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PARTENA PROFESSIONAL

TERMINATION OF AN EMPLOYMENT CONTRACT FOR MEDICAL FORCE MAJEURE

Termination of an employment for reasons of medical force majeure is currently the subject of much discussion. Current thinking aims to encourage, as much as possible, outplacement for workers who suffer a reduction of their capacity for work.

In this context, is it possible to consider terminating employment relation due to a medical force majeure?

01 GENERAL PRINCIPLES OF FORCE MAJEURE

Concept – Referring to the concept as viewed under «civil law», force majeure is an unforeseeable and inevitable event which prevents one of the parties (employer and/or worker) from fulfilling their obligation(s).
Such an event may not be attributable to either of the contracting parties. In other words, the party invoking force majeure shall not be considered as having committed a wrongful act which is at the origin of the event.

Finding and proof of force majeure – It is up to the party invoking the existence of force majeure to expressly make the finding and to provide supporting evidence.
It can be established by any lawful means and in the event of a dispute, the labour court shall have sole discretion to render a final decision on its assessment as to whether or not there exists a force majeure resulting in either temporary suspension or termination of the contract (see below).

Effects and consequences of force majeure – Force majeure may have a suspensive or extinctive effect.
Suspensive effect is characterized by the event of force majeure being temporary. In such a case, performance of the contract is temporarily suspended, which also means that the performance of the contract shall automatically be resumed without need for a formal notice upon expiration of the temporary case of force majeure.

However, when the case of force majeure results in a definitive or long-term non-working period, the employment contract shall be terminated without the party invoking the force majeure being required to notify a notice period or to pay compensation in lieu of notice.

This being said, when a party (employer or worker) wrongly invokes the extinctive nature of the force majeure, i.e. its final (and no longer temporary!) nature, it improperly terminates the contract, in principle, which opens the entitlement to the payment of compensation in lieu of notice. But failing to do so, the contract will continue (Cass., 19 May 2008, J.T.T. 2008, p.394; C. trav. 6 April 2007, J.T.T. 2007, p.348).

02 MEDICAL FORCE MAJEURE

Incapacity for work due to illness or accident has the sole effect of suspending the performance of the employment contract.

The incapacity, **regardless of its duration**, does not end the contract and does not, in principle, authorize the employer to terminate the employment contract without notice or compensation in lieu of notice.

1. POSITION OF THE SUPREME COURT OF APPEAL

The Supreme Court of Appeal held on several occasions that a **permanent incapacity** which definitively prevents the worker from resuming the **agreed work** constitutes (in accordance with Article 32, 5° of the Employment Contracts Act of 3 July 1978) an event of force majeure resulting in the termination of the contract without notice or compensation (Cass., 5 January 1981, J.T.T. 1981, p. 184; 21 April 1986, Ch. Dr. Soc. 1986, p. 282; 13 February 1989, Pas, 1989, I, p. 616; 2 October 2000, Chr. Dr. Soc. 2002, p. 417).

It must once again be stated that the incapacity of continuing the performance of the employment contract must be assessed in relation with the work agreed between the parties, i.e. «that which should normally have been performed by the worker at the time when the incapacity for work occurred, according to the terms of the contract and according to the normal organization of work established by the employer and accepted by the worker» (Cass., 2 October 2000, J.T.T. 2000, p. 476; C. trav. Mons, 30 June 2004, inédit, General cause list No. 16.879, cited in C. trav. Mons, 20 June 2011 General cause list No. 2010/AM/97, www.terralaboris.be; C. trav. Mons, 2 Nov. 2009, General cause list No. 20535, www.juridat.be; C. trav. Mons, 4 May 2015, General cause list No. 2014//AM/9, www.socialweb.be).

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> **REMARK**
>
> The finding of force majeure must obviously be established on the basis of a medical certificate mentioning with all required precision the permanent and definitive nature of the incapacity to resume the agreed work.
>
> Ideally, it is also necessary to have two concurring medical certificates (e.g.: certificate of the treating physician and of the mutual insurance fund's medical adviser) in order to avoid any problems with the National Employment Office (ONEm).

2. COMPLIANCE WITH A POSSIBLE OUTPLACEMENT PROCEDURE (R.D. OF 28 MAY 2003)

Notwithstanding the position taken by the Supreme Court of Appeal (criticized by some legal writers!), it is necessary to take into account the Royal Decree of 28 May 2003 on the monitoring of worker health. It partially implements the Welfare At Work Act of 4 August 1996 and sets up a scheme for monitoring worker health and whose provisions mainly aim to avoid the termination of an employment contracts for reasons linked to their health... by emphasizing the need to search for alternatives within the company...

