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EU: Information and Consultation – the third wave?



As this newsletter hits your inbox, we will have just wrapped up the first run of our new BEERG/HR Policy Global program, *Artificial Intelligence, Human Resource Management and Employee Information and Consultation*.

As we put the program together, one thing became clear. We are on the cusp of a new wave of laws mandating employee information and consultation within the European Union.

There is also a new emphasis on collective bargaining, as evidenced by collective bargaining language in the Adequate Minimum Wage Directive. Several of the other laws under consideration also reference collective bargaining but, in our view, whatever the law may say, there is little evidence of any significant upsurge in union membership in any of the EU Member States. As long as unions insist on using slogans such as “*building union power, confronting global capital*” employers will be reluctant to engage. The majority of employees are also not interested in “*confronting global capital*” as it is “global capital” that employs them.

Of more importance is the stress in the new laws on the information and consultation of employees’ representatives. Many EU Member States provide for the election of such representatives to works councils. Many do not. Even in those countries which already provide for elections, there are countless workplaces where employees have not asked for representative structures to be put in place.

The Council of Ministers and the European Parliament have now agreed the text of a law on gender pay transparency. It provides for joint assessments between management and employees’ representatives when analysis shows gender pay gaps of more than 5%. While sometimes employees are reluctant to engage in information and consultation process, because they see little value in them, if there is a prospect of a pay increase through the elimination of gender differentials that may well be a different

matter. Such assessments will not be one-off. They will be ongoing. The gender balance in joint assessment committees will need to be considered.

Next up will be the Employment Status of Platform Workers, still under consideration. The definition of platform workers is not limited to “Uber” and other such gig economy operators, but also covers anyone employed to work through digital channels, including workers sourced through staffing agencies. The net is cast wide. The representatives of such workers, including the genuine solo self-employed, will have to be informed and consulted in some detail about the use of AI and algorithms in recruitment, work allocation, promotions, pay, and other human resource decisions.

Other legislation such as the AI Liability Directive, the Corporate Due Diligence Directive and the European Parliament’s call for a revision of the European Works Council Directive, all point in the direction of wider and deeper employees’ representatives’ involvement through new, multiply channels of information and consultation. The ETUC is also calling for a specific workplace Directive on Artificial Intelligence [here](#).

All of which suggests that those responsible for employee and labour relations have multiple new challenges coming down the track... and fast.

UK: Fire and Rehire



Last week we reported on the UK government’s consultation on a “fire and rehire” consultation. Here [David Hopper](#) and [William Brown](#) of Lewis Silkin LLP explain what is involved. Fire and rehire” is a shorthand for the practice of changing employment terms and conditions by way of dismissal and re-engagement, typically in situations where it is impossible to obtain employee or trade union consent to the changes. It has attracted heightened controversy in recent years, as a number of prominent employers used the practice during the Covid-19 pandemic.

Following the scandal over the firing of 800 workers by P&O Ferries in March 2022 (which strictly did not involve a “fire and rehire” exercise), the government [announced plans to introduce a new statutory Code of Practice](#) to encourage employers to act fairly and reasonably in negotiations over changes to terms and conditions.

Read their full comment [HERE](#)

Future Work: Some recent developments



Writing for [Forbes](#), Jon Younger takes a look at how compliance with worker classification laws – essential to tax collection – is an increasingly key issue as the globalisation of work, and the impact of new work and collaboration technologies, make it easier than ever to work from anywhere. Fifty-one countries now have active and ongoing programmes inviting so-called “digital nomads” to temporarily domicile in their country.

MEANWHILE, in Ireland a [poll](#) of 500 Dublin companies has found that offices in the city are on average only 10% full on Mondays and Fridays as staff continue to adopt a hybrid working model a year after

Ireland’s last COVID-19 lockdown. The survey by property agency Savills and the Dublin Chamber commerce body indicates offices in the main business district have an average occupancy rate of 0%-10% on Mondays and Fridays. Occupancy rises to between 51%-60% on Tuesdays and Thursdays, and to 61%-70% on Wednesdays. Almost half of the employers polled said employees must spend at least two or three days in the office each week.

Trade: AFL-CIO seeks labour rights clause in digital deals



The AFL-CIO, the largest US labour organisation, wants more of a say in how the U.S. Trade Representative's office sets digital trade goals, arguing they are too often dictated by big technology companies. U.S. Trade Representative Katherine Tai (*photo*) has pledged to create a "worker-centric" trade policy on the digital chapter in negotiations for the Indo-Pacific Economic Framework, the Biden administration's signature economic agreement, but the AFL-CIO said digital trade negotiations too often make no mention of labour standards nor the workers who write software or support networks.

