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PARTENA PROFESSIONAL

REDUNDANCY ON GROUNDS OF FORCE MAJEURE

In the wake of the attacks of 22 March, many companies were forced to suspend or reduce their business activities.

Under certain conditions, situations like this can justify an application for redundancy on grounds of force majeure (an 'act of God') for workers who have been unable to or still cannot perform their contracts.

This is a note on the rules governing such redundancy, which may in some cases be attended by lay-offs owing to a lack of work for economic causes.

01 SUSPENSION ON GROUNDS OF FORCE MAJEURE

Performance of an employment contract can be suspended in cases of force majeure (section 26, first paragraph, Employment Contracts Act of 3 July 1978).

In that case, and provided certain conditions are met, the employer can lay off workers that they are presently unable to employ and, during the period of contract suspension, the workers can in principle claim unemployment benefit.

Temporary redundancy (lay-off) is a measure that can be taken **both** for **blue-collar workers and apprentices** (such as industrial apprentices and apprentices of a small business) **and** for **white-collar workers**.

N.B.

If the event triggering suspension of the contract is of such a nature or character as prevents very long-term contract performance, or renders its performance utterly impossible for once and for all, the employer cannot cite it as a ground for lay-offs. In that case, the employer should consider terminating the contracts of the affected workers on grounds of force majeure.

1. WHAT IS FORCE MAJEURE?

Force majeure is a sudden, unforeseeable event outside the employer's and employee's control (no fault can be attributed to them in principle) that renders continuation of the contract's performance totally impossible for a certain time. It is not therefore enough if contract performance is made more difficult or costly.

The terrorist attacks at Brussels National Airport and in the Brussels underground on 22 March were therefore regarded as force majeure events that affected and, in some cases, still affect workers employed within and around the airport precincts, such as those in the airport's hotel and catering establishments, travel agencies, cleaning and courier companies, as also airport taxi drivers and staff working at shops located inside the airport terminal (bookshops, duty-free shops) etc.

March's dramatic events have also had and could still have repercussions on the business of employers with staff away from Brussels National Airport, such as in the hotel and catering (restaurant) industry in Brussels, at tourist attractions, car rental firms or taxi drivers in the Brussels Region and Flemish Brabant.

It will also be noted that workers unable to reach their place of work owing to a lack of public transport and the absence of alternatives have also been able to claim redundancy on grounds of force majeure. However, the National Employment Office is of the view that claims will only be allowed if the worker is unable to work at some other location (such as a branch office) or home-work and only if they have not been able to receive any form of pay (e.g. further to time off in lieu).

Aside from the current situation, and by way of illustration, the notion of force majeure can also be invoked in the following cases:

- a fire (caused by a short circuit) affecting certain portions of a business or the operation of machinery;
- where the company's premises are flooded following heavy rain;
- delays in deliveries of raw materials, provided they were ordered in due time;
- where the roads network is rendered impassable by weather conditions (snow or black ice) in the case of itinerant workers (trade representatives, technicians, home helps) or driving-school instructors unable to give lessons;
- where blue- and white-collar workers cannot work owing to the absence of supplies of raw materials or goods owing to weather conditions (winter storms, ministerial travel prohibition or lorry blockades at the borders);
- a strike at a company supplying goods or raw materials or parts to another company, which is placed in the position of being unable to function owing to a lack of supplies;
- road works making it utterly impossible to reach a shop;
- the closure of air space (the reader may recall the flight ban in 2010 due to ash emanating from a volcano that erupted in Iceland) making it impossible for companies depending directly or indirectly on air transport activities to carry on business (e.g., aircraft maintenance, baggage handling, catering, airport duty-free shops);
- pursuant to a close-down by the public authorities that, owing to terrorist threats (e.g. the measures taken in Brussels in November 2015), order or recommend the closure of schools, childcare facilities, shopping centres, certain public venues, places of entertainment and the stoppage of certain means of public transport (underground trains and trams).

2. LENGTH OF LAY-OFFS

The length of time for which redundancy on grounds of force majeure continues can vary from one to several days depending on the nature of the events and the extent of the effect it has on performance of the contract. Basically, redundancy is possible until the situation returns to normal, but it certainly cannot exceed a maximum of three months.

As far as the events of March are concerned in particular, the National Employment Office says the situation had not yet normalised on 31 March 2016 and that some employers could apply to extend the force majeure condition after that date (as of 1 April 2016).

3. DECLARATION AND PROOF OF REDUNDANCY ON GROUNDS OF FORCE MAJEURE

As soon as possible, the employer has to inform the National Employment Office and send a letter or e-mail submitting a request for recognition of lay-offs on grounds of force majeure. It has to be sent to the unemployment office for the locality where the company has its place of business (not the registered office, therefore). The notice can also be submitted online at the social security portal site (www.socialsecurity.be).