It is in this context that the worker will, in principle, be granted the right to an **outplacement procedure**.

The employer will only take a decision to terminate the contract due to medical force majeure when the possible outplacement procedure has been completed (see below) and such a decision can be taken (has been «authorized») ... or if the worker has refused said procedure!

When examining the various aspects of this issue, there are 3 different hypotheses depending on whether the definitive and permanent incapacity was established by the treating physician, the workplace prevention adviser-occupational physician (= occupational physician), or by the medical adviser of the worker's mutual health insurance fund.

A. PERMANENT INCAPACITY ESTABLISHED BY THE TREATING PHYSICIAN

When the worker hands his employer a medical certificate issued by his treating physician, stating the definitive and permanent nature of the incapacity, he may **request** (the employer cannot require it) an **outplacement procedure** before the prevention adviser-occupational physician in order to be reinstated within the company.

No deadline has been set for submitting such a request. However, prudent employers (also held to comply with an obligation of information; see Art. 10 of the Royal Decree) shall inform the worker in writing of the possibility for them to be granted such a procedure and the deadline in which his request must be submitted (e.g.: 15 days). The employer shall also inform the worker of the fact that failure to provide an answer shall result in the worker being deemed not to desire such a procedure!

During the period of «reflection» granted to the worker, the contract remains suspended due to incapacity and the worker shall be entitled to the possible balance of the guaranteed pay and/or the compensation from his mutual insurance fund.

Two situations can then arise: either the worker does not request an outplacement procedure, or the worker intends to make use of such a procedure.

- **No request for outplacement**
  If the worker does not desire to make use of the outplacement procedure, the employer shall take note of the worker's refusal and record it in writing.
  In such a case, the employer has only one medical opinion to terminate the contract for reasons of force majeure. In principle, the certificate of the treating physician will suffice to the extent that it is not disputed (C. trav. Bruxelles, 21 Nov. 2006, J.T.T. 2007, p. 110; Trib. trav. Courtrai, 8 March 2006, inéd., General cause list No. 42031; Trib. trav. Bruxelles, 10 Dec. 1992, J.T.T. 1993, p. 15).

In any case, **in the absence of a request for outplacement**, the decision of the prevention adviser - occupational physician who issued a certificate relating to the worker's definitive incapacity following a medical check-up that took place during a period of incapacity, shall be null and void pursuant to Article 12, § 3 of the Royal Decree of 28.05.2003.

Ideally, the employer shall nevertheless endeavour to be in possession of at least 2 concurring medical certificates in order to be in compliance with certain court decisions (C. trav. Bruxelles, 26 May 2004, inéd., General cause list No. 42903; C. trav. Bruxelles, 17 February 2004, inéd., General cause list No. 44.123; C. trav. Anvers 2 Sept. 1997, J.T.T. 1998, p. 385).

! PLEASE NOTE

If the worker submits an application for unemployment benefits following the termination of the contract, the National Employment Office (ONEm) shall cause the person to be examined by a physician attached to its Office before deciding whether or not to grant unemployment benefits. In the absence of confirmation of the treating physician's opinion, the worker could therefore be temporarily excluded from entitlement to unemployment benefits.
In certain situations, this could also encourage the person to claim the payment of severance compensation from their ex-employer!
This is why it is highly recommended, in such circumstances, to enter into an agreement pursuant to which the parties agree upon termination of the contract for reasons of force majeure and agree on the legal effects arising from the termination of their working relationship.

- **Worker's request for outplacement**
  A worker who wishes to have an outplacement procedure must send their request to the employer as soon as possible by registered letter and attaching the certificate of the treating physician thereto (Art. 39).

  Upon receiving the request, the employer must provide the worker with a «Request for monitoring worker health» form duly filled in and then send the worker to the occupational physician.

  During the course of the outplacement procedure, the contract shall remain suspended for reasons of incapacity for work and the worker can claim the possible balance of the guaranteed pay and/or the allowances of the mutual insurance fund.

  As regards the intervention of the occupational physician, the effects of their decision, the possible recourses and the outplacement obligation provided for by the Royal Decree of 28 May, 2003, see point B. below.

! OBSERVATION

DThe worker considered fit for work within the meaning of the AMI legislation (because he no longer has an incapacity rate of at least 66%) but who nevertheless remains incapable of performing an activity during the course of the outplacement procedure may find themselves in an uncomfortable and difficult financial situation. They can no longer claim the incapacity allowance paid by their mutual insurance fund, and the employer has no legal financial obligation towards the worker: no pay is owed in the absence of work performed (Trib. trav. Liège, 11th Division., 24 Apr. 2006, inéd., General cause list No. 348.655; Trib. trav. Mons, 13 Feb. 2009, Chron. D.S, 2010 p. 330)!

