

Employment Law Tracker

L&E Global is pleased to present you with the most recent employment law updates for May 2017.



Australia | Harmers Workplace Lawyers

Latest Case Law: Australian court issues injunction to enforce restraint under Connecticut contract The Western Australia Supreme Court has granted an American company based in Connecticut and represented by Harmers Workplace Lawyers (the Australian affiliate of L&E Global), an injunction to prevent an ex-employee from working for a competitor in Australia. [» Read More](#)

Impending Changes of Legislation: Australia: Changes to anti-discrimination legislation take effect A number of significant changes to Australia's anti-discrimination laws have taken effect, including that complaints are to be made within 6 months after the alleged events and that complainants must seek the leave of the court before progressing their complaints to court [» Read More](#)

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Belgium | Van Olmen & Wynant

Latest Case Law: Belgium: What to do with the ‘old’ clauses in employment contracts regarding the notice periods? As the Belgian legislation with regards to the dismissal of employees was thoroughly reformed on 1 January 2014, questions arose on the applicability of clauses in employment contracts, which dated from before that reform regarding the applicable period of notice. Currently, there are three tendencies in

case law. [» Read More](#)

Belgium: Employer held responsible to employee for the reimbursement of the deficits in a complementary pension scheme caused by the bankruptcy of the occupational pension institution Recently, the Supreme Court judged that the organiser of a pension promise (in casu an employer) is obliged to reimburse the deficits, which arise in a complementary pension scheme and this, regardless of the cause of the deficit, such as the bankruptcy of the occupational pension institution. [» Read More](#)

Impending Changes of Legislation: Belgium: A new codex on the well-being of workers is forthcoming A new codex on the well-being of workers - which bundles the existing legislation - will soon appear in the Belgian Official Gazette. [» Read More](#)

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Canada | Filion Wakely Thorup Angeletti LLP

Latest Case Law: Canada: Ontario Court of Appeal upholds “harsh” and “draconian” bonus eligibility language The Ontario Court of Appeal recently upheld the Superior Court’s decision to enforce strict bonus eligibility language in an employment contract. The appellant’s employment contract provided that he would only be entitled to receive the bonus if he was employed on the bonus payout date. The plaintiff, who had been employed as a lawyer, was dismissed on a without cause basis prior to the bonus payout date. [» Read More](#)

Impending Changes of Legislation: Canada: New Brunswick moves to introduce new statutory holiday, proposes significant amendments to its Human Rights Act. New Brunswick employees will be granted a new statutory holiday,

Family Day, starting in January 2018. Employees are also expected to receive additional protection as amendments expected to be made to the New Brunswick Human Rights Act will introduce family status, gender identity or expression as new prohibited grounds of discrimination. [» Read More](#)

Other Observations: Canada: Ontario's Workplace Safety and Insurance Board approves new Premium Rate Framework. In November 2016, the Workplace Safety and Insurance Board's Board of Directors approved a new premium rate framework to come into effect in January 2019. The new framework will significantly change how employers are charged for WSIB Premiums. [» Read More](#)

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China | Zhong Lun Law Firm

Latest Case Law: China: Companies should be able to check employee's medical records and decide whether or not to approve the sick leave application Companies should have the right to check an employee's medical records when they cast reasonable doubt on the authenticity of the sick leave certificate submitted by the employee.

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Impending Changes of Legislation: China: The

PRC Cyber Security Law will take effect soon The PRC Cyber Security Law released on November 7, 2016 will take effect as of June 1, 2017. [» Read More](#)

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France | Flichy Grangé Avocats

Latest Case Law: France: The dismissal letter cannot be signed in the name of the employer by a person who is not from the company The very purpose of the preliminary interview and the rules on the notification of dismissal prohibit the employer from giving a mandate to a person outside the company, such as the public accountant, to conduct the interview of the termination procedure. Consequently, the public accountant cannot sign the letter of dismissal on behalf of the employer.

