limits. Working hour infringements mainly took place in trust, management, and IT functions, whilst overtime pay problems largely arose because working time records were often being kept by employees rather than management, not divided into normal and overtime categories and then frequently clouded by adjustments to remove bonus and commissions.

According to the Directorate-General of Budget Accounting and Statistics, overtime pay across Taiwan’s economy rose by 12% during the first two months of 2017, although overtime hours only grew by 3%. This change would have largely been an outcome of new overtime rules introduced on the 1st of January 2017. The hospitality, retail, and security industries were the hardest hit by new overtime rules, with overtime pay rising by an average of 260%, 130%, and 40% percent, respectively, in each sector.

UAE: End to backdated sick-notes

Backdated sick leave notes covering up to three consecutive days will no longer be allowed in Dubai, which means leave will only be issued from the day employees visit a medical centre.

It has long been a de facto requirement for employees to obtain a medical certificate to cover all sickness absence from day one – a service requiring payment of a fee. In fact,

from 2013 a web-based sick-note certification system has been in operation in Dubai and Abu Dhabi, where employers can verify if the certificates were issued legitimately.

After three months has passed since the end of a trial period, employees in the UAE are entitled to take up to 15 days sick leave on full pay and a further 30 days (45 in DIFC) at half pay.

No sick pay can be recovered by an employer from the state. The total permitted sick-leave period in UAE is 90 days per year – with 45 days unpaid. However, if days absent coincide with other official time off (such as a weekend), then the other days off will also count as sickness absence time unless they are specifically excluded by a medical certificate.

Article 82 of the Labour Law also requires an employee to report any non-work-related sickness absence within two days. If they fail to do so they may face disciplinary action on their return to work. However, in practice, the sick-pay system is often abused, especially by local staff.

UK: Circumvention comes at a cost

Although not the subject of any appeal – and therefore formal case law – a number of UK employment tribunal cases in the last few years (Bugden & Others v London Borough of Bromley [2014] and Dunkley and others v Kostal UK Limited [2017]) have highlighted the dangers of employers seeking to bypass collective bargaining.

Back in 2004 a new section (145B) was inserted into the UK Trade Union and Labour Relations (Consolidation) Act. This made it

an offence for an employer to offer any inducement directly to employees to opt for having their pay, terms, and conditions set by the company rather than through a collective agreement with a union. A claim needs to be made within three months of any offer and if a tribunal declares that a contravention has taken place an award of £3,830 (\$US4961) will be given to each applicant.

The right to make a complaint and receive an award under S145B is not subject to a service requirement, so an employer could easily find that all their employees make a coordinated application – including those with less than two years service.

Pay, Tax and Benefit Trends

AUSTRALIA: According to recently published figures, the gender earnings gap over the year to August 2016 for employees and owner managers of incorporated enterprises fell by AU\$42. This is because average female gross weekly earnings increased to \$1,007 (\$US747.3), whilst for men average weekly earnings remained steady over the same period at \$1,420 (\$US1,053.89).

CZECH REPUBLIC: The Czech Prime Minister has revealed that he plans to increase the national gross minimum wage on January 1st2018 by 11% to 12,200 crowns (\$US510) a month. This proposal has still to be approved by the Cabinet and discussed with Czech “social partners”. If it is introduced it would immediately affect the pay of just over 100,000 members of the workforce. Many of those not in employment, however, will have their welfare benefits cut this Summer by 35%. If they volunteer for

more than 20 hours a month community service their welfare allowance will not be cut by so much.

FINLAND: Gross wages and salaries grew, on average, in Finland by 2.4% over the year to the first quarter of 2017. Pay grew fastest in construction (+11.9%), whilst across the private sector as a whole it averaged 4.3% over the year.

MONTENEGRO: Gross average monthly earnings in March 2017 stood at 762 euros. Net of tax and social security, average earnings rose over the year to March 2017 by 1.8%. Compared with February 2017, net earnings fell in transport and storage by 2.6% and in manufacturing by 0.9% – but rose by 5.2% in professional, scientific, and technical activities.