B. PERMANENT INCAPACITY ASCERTAINED BY THE OCCUPATIONAL PHYSICIAN

Definitive and permanent incapacity may be ascertained by the medical adviser-occupational physician following the request for an outplacement procedure submitted by the worker (see point A above), or outside of such procedure.
It should be recalled once again that outside the outplacement procedure requested by the worker, the decision taken by the occupational physician shall only be valid if it is not based on a medical certificate performed during a period of suspension of the performance of the contract (e.g.: incapacity for work or annual holidays). Otherwise, the occupational physician's decision shall be rendered null and void (Art. 12, § 3).

Intervention of the occupational physician – After having performed the appropriate examinations, the occupational physician shall document his diagnosis under section C of the «Health Evaluation Form». A copy of the form shall be sent to the employer and to the worker.

The occupational physician shall mention one of the following on the check-up form (Art. 41) :

- either that the worker is sufficiently able to resume the agreed work (see below);
- or that the worker may perform the agreed work, subject to certain adjustments as they shall specify (under section F of the form) (see below);
- or that the worker is sufficiently able to perform another function, if necessary subject to the application of the necessary adjustments and under the conditions that they shall specify (under section F of the form) (see below);
- or that the worker is permanently unfit for work (see below). The occupational physician may supplement his decision by making recommendations, under section F of the form, aimed at having the worker assigned to another job (see below).

Implications of the occupational physician's decision – Various hypotheses may be considered as regards the occupational physician's decision.

a) **The worker is fit for the agreed work**
When the occupational physician considers that the worker is sufficiently able to perform the agreed work, the employer has two contradicting medical opinions (that of the treating physician and that of the occupational physician); given that definitive and permanent incapacity is not established with certainty and, out of caution, the employer shall not terminate the contract for reasons of force majeure!

It must also be noted that, in such as case, the worker cannot request (see Articles 59 and 64) a consultation or appeal procedure (see below).

b) **The worker is fit to perform the agreed work, subject to certain adjustments that he shall specify (under section f of the form).**
In the event that the occupational physician has made recommendations for adjustments to be made to the workstation, the employer must comply with such recommendations to the fullest

extent possible. However, this is not an obligation to achieve a particular result (C. trav. Mons, 2nd Division, 21 Dec. 2011, Chr. D.S. 2013, p. 291). If he considers that the adjustments to the workstation are not objectively or technically possible, or that they cannot be required for duly justified reasons (e.g. too many adjustments), he must notify the occupational physician (Art. 41, subparagraph 2).

In this case, the employer shall refrain from taking any decision until the expiration of the appeal period available to the worker with respect to the occupational physician's decision (see below).

After the appeal period, he shall only take a decision of termination for reasons of medical force majeure if he is able to demonstrate that the adjustments necessary for performing the agreed work are not objectively and/or technically possible.

c) **The worker is fit for another job (permanent transfer)**
When the occupational physician deems the worker fit to perform another function, the employer must, to the fullest extent possible, assign them to another position taking into account the recommendations made under section F of the health evaluation form (Art. 71), the obligation of replacement is not, however, an obligation to achieve a particular result (C. trav. Mons, 2nd Division, 21 Dec. 2011, Chr. D.S., 2013, p. 291).

If the employer deems that it is not objectively and/or technically possible to find another job for the worker, and that such cannot be required, for duly justified reasons, he shall inform the occupational physician (Art. 41, subparagraph 2).

It must be noted that the decision of permanent transfer does not constitute proof of definitive and permanent incapacity for work given that the «is definitively unfit» section was not ticked on the health evaluation form.

The employer shall therefore only consider terminating the contract for reasons of force majeure in the absence of an appeal submitted within 7 working days (and therefore at the end of such period at the earliest) (see below) and **provided that he can justify that assigning the worker to another job is impossible**. In such cases, it is necessary to ensure that the termination of the working relationship due to force majeure is recorded in an **agreement** signed by the parties (see below).

d) **The worker is definitively unfit for the agreed work**
When the occupation physician declares that the worker is definitively unfit, the worker may appeal the decision before the medical inspector of the labour ministry's medical inspectorate (see below).

If it is a worker unfit to occupy a position of control or vigilance or risk activities related to exposure to ionizing radiation, the worker may also make use of a special consultation procedure (not detailed herein) (Royal Decree of 28 May 2003, Art. 59 to 63).