In all cases, the declaration has to include:

- the date when the force majeure event occurred;
- a description of the event constituting force majeure plus, if required, a detailed explanation showing that there is redundancy on grounds of the force majeure. Supporting documents, police or fire brigade reports, photos, etc. can be added to the request;
- the anticipated duration of the lay-offs (in principle, not exceeding three months). However, if the redundancy situation is extended, a new notice can be sent in;
- the identities of the workers affected by the lay-offs.

N.B.

If notice is given electronically, the employer also has to send in a "hard copy file" with all the evidence showing the existence of force majeure.

4. FORMS TO BE ISSUED TO THE WORKFORCE

Temporarily laying off the workers affected by force majeure requires the employer to draw up and issue a number of unemployment forms.

A. "C3.2A" CHECK FORM OR CARD

Employers must issue each worker laid off with a "C.3.2A" temporary redundancy check form, which is a numbered form available free of charge from the National Employment Office's unemployment office's efficiency department. It must be issued no later than the first day of actual redundancy, though common sense must prevail, since employers affected by the airport bombings could hardly have been expected to issue the form on the first day of actual redundancy. We would further add that the C.3.2A check form or card has to be drawn up and issued for each month in which the worker is temporarily laid off. At the end of the month, the workers submit their C3.2A's to their payment body (trade union or CAPAC/HVW (auxiliary unemployment allowances payment fund)).

B. FORMS ISSUED FOR APPLYING FOR BENEFIT

Employers are also themselves responsible to drawing up and issuing "C3.2 Employer" forms, which constitute an application for benefit. The form is available free of charge from the National Employment Office's unemployment office's efficiency department, or employers can print the form themselves (www.onem.be > documentation > formulaires or www.rva.be > documentatie > formulieren). The form has to be issued on the first day of the lay-off period in the company during the reference period, which runs from 1 October to 30 September of the next year.

That said, the allowance application form can be replaced by an electronic declaration via the social security portal at www.socialsecurity.be, in which case the employer has to hand a print-off of the electronic declaration to the employee.

The employee then has to submit the C3.2 Employer form or the print-off of the electronic declaration to their payment body, which will then hand them a form C3.3 Worker for signature.

C. PAYMENT FORMS ISSUED AT THE END OF EACH MONTH

At the end of each month, employers are themselves under a duty to issue the workers with evidence of the hours of temporary redundancy by means of a form C3.2 Employer. In heading 3 on the form, the employer states the number of hours when the worker was laid off. The form can be replaced by an electronic declaration via the social security portal at www.socialsecurity.be, in which case the employer has to hand a print-off of the electronic declaration to the employee.

At the month-end, the worker sends the C3.2 Employer form plus their C3.2A check card to their payment body (trade union or CAPAC/HVW). The forms allow the payment body and the National Employment Office to calculate what benefit each employee is entitled to.

5. WORKERS' COMPENSATION

Employers are not obliged to pay standard pay for the days that cannot be worked owing to force majeure. However workers (both blue and white collar) made temporarily redundant on grounds of force majeure can immediately receive unemployment benefit without having to prove qualification (or doing a traineeship), since temporarily redundant workers of whatever status ("head of household", "single person", "cohabitee") are entitled to a daily allowance of 65% of their last average gross pay.

The last average gross daily pay on which the allowance percentage (65%) is calculated has, however, been capped since 1 July 2015 at EUR 2,497.92 a month or EUR 96.0547 per day on a 6-day working week (or EUR 115.2656 a day for a 5-day working week). That means that the daily amount of unemployment benefit is currently set at a maximum of EUR 62.44.

N.B.

Temporary redundancy on grounds of force majeure attracts benefit on condition it relates to a **full day** (i.e. all the hours during which the employee ought normally to have worked on that day) and on condition that, for that day, the employee cannot claim a guaranteed daily wage (under section 27(1°) of the Employment Contracts Act).

In other words, the benefit claim has to cover full days of work and, so, it is not possible to lay workers off temporarily for a half day if they normally work a full day.

EXAMPLE

The drivers of underground trains (or buses and trams) that were already on their routes at the time the bomb exploded in the underground (9.11 a.m.) had to stop running on that day. For 22 March (which was not worked in full), they are not entitled to unemployment benefit but can claim a guaranteed daily wage (paid by the employer) under section 27(1°) of the Employment Contracts Act of 3 July 1978.

