BEERG HRPA HR POLICY ASSOCIATION HR POLICY GLOBAL

Newsletter

Issue #26 – July 28, 2022

In this week's issue:

- **Europe:** Energy cutbacks agreed
- **Collective bargaining:** a roundup of developments in the UK and EU
- **Brexit:** On the road to nowhere?
- **UK:** Supreme Court rules against pro-rating holiday pay
- **Social Media:** It is organising that counts
- **EU/UK Data Transfers:** Impact assessment hints at £190-£460m costs
- **BEERG Bytes:** Episode #41 – UK LR Legal Developments (plus notes + links)

Europe: Energy cutbacks agreed

In record time, the European Union has agreed on a package of measures which aims to cut back energy usage across the EU by 15% between August 1 and March 31 next, to offset Russian attempts to weaponize gas in support of its invasion of Ukraine. The deal was signed off by the Council of Ministers just a week after the Commission tabled its plan "*Save gas for a safe winter*" here and here.

Reacting to the Commission's proposals, *IndustriAll Europe's General Secretary Luc Triangle* said:

> *"These proposals will have enormous implications for our members and workers across Europe – there must be detailed social impact assessments and dialogue with the social partners to ensure that we do not inflict further long-term damage on our societies in responding to this critical situation. We need rescue packages to cushion the impact on citizens on the one hand and measures to ensure decent industrial work on the other hand, for example in the form of financing, capital aid and guarantees."*

Meanwhile, *EurActiv* reports that:

> *The United States is on track to blow past Biden's March commitment of an additional 15 billion cubic meters of LNG for Europe this year, according to a Reuters analysis of export data compiled by Refinitiv, and to triple the pledge.*

BEERG COMMENT

Over the coming months, BEERG/HR Policy Global will host regular, informal discussions among member companies on the labour relations fallout from the upcoming energy cutbacks, and their impact on the cost-of-living/inflation crisis hitting many European countries. Watch for details of our next call. If you have any information which you think would be of interest to other companies, email us and we will arrange to circulate.

Collective bargaining: a roundup of developments in the UK and EU

Knowing the considerable interest in what's happening with collective bargaining across the UK, Europe, and even further afield, we offer this compendium of notable recent moves. We will publish further roundups when the BEERG Newsletter returns after the Summer break on September 8th.

- Last week, the French Assembly, the lower, directly elected house, agreed that employers could pay staff bonuses of up to €3,000 between now and the end of the year, free of tax and social security contributions.

- Strike action by hundreds of British Airways workers at Heathrow has been called off after staff accepted two separate pay deals. More than 700 workers were set to walk out after a 10% pay cut imposed during the pandemic was not restored. Now, they will receive an 8% pay rise and get a one-off bonus and the reinstatement of extra pay for irregular shifts. Unite said the offer, which will be paid in several stages, is worth 13% in total. A spokesman for British Airways said the company was "delighted with this positive news."

- UK bank Virgin Money is to pay 78% of its staff a £1,000 (€1,175.31) bonus to help them deal with the soaring cost of living. The 6,000 or so employees of the company set for the bonus earn no more than £50,000 (€58,765) per year. They may opt to pay some or all of the sum into their pension pot. David Duffy, chief executive of Virgin Money, says: "The increase in the cost of living is on everyone's minds, whether in political circles, in the media, or in the local supermarket. It's also been part of many conversations among the leadership team because we know that many colleagues are experiencing additional pressure on their finances."

  Meanwhile trade union Unite says the bonus is the result of lengthy negotiations between the company and staff representatives. "Unite has secured the £1,000 payment following a campaign to show Virgin Money UK how the increases to the cost of living are hitting the overwhelming majority of its staff," said Caren Evans, Unite national officer, in a statement published on July 19.

- Also in the UK banking sector, Lloyds Bank, revealed a similar measure to Virgin in June, whereby 64,182 employees, or 99.5% of its workforce, will each receive £1,000 in August.

- TSB is handing 4,500 workers a £1,000 bonus to help them cope with the cost-of-living crisis. The cash will be given to all workers at TSB earning £35,000 or less - regardless of whether they work full or part time. TSB follows in the steps of Lloyds and Barclays, who have made similar payments to employees. Meanwhile, Aldi will give 26,000 workers their second pay rise since the start of the year. The supermarket chain has increased its minimum pay to £10.50 an hour and £11.95 for those in Greater London, benefiting 26,000 workers.