In the absence of an appeal, and therefore at the latest at the end of the appeal period (7 working days) (see below), the employer may terminate the contract for reasons of force majeure. The employer has two concurring medical certificates (that of the treating physician and that of the occupational physician) that are not disputed by the worker.

Appeal before the Medical Inspectorate –
Independently from the consultation procedure that can only be used by certain categories of workers occupying safety- or vigilance-critical positions, or performing certain risk activities (Art. 59 to 63), the worker may appeal the occupational physician's decision with the medical inspector of the labour ministry's medical inspectorate within **7 working days** from the date on which the health evaluation form was sent or from the date on which the form was handed to him (Art. 64 and 65).

The appeal must be lodged by registered letter (Art. 65).

EXAMPLE

A worker is declared as being in a state of definitive incapacity for work by the occupational physician on Monday 15 November. The worker's health evaluation form is handed over in person on the same day.
The appeal period of 7 working days shall end on Monday 22 November and termination for reasons of force majeure can be given from Tuesday 23 November.

The appeal suspends the decision of the occupation physician, except as regards workers occupying a safety- or vigilance-critical position or who performs a risk activity (the latter of which must be immediately removed) (Art. 69). Before considering a possible termination for reasons of force majeure, the employer shall therefore wait for the occupational physician's opinion so that the decision can be final.

Temporary assignment during the consultation and appeal procedures – During the consultation (not detailed here) and appeal procedures, and until a final decision is given, the employer must, to the fullest extent possible (= best efforts obligation) and as soon as possible, assign the worker to another position in accordance with the recommendations issued by the occupational physician (Art. 70, § 1, subparagraph 1). The employer who is unable to offer the worker a different position must, in such event, be able to provide a justification to the medical inspector of the Labour Ministry's medical inspectorate (Art. 70, § 1, subparagraph 2). In such a case, the worker shall be entitled to the payment of the balance of the guaranteed wages or the allowances from the mutual insurance fund.

The worker, for their part, must accept the assignment offered to them, but **cannot suffer any loss of pay** (Art.70, § 2).

Final decision concerning the worker's (in)ability to work – The occupational physician's decision shall become final at the end of the consultation procedure and/or the appeal procedure; this means that the appeal shall suspend the occupational physician's decision.

The employer shall wait for the decision concerning the (in)ability to become final before considering a possible termination for reasons of force majeure; the decision shall only become final at the end of the consultation and/or appeal procedure given that the incapacity for work is not deemed to be proven until the end of such procedure(s) (Art. 70, § 3) (C. trav. Liège, 13 January 2009, J.T.T. 2009, p.132; C. trav. Liège, 15 May 2015, inédit, General cause list No. 2014/AL/185).

It must be noted that some courts focus on the fact that the finding of an event of force majeure is not linked to compliance with a specific procedure: «Non-compliance with the procedure provided for by the Royal Decree of 28 May 2003 may not affect the arrangements for establishing the proof of the definitive incapacity for work, nor limit it as it, it must be recalled, can be reported by any legal means» (C. trav. Mons, 4 May 2015, J.T.T., 2015, p. 451; C. trav. Bruxelles, 23 April 2012, General cause list No. 2010/AB/304). Therefore, «the existence of an event of medical force majeure is not subject to the expiration of the period for appealing the occupational physician's decision» (C. trav. Mons, 4 May 2015, op. cit; Cass., 2 February 2009, Ch. D.S. 2010, p. 55).

Therefore, the above-mentioned Article 70, § 3 only becomes applicable when the worker has lodged an appeal!
«In the absence of such an appeal, either at the expiration of the appeal period, or because the worker did not lodge an appeal (e.g. by expressing agreement with the occupational physician), the occupational physician's decision shall take full effect and shall constitute proof of definitive unfitness» (C. trav. Mons, 4 May 2015, op. cit).

Special outplacement obligation following a final decision – Despite a final decision of unfitness given by the occupational physician, the Royal Decree of 28 May 2003 (still) establishes a special outplacement obligation for the employer.
On the basis of Article 72 of said Royal Decree, the employer is «required to continue to employ the worker who has been declared definitively unfit for work by a final decision of the occupational physician (except for the worker referred to in Article 71, namely the worker occupying a security-critical position), **in accordance with the latter's recommendations**, by assigning the worker to other work except where such is not technically or objectively possible or if this cannot be reasonably be required for duly justified reasons» (e.g. too large technical adjustments, excessive cost, organizational difficulties, refusal by the worker).