02

AFTER THE PERIOD OF REDUNDANCY ON GROUNDS OF FORCE MAJEURE: ECONOMIC REDUNDANCY

After the period of redundancy on grounds of the force majeure constituted by last March's attacks, many companies, businesses and employers could also be faced with serious economic and financial difficulties due to a drop-off in business. Examples include cancellations or a fall-off in bookings in the hotel sector or a drop in turnover in the Brussels restaurant sector, fewer visits to tourist sights or places of entertainment, negative repercussions that the attacks have on travel agencies, taxi firms, events organisers, car-rental firms, coach companies, etc.

To (partially) cope with these difficulties, the companies in question may invoke another form of temporary unemployment, which is **redundancy due to a lack of work based on economic causes**.

Economic redundancy is possible for both blue- and white-collar workers. However the lay-off conditions, the rules and the permitted periods for economic lay-offs and the relevant formalities vary significantly according to the status of the worker in question (blue or white collar) who is affected by application of this form of temporary unemployment. What follows is a very brief résumé of some of the rules that apply in this context.

1. ECONOMIC LAY-OFFS OF BLUE-COLLAR WORKERS

Circumstances do not always allow employers to guarantee blue-collar workers normal work. Employers are then entitled to unilaterally suspend or reduce contract performance and to put their workers under on economic redundancy measures.

A. NOTIFICATION FORMALITIES

To introduce economic lay-offs, employers have to go through certain notification formalities.

➡ **Notification to blue-collar workers seven calendar days ahead of time**

Blue-collar workers laid off have to be warned of any suspension of their contract for economic reasons by a notice being posted up on the company's premises in a visible place or by each of them being handed a notice at least seven consecutive calendar days beforehand, not including the date of the notice being posting up or handed to them.

The redundancy notice has to contain the following particulars:

- the surname, first names and social security number of the worker laid off or the part or parts of the business to be shut down;
- the number of days' unemployment and the dates on which each worker will be laid off; the notice to the unemployment office (see below) only needs to include the anticipated contract-suspension regime (full suspension or reduced-time working), however;
- the date when full suspension or reduced-time working will start and end (= the precise length of the suspension period). The exact duration has to be stated even though the temporary lay-offs can be effected for an open-ended period.

N.B.

In certain sectors, the seven-day period has been shortened or increased, or even done away with. Moreover, in some cases, there are special procedures for the start date of the temporary redundancy period.

➡ **Advance notice to the National Employment Office**

A copy of the notice or individual hand-out must be sent on the same day as it is posted up or handed over (i.e. at least seven consecutive calendar days in advance not including the date of posting or remittance) to the unemployment office for the company's place of business. It has to be notified **electronically** (on the web) or by structured elec-

tronic message (per batch) via the social security portal (www.socialsecurity.be). The notification also has to include the economic causes (e.g. fewer orders, lower sales) justifying total or partial suspension of performance of the employment contract.

Exception to the electronic notification rule
Instead of electronic communication, the employer can send a recorded delivery letter or fax to the unemployment office for the company's place of business in the following three cases:

- **for the first notification** of temporary redundancy on or after 1 October 2011 (or new notification of temporary redundancy after an interruption of at least 24 months);
- **where no IT means are available** (e.g. computers or internet connection). Employers that do not have the requisite IT equipment and have been given a dispensation from electronic communication by the director of the National Employment Office's unemployment bureau can send notification by recorded delivery letter. Dispensation can be requested by sending an ordinary letter to the temporary redundancy department of the National Employment Office branch where the company is situated. the application has to be accompanied by an affirmation stating the reasons why electronic submissions are not possible (e.g., no internet connection);
- **in the case of technical issues.** If the employer cannot submit an electronic notification owing to technical issues (e.g., computer breakdown, temporary internet connection problems) it can send notification by recorded delivery letter provided it states in the letter what the nature of the technical problem is.

➡ **Notification to the works council, failing which the trade union chapter**

On the same day as written notice is posted up or handed to the workers individually (see above), the employer also has to give notice to the works council, failing which the trade union chapter, of the economic reasons justifying laying off the blue-collar staff.

➡ **Notification of the first day of actual redundancy**

Aside from the notification to the unemployment office referred to above, the employer also has to immediately inform the unemployment office of the **first actual day of suspension** of the contract on grounds of economic redundancy in each calendar month.

In particular, notification has to be given:

- on the first day of actual suspension of contract performance due to a lack of work resulting from economic causes in each calendar month;
- or the next working day;
- or no earlier than as of the fifth working day preceding the first day of actual redundancy (if the employer is certain that contract performance will actually be suspended).

> **N.B.**
>
> The employer may cancel the notice between the fifth working day preceding the first day of actual suspension and the working day following that first day.