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Impending Changes of Legislation: France: Emmanuel Macron elected president of France: what should we expect from his program in terms of employment and labour law? Emmanuel Macron became President of the French Republic on May 7, 2017. His program in the field of labour law includes several measures that impact companies (exemption from contributions, premium for hiring,...), employees (health, retirement, vocational training), staff representatives and trade unions (consolidation, negotiation, etc.). He plans to implement reform as soon as possible this summer. [» Read More](#)

Other Observations: France: The ban on vaping in certain workplaces will come into force on October 1, 2017. Effective October 1, 2017, the use of an electronic cigarette will be prohibited in premises with workstations, closed and covered, and used for collective use. As an exception, the prohibition will not apply to premises that accommodate the public or to the individual office. [» Read More](#)

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Germany | Pusch Wahlig Legal



Latest Case Law: Germany: A hidden video surveillance requires an initial suspicion of a crime Federal Labor Court held that a hidden video surveillance in order to investigate a crime is only permissible if there are concrete facts that substantiate an initial suspicion of a defined group of employees. Therefore, the employer does not need to suspect a concrete individual employee. However, vague indications or speculations are not sufficient. [» Read More](#)

Impending Changes of Legislation: Germany: Amendments to the Maternity Protection Act (MuSchG) The German Federal Assembly (*Bundesrat*) has approved the changes to the Maternity Protection Act (*MuSchG*). [» Read More](#)

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Italy | LABLAW – Studio Legale



Latest Case Law: Italy: It is lawful to dismiss an employee who participates in a soccer game during his absence due to sickness Court ruling held that it is lawful to dismiss for just cause an employee who participates in a soccer game during a sickness leave. [» Read More](#)

Italy: Disciplinary procedure not promptly started: Reinstatement of the employee Court ruling held that a dismissal shall be considered unlawful if the disciplinary procedure is not promptly

started, with the letter of charge, in the light of the principle of the immediate reporting of any misconduct. In this case, the action of which the employee was accused should be considered unfounded and the employee has the right to be reinstated. [» Read More](#)

Impending Changes of Legislation: Italy: Government eliminated the norms on the voucher system Italian government has eliminated the norms on the voucher system, but a transitional phase is foreseen. [» Read More](#)

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Netherlands | Palthe Oberman Advocaten



Latest Case Law: Netherlands: Without a proper improvement plan, the request for dissolution of an employment contract based on poor performance fails In the improvement plan, the employer must explain specifically and in a clear way – based on concrete examples – what the poor performance is based on, what the employer exactly expects from the employee in his/her job and in what way or by what means the em-

ployer expects the employee to be able to achieve the intended improvement. [» Read More](#)

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Spain | Bufete Suárez de Vivero

Latest Case Law: Spain: Supreme Court changes criterion on the obligation to record the working day Court ruling held that the employer's obligation to record the working day is only extended to overtime. This implies a change in the Court's criteria regarding the record of the working day. [» Read More](#)

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United Kingdom | Clyde & Co

Latest Case Law: UK: Redundancy: Offer of suitable alternative employment The EAT found that an employee's reason for rejecting suitable alternative employment was reasonable despite the employer having no knowledge of that reason at the time of dismissal. [» Read More](#)

UK: TUPE – Employee Liability Information: whether terms are contractual The EAT considered whether the outgoing contractor's obligation under TUPE to provide employee liability

information required it to state whether or not a bonus was contractual. [» Read More](#)

Impending Changes of Legislation: UK Finance Bill 2017 amendments The Finance Bill 2017 has been fast-tracked through the legislative process, and in doing so, the government has left out of the Bill changes to the taxation of termination payments. [» Read More](#)

Other Observations: UK: Gender Pay A 'beta' version of the website for publishing gender pay gap information has been set up. [» Read More](#)

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United States | Jackson Lewis P.C.

Other Observations: USA: H-1B Visa Executive Order In the wake of the lowest number of H-1B visa petitions filed in five years (199,000), President Donald Trump has signed an Executive Order dubbed “Buy American, Hire American.” It is focused on reform of the H-1B non-immigration visa program, as well as the elimination of waivers and exceptions that are central to international trade deals. [» Read More](#)

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