The employer is therefore obliged to offer replacement work unless he is able to justify that assigning the worker to another position is impractical on objective and reasonable grounds.
It is obviously necessary to demonstrate (prove) the impossibility to provide outplacement and the labour court may, if necessary, evaluate the relevance of the reasons given by the employer.

The employer is therefore obliged to offer replacement work unless he is able to justify that assigning the worker to another position is impractical on objective and reasonable grounds.
It is obviously necessary to demonstrate (prove) the impossibility to provide outplacement and the labour court may, if necessary, evaluate the relevance of the reasons given by the employer.

However, should this outplacement obligation be complied with (and brought to completion) before any finding of force majeure?
This issue is hotly debated. There are two competing theories.

a) According to the first theory, non-compliance with the obligations contained in the Royal Decree would have no bearing on the possibility of termination. The Royal Decree, an inferior source of law, cannot apply without prejudice to the Employment Contracts Act of 3 July 1978. Possible non-compliance with the provisions of the Royal Decree of 28 May 2003 cannot impact the possibility for either party to find the existence of an event of force majeure (Cass., 2 Oct. 2000, Pas., 2000, p. 1434 in a case concerning the former regulations enshrined in the General Protection at Work Regulation (R.G.P.T.), i.e. Articles 146, § 2 and 146 ter, § 3 and 4.; C. trav. Gand, Bruges section, 16 January 2009, inéd., General cause list No. 07/183; Trib. trav. Termonde, 7 January 2014, T.G.R., 2014, 317; C. trav. Bruxelles, 21 Nov. 2006, J.T.T. 2007, p.110; C. trav. Mons, 4 May 2015, op. cit.).

   In other words, the redeployment obligation would only be imposed on the employer after the dissolution of the employment contract; it would not prevent the employer from terminating the contract!

   In the event that the employer is able to offer a different position but nevertheless invokes force majeure, it must be considered that the resolution of the contract does not give rise to a severance payment but rather to possible damages for non-compliance with the obligation provided for by the Royal Decree.

b) In another part of doctrine and jurisprudence, the obligations imposed by the Royal Decree of 28 May 2003 (and therefore the outplacement obligation) must be complied with before any finding of termination of the contract for reasons of force majeure. The outplacement obligation is a necessary precondition for acknowledgment of medical force majeure so that the employer who fails to comply with this obligation cannot terminate the contract for reasons of force majeure.
   In other words, the employer shall be required to provide two items of evidence: demonstrate the existence of force majeure and provide evidence of the fact that he is unable to reinstate the worker in his company. Otherwise, the employer would have to pay a compensation in lieu of notice and not damages (C. trav. Liège, 15 May 2015, inéd., General cause list No. 2014/AL/185; C. trav. Liège, Namur division, 23 Nov. 2010, General cause list No. 2009/AN/8785, www. juridat.be; C. trav. Liège, 13 January 2009, J.T.T. 2009, p. 132.; C. trav. Liège, Namur division , (13th Division), 2 January 2009, inéd., General cause list No. 8287/2006; C. trav. Liège, Namur division, 23 June 2008, General cause list No. 8287/06, www.juridat.be; Trib. trav. Bruxelles, 6 May 2015, inéd., General cause list No. 13/6.128/A; Trib. trav. Bruxelles, 4 April 2014, General cause list No. 12-7-176-A, www.socialweb.be).

> **REMARK**
>
> Ot is with the aim of further promoting the reinstatement of the worker who suffered a definitive incapacity for work certified by the treating physician and/or the occupational physician that the legislature, through the Act of 27 April 2007 containing various provisions (1) (Belgian Official Gazette 08.05.2007), restored Article 34 of the Employment Contracts Act of 3 July 1978 requiring the employer to comply with a new reinstatement into work procedure **before being allowed to dismiss** on grounds of medical force majeure.
>
> This is aimed at encouraging, as much as possible, the continued employment of the workers within the company despite a definitive unfitness.
>
> This new scheme and the new procedure that goes with it will only take effect on a date to be set by royal decree, which was expected in 2007!

C. DEFINITIVE INCAPACITY FOR WORK ASCERTAINED BY THE MUTUAL INSURANCE FUND'S MEDICAL ADVISER

Finally, a finding of definitive incapacity for work can result from a decision of the mutual insurance fund's medical adviser.
Caution is still required because the concept of incapacity for work is assessed in a special way under the compulsory healthcare and benefits insurance. The fact that the worker is eligible for AMI benefits for a long period of time does not sufficiently establish the definitive and permanent nature of the incapacity; there may subsequent medical checks and an administrative review should there be positive changes in the medical situation.

In such cases, the worker would have to request his treating physician to issue a certificate certifying the definitive and permanent nature of the incapacity for work, in order to enable the worker to submit a request for an outplacement procedure to the occupational physician (see the details for this procedure above).

03

FORMALITIES IN THE EVENT OF TERMINATION OF THE CONTRACT FOR REASONS OF MEDICAL FORCE MAJEURE

In this regard, there are two essential formalities.

Finding of termination for reasons of force majeure – Termination of the employment contract for reasons of force majeure is not automatic; the contracting party (employer or worker) who wishes to terminate the contract must expressly find the termination of the working relationship on the basis of said force majeure. Otherwise, the employment contract shall remain in effect.

The necessary finding of force majeure resulting in the termination of the contract can result from a unilateral written document drawn up by one of the contracting parties and notified to the other (preferably by registered letter), but can also be laid down in a written agreement between the parties.

When the medical force majeure is established on the basis of a single undisputed medical certificate (e.g. that of the treating physician), the employer can unilaterally find the termination of the contract for reasons of force majeure, but it must be recalled that certain labour courts are nevertheless reluctant to accept a definitive incapacity for work based only on the treating physician's certificate; it is therefore necessary and prudent to ensure that the medical report is confirmed by the workplace prevention adviser-occupational physician, at the risk of the employer being ordered to subsequently pay compensation in lieu of notice.

When the existence of medical force majeure is not disputed by either party (employer and worker), the two parties may also, if necessary, consider entering into a written agreement evidencing said event and specifying or lays down certain terms surrounding the termination (without notice or compensation) of the working relationship.

Establishing an unemployment certificate – The employer who invokes force majeure to terminate the contract (following definitive and permanent incapacity of the worker) must issue a C4 to the worker.

In section C «Data concerning the way in which the employment ended» of the form, the employer should check point 5 and add the words: «for reasons of force majeure, invoked on ...».

In addition, the employer will state the specific reason for the unemployment as being: «Force majeure following a definitive and permanent incapacity for work established by the medical certificate(s) attached hereto.» and will add: «Impossibility of assigning the worker to another position or entrusting them with another function».

PLEASE NOTE

Should the worker disagree as to the existence of an event of force majeure terminating the contract, it will be up to him, if necessary, to refer the matter to the labour court which will have absolute discretion.
The court could therefore order the employer to pay the compensation in lieu of notice provided for by the law if the existence of a force majeure is not sufficiently demonstrated or if the outplacement and/or appeal procedures were not followed or properly complied with!

Francis Verbrugge, Senior Legal Counsel

SOCIAL NEWS

BENEFITS IN KIND: LOANS AT A REDUCED RATE OF INTEREST OR INTEREST-FREE LOANS

The rates of interests for determining the value of some benefits in kind have been published in the *Moniteur Belge*.
On the basis of these rates of interests, the value can be determined of the benefits granted in 2015 (and 2016 pending the publication of the rates of interests 2016 and under an administrative tolerance) in the form of various loans.

A. MORTGAGE LOANS WITH A FIXED RATE OF INTEREST

Year in which the loan agreement is concluded	Reference rate of interest	
	Loans guaranteed by a mixed life insurance policy	Other loans
2014	4,16 %	3,18 %
2015	**2,47 %**	**2,41 %**

B. NON-MORTGAGE LOANS WITH A FIXED TERM

Year in which the loan agreement is concluded	Loans to finance the purchase of a car (monthly charge rate)	Other loans (monthly charge rate)
2014	0,10 %	0,22 %
2015	**0,09 %**	**0,20 %**

C. NON-MORTGAGE LOANS WITHOUT A SPECIFIC TERM

Year in which the borrower disposed of the loaned sums	Reference rate of interest
2014	9,20 %
2015	**8,16 %**

Isabelle Caluwaerts, Legal Counsel

SOCIAL NEWS

TAX SHIFT: AMOUNTS OF THE STRUCTURAL REDUCTION AS FROM 1 APRIL 2016

In our *Memento of the Employer* of December 2015 we announced the changes in the amounts of the structural reduction as a result of the tax shift. To date, not all legislative texts on this subject have been published yet. However, the NSSO has communicated some adjustments to what had been previously announced. These adjustments relate to categories 2 and 3.

RECALLING THE 3 CATEGORIES

Below the definition of the 3 categories:

Category 1: workers subject to all social security systems and not referred to in the other two categories.

From 1 April 2016, category 1 will also apply to those employed as workers bound by an employment contract with:

- The Théâtre Royal de la Monnaie;
- The Palais des Beaux-Arts.

Category 2: workers employed by employers falling within the scope of the social Maribel:

- Joint committee 319 (JC for education and accommodation service establishments), including all sub-sectors;
- Joint committee 329 (JC for the socio-cultural sector), including all sub-sectors;
- Joint committee 330 (JC for the health services), including all sub-sectors, except sub-sector No. 330.03 for dental prostheses;
- Joint committee 331 (JC for the Flemish welfare and health sector)
- Joint committee 332 (JC for the French and German-language welfare and health sector)

except workers covered by the joint committee for home help and elderly caregiver services (JC 318.01 & 318.02) and workers employed in adapted work enterprises (JC 327);

Category 3: workers employed in an adapted work enterprise (sub-sector 327.01 index 473, sub-sector 327.02 and 327.03).

AMOUNTS OF THE STRUCTURAL REDUCTION AS FROM 1 APRIL 2016

The changes to what we have announced in our *Memento* of December 2015 relate to category 2 and 3:

Category 2: the basic amount and the 'high-wages' supplement is maintained, contrary to what was announced.

Category 3: a distinction is now made according to whether or not the worker is disabled. For the non-disabled worker (i.e. for which the employer is due a wage moderation contribution), the employer will be entitled to a structural reduction that will follow as much as possible the amount applicable to category 1.

The structural reduction can be summarized as follows as from **1 April 2016**.

Structural reduction in social security charges (manual and non-manual workers)	Gross amounts in EUR per quarter	
category 1	438 + 0,1369 x (6.900,00 – S) + 0,0600 x (W – 13.401,07)	
category 2	24,00 + 0,2557 x (7.710,00 – S) + 0,0600 x (W – 12.484,80)	
category 3	Non-disabled persons	438,00 + 0,1369 x (7.500,00 – S) + 0,0600 x (W – 12.484,80)
	Disabled persons	420,00 + 0,1785 x (8.185,00 – S) + 0,0600 x (W – 12.484,80)

S = quarterly benchmark salary
W = payroll declared to the National Social Security Office on a quarterly basis

Anne Ghysels, Legal Counsel

SOCIAL NEWS

NON-RECURRENT PERFORMANCE-RELATED BENEFITS (CBA NO. 90)

CRECTIFICATION

In our *Memento* of February we have recalled that the bonus granted under the cba No. 90 is exempt from personal income tax up to an annual ceiling.
Unfortunately, an error crept into the amount of the annual ceiling that is applicable as from 1 January 2016.
For 2016, the ceiling amounts to €2,798 instead of **€2,755**.

Francis Verbrugge, Senior Legal Counsel

WAGE ADJUSTMENTS

WAGE ADJUSTMENTS FROM 1 MARCH 2016

Index figures for February 2016
- (base 2013) 101,65
- (base 2004) 124,42

Health index
- (base 2013) 102,53
- (base 2004) 123,83

Average over the past 4 months
- 100,66

Wage adjustments on March 2016	
102.06	**Joint Bargaining Sub-Committee for open-cast gravel and sand pits in the provinces of Antwerp, West Flanders, East Flanders, Limburg and Flemish Brabant** **Not for silver sand working: M&R (T)** Collective agreement increase 0.5%. **From 1 January 2016.** **Not for silver sand working: M&R (T)** increase of seniority bonus and increase of employer's contribution to meal vouchers. **From 1 January 2016.** **Not for silver sand working: M&R (T)** increase of the subsistence security allowances. **From 1 September 2015.**
118.11	**Joint Bargaining Sub-Committee for canned meat, salamis, salted meats, smoked meats, meat derivatives, meat cutting plants, fat rendering plants, sausage casing plants, including the processing and handling of raw, dry casings, calibration and gluing thereof, abattoirs, slaughterhouses** **Only for canned meat:** introduction of pay scale for manual workers hired from 1 January 2016 in certain positions. **From 1 January 2016.** **Only for canned meat:** adjustment of cold bonus.
119.01 – 119.03	**Joint Bargaining Committee for the food retail trade** Introduction of separate pay scales: pay scale I (existing pay scales) and pay scale II (existing pay scales + € 0.0875). Pay scale II applies for: - Companies in which eco-vouchers were not converted into another benefit by corporate collective agreement before 30 October 2009 and for companies in which eco-vouchers were not converted into another benefit by corporate collective agreement before 31 October 2011, nor into an increase of € 1.08 of the meal voucher - Companies created from 1 January 2016 - Companies that hired manual workers for the first time from 1 January 2016. **From 1 January 2016.**
140.02 (140.06)*	**Taxi's** **Taxi drivers:** adjustment of the granting terms of the guaranteed average minimum hourly wage for taxi drivers with less than 3 months of seniority and raise of the ARAB allowance. **Renting of vehicles with driver:** raise of the ARAB allowance.
144.00	**Joint Bargaining Committee for agriculture** Introduction of a subsistence security allowance (temporary unemployment due to technical failure). **From 1 January 2016.** **Only for seasonal and casual workers who reported at least 25 days on the agriculture card:** introduction of a fixed bonus of € 5. Reference period from 01.01.2016 to 31.12.2016. Payment at the time of the statement of the month during which the 25 days were reached. **From 1 January 2016.**
145.01 – 145.07	**Joint Bargaining Committee for horticultural businesses** Adjustment of the subsistence security allowances. **From 1 January 2016.** **Only for seasonal and casual workers who reported at least 50 days on the seasonal work card:** introduction of a fixed bonus of € 10. Reference period from 01.01.2016 to 31.12.2016. Payment at the time of the statement of the month during which the 50 days were reached. **From 1 January 2016.**

Wage adjustments on March 2016

216.00	**Joint Bargaining Committee for non-manual employees in notary's/solicitor's firms** **Does not apply for employees who, in 2009-2010, already received an equivalent recurring benefit and for students and employees employed with the help of the public authorities:** award of eco-vouchers for an amount of € 150 to all full-time employees. Reference period from 01.01.2015 to 31.12.2015. Prorated for part-timers. At company level, another at least equivalent benefit may be provided for by 31 March 2012 at the latest.
306.00	**Joint Bargaining Committee for insurance companies** Award of eco-vouchers for an amount of € 190 for all workers whose wages exceed the pay scale by at least € 16. Reference period from 01.01.2015 to 31.12.2015. Other spendable income arrangements may be provided for at company level.
315.02	**Joint Bargaining Sub-Committee for airlines** **Does not apply if increases and/or other equivalent benefits are awarded on terms specific to the company before 30 June 2016 at company level:** introduction of an annual bonus of € 170 gross for all full-time workers who have full benefits during the reference period. Prorated days actually worked and equivalent days during the reference period. Reference period from 01.01.2015 to 31.12.2015. Prorated for part-timers. **From 1 January 2016.** Award of eco-vouchers for a total amount of € 100 for all full-time workers. Reference period from 01.01.2015 to 31.12.2015. Prorated for part-timers. Other spendable income arrangements may be provided for at company level by 30 June 2016 at the latest. **From 1 January 2016**.
320.00	**Joint Bargaining Committee for funeral directors** **M&R (T)** Collective agreement increase 0.5%. **From 1 January 2016.**
322.00	**Joint Bargaining Committee for temporary work agencies and licensed providers of community-based work or services** New introduction of the pension contribution matching amount of CP 140.04 (140.08)*: the temporary work agency pays the temporary worker, who is made available to users falling under CP 140.04 (140.08)* a bonus of 0.49% of his gross wage. The bonus is awarded on each pay slip until 31 December 2016.
325.00	**Joint Bargaining Committee for public credit institutions** **Does not apply if an equivalent benefit is provided for by a corporate collective agreement:** award of eco-vouchers for an amount of € 210 to full-time workers. Prorated for part-timers. **From 31 December 2015.**
336.00	**Joint Bargaining Committee for professions** **Does not apply if effective wage increases and/or other equivalent benefits are awarded in 2015-2016 (decision before 1 April 2016):** award of a one-time gross bonus of € 42. Reference period from 01.01.2016 to 31.03.2016. Prorated for part-timers.

(*) listing for internal use

Terms for wage adjustment

M&R = T: the adjustment applies to all wages (pay scale wages and actual wages)

M: adjustment of all wages with the difference between the new pay scale wage and the former pay scale wage

M* = B: the adjustment only applies to pay scale wages. No adjustment of actual wages if the actual wages are higher than the new pay scale wages

M(+tensions)&R = P: the adjustment is calculated on the basis of the pay scale wage at tension 100. The other pay scale wages are adjusted depending on their reciprocal wage tension. Actual wages are adjusted without taking the wage tension into account.

R* = R: The adjustment applies to actual wages. All wages are adjusted, but the scale is not adjusted.

If you are affiliated to the payroll and HR services bureau but are looking for information on index forecasts for other industries that concern you, please e-mail previsionsindex@partena.be.

COLOPHON

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Responsible editor: Alexandre Cleven. Editor in chief: Francis Verbrugge, fverbrugge@partena.be, tel. 02-549 32 23.
Contributors: Isabelle Caluwaerts, Anne Ghysels, Philippe Van den Abbeele, An Van Dessel, Patrick Desmyter.

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