SLOVENIA: Average gross monthly earnings in the private sector grew over the year to March 2017 by 2.1% to EUR1,502.96 (\$US1,794). Earnings are currently growing fastest in the ITC sector, with the increase from February to March 2017 amounting to 6.4%.

Other Global HR News in Brief

ANGOLA: The Angolan President has signed a new decree allowing employers the option of paying non-resident workers in any currency they choose. This reverses a previous order on the 6th of March 2017 that limited such workers to be employed in the country for 36 months and to only be paid in kwanzas – with the national bank determining how much local currency could be taken abroad.

BANGLADESH: The government is currently undertaking a major review of its labour and

judicial systems. This is likely to result in additional Labour Courts and the greater use of alternative dispute resolution mechanisms throughout Bangladesh. The primary target will be on the elimination of child labour in hazardous occupations by 2021 and child labour in all activities by 2025.

EGYPT/SUDAN: Visa-free travel for women and citizens above the age of 50 and below 16 between Egypt and Sudan has been established for the next six months, with an option of renewing it for a further six months. The new visa exemptions also cover Egyptian and Sudanese citizens who have valid residency in the Gulf, US, Canada, European countries, or Australia.

ESTONIA: In the first quarter of 2017, the unemployment rate was significantly lower for Estonian nationals (4.2%) than for non-Estonians (8.7%) living in the country. However, in both cases unemployment declined over the past year. Overall the employment rate was 66.3% of the 15–74-year-old population, up 2.2% in the last year.

GERMANY: The online retailer Amazon has come up with a novel way to encourage their German workforce to turn up to work – peer pressure. The company operates a monthly attendance bonus that ranges from 6 to 10%. However, it is linked to attendance of all their immediate co-workers. The “health bonus” was agreed with Amazon’s local works council and does not contravene the Continued Remunerations Act.

In Germany employers have responsibility for paying an employee their salary during the first six weeks of sickness absence, therefore any way to reduce this liability represents a significant saving in operational costs.

GERMANY: The company Grohmann Engineering was taken over by the US automaker Tesla last Autumn and renamed Tesla Grohmann Automation. Refusal by the company to enter into a collective agreement brought it close to industrial action by the union IG Metall. However, recent job guarantees, pay rises, a one-off 1,000-euro (US\$1,100) Easter bonus, and stock options have undermined the union's position. The union claims that the company continues to pay around 25% below the electrical industry collectively agreed rates, but at each union move, the company makes a concession to its local work council, thus using a divide-and-rule tactic to neutralise opposition.

NORWAY: 56% of all working days lost due to labour disputes in Norway last year took place in the restaurants and hotels sector. Here a total of 6,300 employees lost 92,700 working days. In the last 17 years there have only been two years (2000 and 2010) when the number of workers involved in stoppages has exceeded 40,000. In 2000, it was largely due to disputes in manufacturing and in 2010 to disputes in the oil and gas, educational, and construction sectors.

OMAN: Almost 400 arrests and deportations due to labour infringements took place in Oman during the 1st week of May 2017. According to the Ministry of Manpower, vigorous compliance inspections will continue. Responsible employers will face heavy fines and imprisonment in the case of serious violations

ROMANIA: The new law (16/2017) on the "posting of workers for the delivery of transnational services" came into force on the 20th of May 2017. This requires foreign employers to notify the Romanian Labour

inspectorate (*Inspectia Muncii*) one business day before they dispatch a posted worker to Romania. The law guarantees workers posted between Romania and another EU state (plus Switzerland) basic terms and conditions that are the most generous on offer by law or sectoral collective agreement in either state. Wages, holidays, working time, and related data must also be held by posting companies for three years after the posting has taken place. Companies not established in the EU (including Switzerland) that post employees to Romania must only comply with standards set by Romanian law.

RUSSIAN FEDERATION: The Russian Supreme Court has clarified several important contractual aspects governed by the Civil Code. This establishes that all payments must be in Rubles, unless at the time of payment there is a valid law allowing payment in other currencies. It is also now lawful to unilaterally decide not to perform elements of a contract, or to terminate it, provided that the party acting unilaterally does so in good faith – accounting for the interests of the other party.

SE ASIA: A meeting of APEC member countries has just taken place in Hà Nội, Vietnam to discuss the employment of disabled people in the region. It was concluded that although many APEC countries had laws in place to encourage the employment of people with disabilities, problems remained. These were in respect to discrimination protection, suitable transportation, inaccessible workplaces, and poor awareness about the economic importance of disabled people in contributing to GDP growth in the face of ageing general populations.

SOUTH KOREA: The election of Moon Jae-in as President ushers in a new era of liberal politics in South Korea, just as threats from the north grow over the deployment of the THAAD anti-missile defence system. Moon promised to root out the corruption of the former government and “close links between government and big business”. However, his party lacks an overall majority and one of the best supported minority contenders in the election was the Justice Party, which is committed to rewriting anti-discrimination legislation to uphold the rights of minorities. Other policies that may come to the fore over the next five years are the combatting of youth unemployment and a significant improvement in the minimum wage.

USA: When an American employer wishes to hire a foreign worker on a permanent basis, they must embark on the long process of obtaining a green card for the worker. The first step to achieving this is by completing an application under the Program Electronic Review Management (PERM) system. To speed up this process, PERM has been automated, but in doing so the chances of rejection have multiplied. Now even minor errors will lead to rejection and there is no scope for modification once submitted. Employers should therefore have in place a procedure for close scrutiny and double-checking of PERM submissions.

Dates for your diary:

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

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

June 8th 2017: General elections in the **UK**

July 1st 2017: **California** employers will be obliged to inform their employees about domestic violence protection rights

August 8th 2017: General elections in **Kenya**

September 2017: Presidential election in **Singapore**

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

April 4th 2018: First report under Equality Act 2010 (Gender Pay Gap Information) Regulation 2017 submission by **United Kingdom** employers

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

Travel Warnings

ARGENTINA: Benjamín Matienzo airport will be closed between the 1st of June and the 31st of August. Passengers flying to Tucumán during these dates will be transferred from the Termas de Río Hondo terminal in Santiago del Estero (free of charge) to the capital of Tucumán, and will be offered a free transfer to the Santiago de Chile terminal if they fly from Tucumán.

BANGLADESH: There are an increasing number of criminal gangs operating in the capital city of Dhaka. Visitors should be aware of potential threats including mugging and other violent crime.

BRAZIL: Scattered demonstrations are taking place in many cities such as São Paulo and Rio de Janeiro. Visitors can expect severe disruption on roads and on public transport over the coming weeks.

FIJI: Almost 1000 dengue cases have been identified on Fiji since the start of the year prompting the Ministry of Health and Medical Services to declare an official outbreak. Travelers to Fiji should protect themselves against mosquito bites to avoid getting the disease.

HAITI: Visitors should carefully consider the risks of traveling to Haiti as its current security environment is unstable and its medical facilities are inadequate, especially in the areas of Petionville and the storm-damaged southern peninsula departments of Grand Anse and Sud.

INDIA: With the highest number of road fatalities in the world and an average of 400 fatal accidents a day India represents a huge danger zone for the business traveler. You are advised to instruct drivers to reduce their speed and never to rush for meetings.

IVORY COAST: Gunfire has erupted in several cities. Visitors should remain vigilant near military barracks, military installations, large crowds and demonstrations.

MALAYSIA: The British Foreign and Commonwealth Office advise against all but essential travel to all islands off the coast of eastern Sabah from Kudat to Tawau, including (but not limited to) Lankayan, Mabul, Pom Pom, Kapalai, Litigan, Sipadan and Matakong. The Philippines authorities have reported that the terrorist group Abu Sayyaf may be about to conduct kidnaps in the Sulu Sea, including around the islands of the Sulu archipelago (Philippines) and the seas/islands off the east coast of Sabah (Malaysia). Any vessels sailing in this area could be targeted.