- *Bloomberg* reports that around the world, workers in transportation and logistics are demanding a better deal as inflation eats into their wages. Because their work is so crucial to the world economy right now as post-pandemic supply chains remain fragile and job markets stays tight, those workers have leverage at the negotiating table. Disruptions caused by labour disputes could add to the shortages and soaring prices that threaten to trigger recessions.

  Katy Fox-Hodess, a lecturer in employment relations at Sheffield University Management School in the UK, says workers are increasingly emboldened to stand up to their bosses. *"Global supply chains weren't calibrated to deal with a crisis like the pandemic, and employers have really pushed that crisis onto the backs of workers,"* she says. Cornell University associate professor Eli Friedman observes: *"There's a very tight labour market, so that puts workers in a position where they have both an accumulation of lots of grievances and they feel empowered."*

- In the **Netherlands**, it is expected that as of the 1st of January 2023, employers with 100 or more employees will have to report data of their employees' work-related travel on an annual basis. The purpose of this measure is to reduce CO2 emissions as work related travel causes a large part of the CO2 emissions. (*We will come back to this in a future issue).*

- In **Germany** practically all Lufthansa domestic flights were grounded on Wednesday as Verdi, one of the main unions in the company, called a strike of 20,000 ground staff to put pressure on management over demands for a 9.5% pay hike.

- *Reuters* sees airline workers as the cutting edge of a new wave of worldwide worker militancy. It says that a widespread display of worker power would help reverse a decades-old decline in industrial action that has seen employers gain the upper hand in labour relations. Sharan Burrow, head of the ITUC, says it shouldn't come as a surprise that the first big pandemic-era display of such power has been in the air travel industry: *"The aviation sector globally is a prime example of bad employment policy… People are voting with their feet."*

  But *Reuters* observes that trade unions have ceded much of the power they enjoyed before the 1980s. Trade union density has more than halved across developed economies from 33.9% in 1970 to 15.8% in 2019, according to the OECD. *"There might be grievances in society and on the work floor but this social injustice needs to be organised and channelled,"* says Kurt Vandaele, a senior researcher at the European Trade Union Institute (ETUI). *"Fissured workplaces might make it harder to set up industrial action because in the same place you have different categories of workers, different companies. This is increasing the coordination costs for unions."*

Brexit: On the road to nowhere

Many of you will have seen TV footage and newspaper pictures over the weekend of long queues at Dover and the Eurostar as hundreds of thousands of British people – and many European citizens as well – waited to cross to France to begin European holidays or to return home. Many of the UK's newspapers blamed the lack of French border officers for causing the delays but the French are entitled to staff their borders as they see fit, even if there is an economic cost in understaffing.

The main reason for the delay was the need for border officers to stamp passports, which they did not have to do when the UK was an EU member. As citizens of a "third country", British nationals are only allowed to stay in the Schengen area for 90 days in any period of 180. Multiple trips count towards the 90 days. The stamped passport shows the date of entry and the date of exit. Electronic systems may make the control process easier in the future, but for now it has to be done manually. The need to stamp passports means that the time it takes each car to pass through controls has increased from about 30 seconds to between 1 and 2 minutes. Backlogs build quicky especially as the infrastructure was designed to deal with the old procedure.

In the short-term it is likely to get worse as biometric controls are introduced, similar to airport scans. This will require people to get out of their cars, something they do not have to do at the moment. Obviously, the new controls will apply to business travel as well. We have already had reports of long queues at airports as UK travellers are no longer allowed to use the "EU Citizen" lanes.

For a comprehensive overview of where the law now stands, see this blog post from Professor Steve Peers

UK: Supreme Court rules against pro-rating holiday pay

Anna Sella and Lee Nair of Lewis Silkin (here) write: On 20 July 2022, the UK Supreme Court ruled that the paid holiday entitlement of part-year workers should not be pro-rated for the weeks they do not usually work. This means that the 12.07% method for calculating the holiday pay hours of casual workers on permanent contracts is no longer a valid approach.

Employers with people under contract for the whole year but who work for short of a whole year, or who currently use the 12.07% method for casual workers on permanent contracts, should review their contracts and policies in light of this decision. They may also now face significant claims for underpaid holidays. ***You can read Anna's and Lee's article in full (here).***

In other U.K. legal news, the union UNISON has filed a legal challenge to the government's decision to allow employers to use agency staff to fill-in for workers on strike. The unions says that the government's reliance on a seven-year-old consultation and flawed evidence to justify changing the law is unlawful.