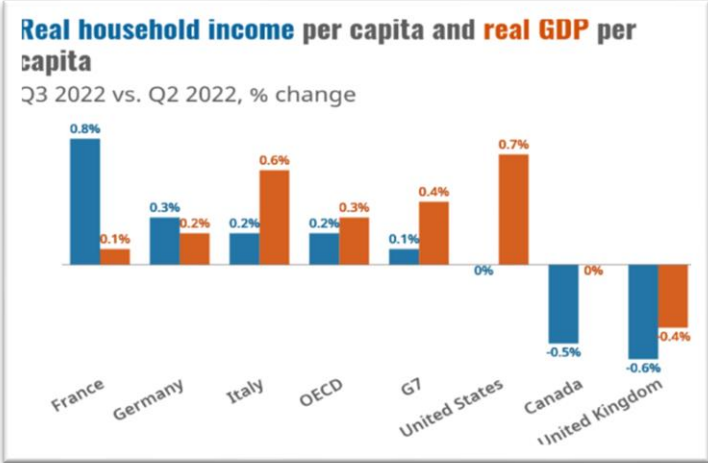
The AFL-CIO said that key to its demands involve ensuring that digital trade agreements are subject to strong and enforceable labour standards that discourage the "exploitative" use of "gig" workers and also the offshoring of back-office or telemedicine jobs to countries with low labour standards. "Corporations shouldn't dictate the rules of the global digital economy with no regard for working people," AFL-CIO President Liz Shuler said. "Their drive to monetise data frequently violates crucial privacy rights and exploits workers."

For more, see [here](#)

Pay: Real household income sees first rise since Q1 2021

Real household income per capita across the OECD was up 0.2% in Q3 2022 – the first quarterly increase since the beginning of 2021.

Among G7 countries (ex-Japan, for which data were not yet available), France, Germany and Italy recorded growth in quarterly real household income, while Canada (-0.5%) and the United Kingdom (-0.6%) continued to see falls. (Outside the G7, Austria saw the highest growth at +10.1%.) Real GDP per capita grew or was flat in all G7 countries except for the UK (-0.4%).



Of the 21 OECD countries with available data, real per capita household income has now surpassed pre-COVID-19 pandemic levels in all but six (Czech Republic, Denmark, Finland, Portugal, Spain, and the UK). Among G7 countries, the strongest recovery has been in Canada (+4.1%), compared with -3.9% for the UK.

EU: A law on “non-compete” clauses?



It is not really the sort of issue that we in BEERG have traditionally paid much attention to, but we do know that it is something our colleagues in the US get concerned about. Maybe it is the fact that “*hire and fire*” comes more easily in the US than in Europe, especially when it comes to “fire”. Whether an individual dismissal or a collective redundancy, that are procedures to be followed, which allows time for issues to be sorted out. In the US, with its doctrine of “employment at will”, dismissal can be instantaneous. Gone in 60 seconds.

In recent years, non-compete agreements have become commonplace across the US. So much so, that the federal government is now moving to stamp down on them. See this story from our colleagues in HR Policy [here](#). All of which explains why this [story](#) in *EurActiv* caught our attention.

Could a law on non-competes be on the way in Europe? *Is it that important an issue?*

BEERG Comment: Anne-Perrine Cades on measuring employee relations



Anne-Perrine Cades, Ph.D., Senior Director, HR Compliance and Employee Relations, FIS writes: Walking the floor and talking to people used to be the way for Human Resources officers to get a feel for the state of employee relations in organizations. Those days are gone. With the new ways of working, the workplace is spread across multiple locations. If offices are in the mix, it also now includes much more homes and coffee shops than it did before.

In this new context, how can we measure the state of our employee relations? I believe using an employee relations index provides essential insights on the state of employees relations in organizations.

What is an Employee Relation Index (ERI)? I propose to define ERI as a measure of the factors affecting (a) employee relations with the company and with one another as well as (b) job performance ability. I see that including performance ability in the index is critical to supporting a conducive work environment. The ERI may be defined at a global level, but its true meaning is at a country-level. In fact, in addition to the internal factors that companies have control over, to some degree, such as attrition and turnover, performance management, employee incidents, and labor relations, external factors such as unemployment rate, inflation or the employment legislative landscape do influence employees’ behaviors.

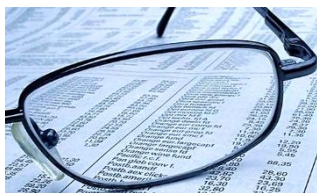
Many things can be included in the index, but I would recommend keeping it simple, so it is easy to use and to understand. Attendance is one element to include and should measure attrition and unplanned absence. This data points are typically available in HRIS. Job performance is another one I would include in the ERI. The measure should assess if low performance is effectively dealt with (e.g. improvement plans are implemented when employees have a low score to get them back on track).

A third component is on employee conducts and would include complaints, grievance, and incidents. This would typically require an ER case management system. The last piece would include labor relations. In fact, although the context varies greatly between regions of the world, an ERI should include a measure of the social dialogue in the company.

