August/September 2010

Euroview

Employment

Germany: 'principle of uniform collective bargaining agreements' overturned

Until recently German case law – under the 'principle of uniform collective bargaining agreements' – provided that where there is more than one applicable collective bargaining agreement in a particular business operation, only one of the agreements can apply. Any conflict over which agreement should prevail was usually solved via the 'principle of specialisation' which states that the agreement which is "closest to the business" - operationally, professionally, and personally - supersedes the other agreements.

Following decisions in January and June this year, however, the German Federal Labour Court appears to have abandoned these principles. It has held that there is no overarching principle that only uniform (consistent) sets of collective bargaining regulations can apply to different employment groups in the same business operation. In the Court's opinion, employees should be treated according to the collective bargaining agreement which directly applies to their individual employment relationship with the employer. This should apply regardless of whether the employer is also bound by other collective bargaining agreements with respect to other groups of employees, potentially in different terms.

"Employees should be treated according to the collective bargaining agreement which directly applies to their individual employment relationship with the employer."

The Court's decision means that it will now be easier for smaller trade unions that do not represent the majority of employees in a business to conclude their own collective bargaining agreements in respect of those they do represent. The collective bargaining situation will inevitably become more complex as a result. Employers are understandably concerned by both the potential administrative chaos resulting from implementation of multiple collective bargaining agreements in the same business operation, and also the risk of strikes by smaller trade unions representing small but vital parts of their workforces. Additionally, the larger trade unions are predictably worried about losing their influence.

It remains to be seen what effect the decisions of the Federal Labour Court will have in practice and whether such concerns are well-founded.

Spain: urgent measures in the job market

Legislation introducing a range of measures designed to breathe new life into Spain's jobs market came into effect on 18 June. The key reforms (which may still be subject to modification by Parliament) include:

- **Restrictions on fixed term contracts**. Fixed-term contracts now have a maximum duration of three years, with an option for the parties to extend for another twelve months in certain circumstances. Also, the severance payment for this type of contract will increase in stages from 8 to 12 days' pay.
- **'Contracts to promote permanent employment' extended - severance payments reduced.** This type of contract, which is already in force for some groups of employees – particularly those aged under 31 or over 45 - has been extended to cover:
    - unemployed people registered as job seekers for at least three consecutive months.

- unemployed people who have been employed exclusively on temporary or training contracts over the preceding 2 years, or have had a permanent contract with another company which has been terminated during the preceding 2 years.

- people employed by the same company under a temporary contract (including a training contract) signed before 18 June 2010 provided that that contract is changed to a 'Contract to promote permanent employment' before 31 December 2010. If the temporary contract was signed on or after 18 June 2010 and provided it is for a duration of less than six months, it must be changed to a 'Contract to promote permanent employment' before 31 December 2011.

Coupled with this extension, compensation for the unfair redundancy of a permanent employee is reduced from 45 to 25 days of salary per year of service, at least until January 2012, so some slightly mixed messages there, perhaps?

- **System for training contracts modified.** A training contract can be signed in the first five years after a university degree is obtained. During the second year of the contract, pay will be fixed by the relevant collective wages agreement and cannot be less than the minimum salary. Furthermore until the 31 December 2011 the age until which the graduate can sign this form of contract is increased to 25.

- **Legal framework for objective dismissals modified.** Companies must now prove the existence of one or more of the statutory reasons for dismissal and also that the decision to terminate the contract for that reason was reasonable. Separately the statutory minimum notice period has been reduced to 15 days from when the employee receives the communication of the termination. Breach of the formal requirements needed for this type of dismissal no longer results in the dismissal being declared void but simply makes it an unfair dismissal instead. Breaches of the notice requirements or an unintentional error in the calculation of a severance payment are, moreover, no longer determining factors in assessing the fairness of the dismissal.

- **Non-application of collective wages agreement salary systems.** This will be allowed during economic downturns provided that the period of non-application does not exceed the duration of the collective agreement or three years (whichever is shortest) and subject to agreement between the company and the legal representatives of the employees, following a consultation period.

- **Reduced working days encouraged.** In the event of a company crisis, and providing that they can be objectively justified, temporary reductions in the working day of between 10% and 70% (without entitling the employee to a severance payment) are now encouraged as an alternative to outright job losses.

- **Revised consultation periods in relation to geographical mobility and substantial changes to working conditions**. Such consultation periods must not now exceed 15 days (they can also be replaced by a mediation and arbitration procedure) subject to agreement between the employer and the legal representatives of the employees. If there is no legal representation of the employees, the employees may assign their representation to a commission with a maximum of three members, made up from the most representative trade unions of the relevant sector.

- **Social Security discounts.** Subsidies have been introduced for companies which contract employees on a permanent basis provided that the contracts increase the level of permanent employment in the company (i.e. excluding contracts which merely replace leavers) and that increased level is maintained while the subsidy is applied (unless the contract is terminated due to a disciplinary dismissal declared fair by the Court, resignation, death, retirement or total and permanent incapacity, or occurs during the probationary period). In all other circumstances, the subsidies may have to be returned.

"A range of measures designed to breathe new life into Spain's jobs market"

FURTHER INFORMATION
For more information relating to this newsletter, please contact:

Caroline Noblet
International Head of Employment
caroline.noblet@hammonds.com

Matthew Lewis
Partner & Head of Employment - Leeds
matthew.lewis@hammonds.com

David Whincup
Partner & Head of Employment - London
david.whincup@hammonds.com

Nick Jones
Partner & Head of Employment - Manchester
nick.jones@hammonds.com

Teresa Dolan
Partner & Head of Employment - Birmingham
teresa.dolan@hammonds.com