UNISON says it also intends to show that the government is in breach of Article 11 of the European Convention on Human Rights, which protects the right to strike, and international labour standards. Its general secretary Christina McAnea said: "The government is prepared do anything to stop strikes, except encourage dialogue and sensible industrial relations.

> *"Sending agency staff into disputes to break strikes will only fan the flames and make it harder for employers and unions to reach agreement…*
>
> *…Strikes are only ever a last resort, and often the only avenue left to employees in the face of hostile employers. Changing the law to make it harder for workers to win disputes is both reckless and unlawful. If ministers won't back down, we'll take the government to court to prove it."*

The *Financial Times* ***reports*** that *UK Foreign Secretary, Liz Truss,* widely seen as the favourite to succeed Boris Johnson as Tory leader and the next prime minister, has said that if she gets to No 1O she will enact legislation in the first 30 days to make it more difficult for you to strike. Currently, unions must secure a 50% turnout of a company's workers for a strike to be legal. In addition, employees in "important public services" need to obtain an active vote from over 40 per cent of the entire workforce. Truss pledged to change the law to require 50% of the entire workforce to vote "yes" in order for a strike to go ahead, and that this would apply to all places of work not just crucial public services.

The foreign secretary said: *"We need tough and decisive action to limit trade unions' ability to paralyse our economy. I will do everything in my power to make sure that militant action from trade unions can no longer cripple the vital services that hard-working people rely on."*

Social Media: It is organising that counts

Some years ago, knowing that I was interested in the effect of social media on labour relations, a colleague suggested that I read Zeynep Tufekci's *Twitter and Teargas,* a first-hand witness account of the role social media had played in such events as Tahir Square and Occupy Wall Street.

A sociologist, Tufekci (photo) saw social media as ushering in a new wave of political protest, giving creative and exciting tools to those who wished to challenge the status quo.

When I finished the book my reaction was: *"So what? Sure, the immediacy and reach of social media can help organise a demonstration in a heartbeat and broadcast it to the world in a nanosecond. But, as the saying goes: when the lights go down, what happens next?*

Change requires hard work, slog, hours of meetings, planning. In a word, organising, and organising requires long-term commitment. Social media protest just happens in the here and now, with no backstory, and, in all likelihood, no future. Like a storm at sea, it blows fierce. And then it blows out. Tufekci has now come to the same conclusion. In an article for the *New York Times* she writes:

> *As I studied many of these movements, I noticed more common patterns. The quickly sprung large movements often floundered for direction once the inevitable pushback came. They didn't have the tools to navigate the treacherous next phase of politics, because they hadn't needed to build them to get there.*
>
> *In the past, a truly big march was the culmination of long-term organizing, an exclamation mark at the end of a sentence, indicating prior planning and strength. Large numbers of people had gotten together and worked for a long time, coordinating, preparing — and getting to know one another and making decisions. So they didn't just manage to hold a protest; lacking easier ways to organize, they ended up having to build organizational capacity, which then helped navigate what came after.*

Protest for change has to be organised or it is nothing. You can't negotiate with Twitter. Let the storm blow out. But be prepared for the storm.

The impact of social media on labour and employee relations is one of the topics we discuss on our Fundamentals of Global Labor Relations program, next running in December.

EU/UK Data Transfers: Impact assessment hints at £190-£460m costs

***Derek Mooney* writes:** The UK's Department for Digital, Culture, Media and Sport has published its impact assessment for the UK's Data Protection and Digital Information Bill (the Data Bill). The legislation itself, which is to reform the UK's GDPR and other EU based privacy laws, commenced its progress through the legislative process last week.

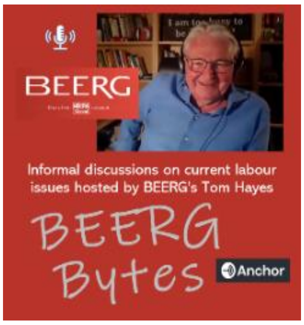
We will look at the legislation itself in more detail in September, after the Summer break, but we wanted to bring paragraphs 17 and 18 of the Impact Assessment to your attention just now. In paragraph 17 the Department says that *"...the Government's view is that reform of UK legislation on personal data is compatible with the EU maintaining free flow of personal data from Europe"*, in other words, it assumes that the UK will not lose its EU adequacy. It does offer any justification or explanation for this assumption - it simply asserts it.