Why it matters? Because that's a company's story. Measuring Employee Relations is necessary for a company to own its ER environment. We hear a lot about employee engagement, employee satisfaction, employee well-being but the core is employee relations. We are back to Maslow's hierarchy of needs: if you do not take care of the fundamental needs of employees, investing in the next level will not get you very far and is likely a waste of time and money. The index provides answers to questions that were not asked. It follows a similar logic that the Heinrich safety pyramid: the more we know about the minor incidents, the better equipped we are to prevent the severe accidents.

An important aspect of ERI is that it is focused on behaviors. ERI measures are not based on a survey that collects answers to pre-defined questions. ERI measures are using events that result from employees' behaviors. This point is important because what we say and what we do differ (even if cognitive dissonance tends to force the alignment between the two). Engagement survey is about collecting employees' answers to a series of questions. Whereas employees relations index is about assessing employees' behaviors through attendance, turnover, performance, and conducts and doing so in the context of the country where they are located.

How to design it? When it comes to the design of the ERI, the usual suspects quickly invite themselves to the party. Once the factors are defined, they should be assigned a weightage that meets the purpose of the ERI in the organization. Depending on the focus, one dimension may take more weight than another. For a start, it is a good idea to balance the weight equally between all the factors. After 12 to 24 months, once adoption is completed and the baseline is established, the weightage can be revisited.



The data sources must be reliable and sustainable. Organizations can use data from their HRIS for attendance, turnover, and performance. Conduct-related data typically comes from Employee Relations Case Management System although spreadsheets can be a starting point. Labor relations data may be the most challenging to collect as they would relate to the presence or not of collective representations. In addition to management site visits to measure communication exercises, focus groups can be organized for company representatives and employee representatives to discuss and assess the quality of their relationship, a good proxy for social dialogue.

The last component of the design is the legal framework. Any of the systems used to feed the ERI must comply with legal requirements. To ensure compliance with GDPR requirements, I recommend completing a Legitimate Interest Assessment to document not only the benefits that implementing such systems present for the company but also what it brings to the employees. The purpose, security, confidentiality, and privacy of the system must be assessed via a Data Privacy Intake Assessment that is reviewed and approved by the company Data Protection Officer.

It may appear a daunting exercise at first but from experience, it is well worth the time. Likewise, EU whistleblowing directive requirements must be carefully incorporated in the mechanisms for employees' reporting avenues. Of course, employee representatives should be informed of the project prior to its implementation, where applicable.

To conclude, when it comes to the drivers behind measuring employee relations, it seems appropriate to cite leadership trainer John E. Jones who said: *"What gets measured gets done. What gets measured and fed back gets done well. What gets rewarded, gets repeated."*

The ability to steer towards effective employment relations management starts with measuring employees' behaviors. There is no way to deliberately progress on a ER strategy roadmap without data points to determine the current state of things. Even the best sailor in the world would struggle to reach a destination with no tool to tell where the vessel is on the map. ERI is not the single source of truth, but that is a critical measure to consider.

HR Policy Global: 2023 Asia-Pacific Membership Summit

March 21 & 22, Singapore

Emerging Employee Relations Issues in this Challenging Time the summit brings together senior HR & Employee/Labor Relations professionals from the HR Policy Global network over one-and-a-half days, to discuss the most urgent and challenging issues that employers are facing in the region. Join us - in person - at the [Four Points by Sheraton Singapore](#) on March 21–22 - in the beautiful and diverse Lion City, for the first time in three years

[BOOK Asia Pacific Summit](#)

Training: Managing ER in Europe

April 18 – 21, Hotel Estela, Sitges, Barcelona

This is BEERG’s flagship training program: *Managing European Employee Relations In Europe* – its goal is to familiarise attendees with the architecture of EU-level employee relations and issues of current concern. We look at the cultural gap between the EU and the US when it comes to understanding of how labour relations should be structured in individual companies. [Download programme](#)

[Book April Training](#)

*BEERG/HR Policy Global Members can self-register for these events via the links above. If you get a “No Tickets Available for Purchase” message make sure you are logged in – if the issue persists contact [Derek](#).

Upcoming BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
March 21 - 22	2023 Asia-Pacific Summit - Emerging Employee Relations Issues in this Challenging	BOOK Asia Pacific Summit	Four Points by Sheraton, Singapore
April 18 - 21	BEERG Training: “Managing ER in Europe” Download brochure	Book April Training	Hotel Estela, Sitges, Barcelona, Spain
June 14 - 16	BEERG Members Annual European Summit		Hotel Estela, Sitges, Barcelona, Spain
Sept 27 & 28	BEERG Members Meeting		Brussels, Belgium
Oct 10 - 13	BEERG Training: “Managing ER in Europe”		Hotel Estela, Sitges, Barcelona, Spain