PAKISTAN: The Department of State has warned U.S. citizens against all non-essential travel to Pakistan.

PHILIPPINES: The Philippines national carrier has announced it is suspending flights between Abu Dhabi and Manila commencing the 8th of July 2017 and until further notice.

SAUDI ARABIA: Public security is now becoming very uncertain in Saudi Arabia following a shooting incident in the al-Qatif province and another in Al Musawara involving a rocket propelled grenade.

SOUTH AFRICA: With over 150 serious crimes an hour, South Africa now rivals Brazil as the crime capital of the world. Foreign travelers should take great care when anywhere in the country and especially in the vicinity of hotels. Carjacking at gunpoint is also increasing and property belonging to foreigners is as favourite target for gangs to attack, set fire to and loot.

SUDAN: Fierce fighting has erupted between Government forces and rebel groups in the areas around the Libyan border and Darfur.

TAJIKISTAN/AFGHANISTAN: There have been clashes between the Taliban and Afghan government forces in north-east Afghanistan close to the border with Tajikistan. Visitors should check local advice before traveling to the Gorno-Badakhshan Autonomous Oblast as the area may be closed to visitors at short notice. A measles epidemic in Tajikistan started in April 2017 and has gradually spread out of Rudaki district to the capital city of Dushanbe and the surrounding districts – as well as Khatlon oblast. The number of notified and investigated cases rose from 263 to 345 by the 1st of May, with 246 (71%) patients hospitalized.

THAILAND: There has been an explosion inside Phra Mongkut military training hospital, near the National Monument in Bangkok wounding more than 20 people. Since the 2014 coup, at least 6 explosions have occurred in Bangkok.

TURKEY: Nevsehir/Kapadokya (Cappadocia) airport in central Turkey will be closed until the 30th of September, 2017 due to essential runway repairs. Passengers are advised to use Kayseri Airport, which is located 83 kilometres away.

VENEZUELA: The British Foreign and Commonwealth Office (FCO) advise against all travel to within 80km (50 miles) of the Colombian border in the states of Zulia, Tachira, Barinas, Apure and Bolivar; within 80 km (50 miles) of the Colombian border in Amazonas state as far south as 100 km (62 miles) south of Puerto Ayacucho; and within 40km (25 miles) of the rest of the Colombian border. The FCO advise against all but essential travel to the remaining areas of Venezuela except for: Los Roques Archipelago National Park, Delta Amacuro state, the remainder of Amazonas state, and Bolívar state south of a line from El Caura – El Casabe – Guarento – Km 88 San Isidro.

ZIMBABWE: Air Zimbabwe has been refused permission to operate flights to the EU because the airline failed to prove that it complies with international air safety standards.

FedEE News

EMPLOYMENT LAW PROGRAMME: The latest addition to our online law programme presentations covers, hiring, working time and termination in India. The next videos in our new series of online audio-visual briefings will cover Germany and the USA.

FELLOWSHIP MEETING: Our next Fellowship round table in London will take place on Friday, June 16th. It is less than a month away now. As there are still 2 places available we would like to offer a free additional place for both Fellows who have already booked and for anyone who has not already booked and would like to come along with a colleague. Your guest should be employed by your organisation, but need not themselves be a Fellow. Please see the [invitation](#) for further details. You can book a place by contacting us at membershipservices@fedee.com. We have selected an interesting new venue which fronts the river Thames. There will be a wide range of highly relevant topics that we have selected from the issues raised by members over the last six months. Discussions will be led by our Secretary-General and FedEE's new head of legal research, Vasiliki Filippou, who is a qualified practicing Barrister with an LLM in International law.

INDONESIA, PHILIPPINES, USA FEDERAL AND CALIFORNIA: Knowledgebase entries are currently being prepared for these jurisdictions and will be posted into our members' area in the next few weeks.

LUGGAGE TAGS: Please contact us for a full-sized [flag](#) to display outside your office and also for our new extrasafe FedEE [luggage tags](#).

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