However, Paragraph 18, does consider the possible implications if an EU adequacy decision "*was not available"* and accepts *"that businesses would have to implement alternative transfer mechanisms to exchange personal data."* It then models its revised best estimates for the direct one-off costs to business and the loss in export revenue, saying:

> *"As a result, we estimate the impact of Adequacy with the EU being discontinued on top of these measures to be between £190 and £460 million in one-off SCC (standard contractual clauses) costs and an annual cost of between £210 and £410 million in lost export revenue when taking a micro approach to modelling.*

The analysis does not attempt to assign probabilities but simply estimates the impact in the event of loss of Adequacy. The trade impacts are the direct reduction in UK-EU trade and ***the impact may be larger*** *when accounting for interactions with onward supply chains with trade with third countries."*

BEERG Bytes: Episode #41 – UK LR Legal Developments



BEERG Byte (No 41) is now available to stream/download. It features an update on a number of important UK legal developments from Vince Toman and David Hopper from Lewis Silkin LLP. David has put together a note (with links) on the issues tackled in this BEERG Byte (see next item).

It is available on the HR Policy YouTube Channel and on the BEERG website: beerg.com/beergbytes plus on Vimeo - it is also available as a Podcast via your favourite Podcast search engine – search for *"BEERG Bytes"*. See: Spotify / Google Podcasts / Apple Podcasts / Anchor RSS

BEERG Bytes #41 – Notes & Links

In this BEERG Byte (recorded on 26 July 2022) Tom chats with Vince Toman and David Hopper of Lewis Silkin LLP discuss a number of significant UK legal developments including:

- The latest on "fire and rehire" following the Court of Appeal's decision in *Tesco*, which means that Tesco can go ahead to dismiss its employees as part of trying to remove their entitlement to valuable "Retained Pay" (see HERE);
- Increasing industrial unrest in the UK and recent legal reforms to increase the cap on trade unions' financial liability for calling industrial action without following the correct procedures and to repeal the ban on agencies supplying workers to cover for those on strike (see HERE);
- The ongoing of *Mercer* court case, following the Court of Appeal recently deciding that UK law does not prevent employers taking steps falling short of dismissal against workers who go on strike, even though doing so might breach their human rights (see HERE)
- Increasingly difficult pay negotiations as the cost of living crisis bites, an update on the legal issues faced by employers who wish to make unilateral increases to pay with a view to helping their employees and managing workforce retention issues (see HERE)

As BEERG Byte #41 shows there is a lot happening in the UK when it comes to labour relations. Furthermore, a new UK Prime Minister may want to make changes to the law. Meanwhile questions still hang around the UK and EWCs, despite Brexit. To look at these issues in detail, and to answer BEERG members' questions, we will be hosting a Webinar on Sept 20th at 5pm CET – (Date and time TBC). Booking links in the next Newsletter (Sept 8th).

This is the final issue of BEERG Newsletter before our summer break.

The next issue (#27) will reach you via email on Thursday September 8th.

THE BEERG AGENDA:

Note that BEERG events are now 'in person' unless listed as a webinar

BEERG Webinar on UK LR developments — Webinar Sept 20th 1700H CET/ 11am EST

As our latest BEERG Byte shows there is a lot happening in the UK when it comes to labour relations, so we will be hosting an open format BEERG/HR Policy Global members' webinar to explore these issues and answer your questions. Details of the webinar will be shared in the September 8th BEERG Newsletter – the provisional date for the event is Sept 20th at 4pm (London/Dublin time). Booking links will be available from Sept 8th.

BEERG Members' Network Meeting — Pullman Hotel, Gare du Midi Brussels Sept 28/29

Attendance at the September BEERG Network Meeting in Brussels is open to BEERG members, HR Policy Global members. Click link on right to book a place at the meeting.

You can find draft agenda outline and accommodation booking form via this BROCHURE.

Book Sept Meeting

BEERG Training: Managing European Employee Relations — Hotel Estela Sitges: Oct 18-21

Over the past fifteen years, hundreds of executives have participated in our twice yearly BEERG training programs. We have radically restructured our program to include a twin track component offering participants a tailored choice of modules.

Download the training brochure and draft course schedule ONLINE HERE.

Book Oct Training

BEERG/HR Policy Global Members can self-register online for these events via the links supplied. Members who get the "No Tickets Available for Purchase" message online should contact **Derek.*

BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
Sept 20	***BEERG Webinar:*** *Important UK decisions and developments*		*Webinar on Zoom*
Sept 28/29	***BEERG Members' Network Meeting***	*Book Sept Meeting*	*Hotel Pullman, Gare du Midi, Place Victor Horta 1, 1060 Brussels*
Oct 18 - 21	***BEERG Training:*** *"Managing European Employee Relations"*	*Book Oct Training*	*Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain*