

E-ALERT | International Employment Law Update

April 22, 2014

Australia

Amendments to national workplace legislation in relation to workplace bullying

Amendments to Australia's national workplace legislation commenced in January 2014, under which the Fair Work Commission was granted broad powers to make orders to stop workplace bullying. The Commission's [first order](#), handed down last month, directed the applicant worker not to arrive at work before 8:15 am; and the perpetrator of the bullying not to exercise at the employer's premises after 8 am, have contact with the applicant alone, comment on the applicant's clothes or appearance, send the applicant any emails or texts except in emergency circumstances, or raise any work issues without notifying the Employer's Chief Operating Officer or his subordinate beforehand.

Austria

Supreme Court rules on social justification for dismissals

Under Austrian law, dismissed employees are entitled to challenge their termination where it lacks social justification (*i.e.*, it has detrimental consequences that exceed the "usual" negative effects of a termination). The Supreme Court has held that periods of unemployment up to 12 months are "usual," provided the employee then gains full employment with comparable pay. However, a 30% loss of income would be considered "unusual" among lower paid employees, but not among those in higher income brackets.

European Union

Ban on sympathy strikes does not infringe human right to freedom of association

The European Court of Human Rights ([RMT v United Kingdom](#)) has held that the UK's restrictions on secondary industrial action do not infringe the right to freedom of association under Article 11 of the European Convention on Human Rights. The restrictions were deemed to interfere with Article 11 rights, but also to be in pursuit of the legitimate aim of protecting the rights and freedoms of the employer and the public. This was held to be proportionate.

Netherlands

New "Work and Safety" proposals revise rules on Dutch dismissal law

The new Dutch Minister of Social Affairs and Employment has submitted a [legislative proposal](#) which, if accepted, will significantly revise dismissal laws in the Netherlands. At present, employers can choose to terminate an employee by one of two procedures -- an Employee Insurance Agency (UWV) procedure or a court procedure -- resulting in diverse outcomes for compensation. Under the legislative proposal, the UWV procedure would be reserved mainly for economic terminations; the court procedure, mainly for performance-related dismissals.

United States

Supreme Court extends Sarbanes-Oxley whistle-blower protection

The Supreme Court ([Lawson v FMR LLC](#)) has settled the question of who is protected under Section 806, the whistle-blower protection provision of the Sarbanes-Oxley Act. The Court defined the protected class as broadly as possible to include not only the employees of public companies, but also the employees of privately held companies that provide services to public companies under a contract or subcontract. The Court reversed the First Circuit's narrower interpretation of Section 806, which would have granted whistle-blower protection only to the employees of public companies.

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