The notification must state:

1) the name, address and company number of the employer or company;
2) the surname, first name and social security number of the worker laid off;
3) the first day from when the employment contract is suspended for want of work resulting from economic causes during the month in question;
4) the full address of the place where the laid-off worker should have worked on that day.

It will be noted that notification has to be given electronically via the social security portal site (see above), though a recorded delivery letter or fax to the unemployment office of the employer's place of business will suffice in some cases (see above).

N.B.

No such notification is required if, in the same calendar month, an equivalent notification has already been given for the worker or workers concerned owing to contract suspension due to bad weather or a technical accident.

N.B.

It is possible for royal decrees to set longer or shorter redundancy periods for certain sectors than the maximum statutory periods cited in the above table. We therefore advise all employers contemplating redundancy measures to first contact their payroll agency or the FPS Employment, Labour and Social Dialogue as to whether particular rules apply to their sector.

B. PERMITTED LENGTH OF REDUNDANCY PERIOD

Where an employer wants to lay off blue-collar staff for economic reasons, it can choose between full contract suspension (full stoppage of work) or a reduced working time schedule, in which actual days of work alternate with days of unemployment.

In each case, however, the redundancy period is limited by law. *See the table below.*

C. WORKERS' COMPENSATION

During the redundancy period, workers can claim unemployment benefit from the National Employment Office for full days not worked since, regardless of status ("head of household", "single person", "cohabitee"), workers temporarily laid off are entitled to a daily allowance of **65%** of their last average gross daily pay.

Redundancy starts	Maximum period of redundancy
1. Full work suspension	
(or schedule of one day's work every fortnight)	**4 weeks**, or 28 calendar days
2. Short-time working	
A. "Major suspension" schedule	
■ less than 3 days' work a week;	**13 calendar weeks** or 3 calendar months or three months from date to date;
■ or less than one week a fortnight.	**13 calendar weeks** or 3 calendar months or three months from date to date;
B. "Minor suspension" schedule	
■ at least 3 days' work a week	**open-ended period** that can exceed 3 months, though an end date has to be set in the notification (maximum 12 months);
■ or at least one week's work a fortnight.	**open-ended period** that can exceed 3 months, though an end date has to be set in the notification (maximum 12 months).

The last average gross daily pay on which the allowance percentage (65%) is calculated has, however, been capped since 1 July 2015 at EUR 2,497.92 a month or EUR 96.0547 per day on a 6-day working week (or EUR 115.2656 a day for a 5-day working week).

In addition, for each day's economic redundancy, blue-collar workers can claim **additional compensation from their employer**, unless this supplement is paid by a Minimum Subsistence Fund under a CBA made obligatory by royal decree. The supplement has to be at least EUR 2 per non-worked day (i.e. day of unemployment). However, special grant procedures (or even a higher additional allowance) are laid down in many business sectors.

D. PREPARING AND ISSUING EMPLOYMENT DOCUMENTS

Temporary redundancy entails the preparation and issue to the worker of various unemployment forms.

➡ **Issuing a C3.2A check form**

Employers are under a duty themselves to issue each redundant worker with a C3.2A temporary redundancy check form (or C3.2A Construction for the building sector). It must be issued no later than the first day of actual redundancy in each month when the worker is laid off before the regular time for the start of work. The document functions as a check card and the worker has to be able to produce it if required.

At the month-end, the worker submits the check form to their payment body (union or CAPAC/HVW) to be able to receive unemployment benefit.

Each C3.2A is **numbered** (obtainable from the National Employment Office's unemployment office's efficiency department) and has to be entered in the **validation register**.

➡ **Issuing a benefit-application form**

Employers are also responsible for themselves preparing and issuing a form C3.2 Employer, which the worker uses to apply for benefit. It has to be issued on the first day of temporary redundancy in the company during the reference period running from 1 October to 30 September of the next year.

That said, the benefit-application form can be replaced by an electronic declaration via the social security portal at www.socialsecurity.be, in which case the employer has to hand a print-off of the electronic declaration to the employee.

The employee then has to submit the C3.2 Employer form or the print-off of the electronic declaration to their payment body, which will then hand them a form C3.3 Worker form for signature.

➡ **Issuing a payment form at the end of each month**

At the end of each month, employers are also themselves under a duty to issue the workers with another copy of the C3.2 Employer form, which constitutes a **certificate of the hours of temporary redundancy**, in which the employer states the days and number of hours when the worker was laid off during the month. The information allows the National Employment Office to calculate the unemployment benefit for the period in question.

The form can be replaced by an electronic declaration via the social security portal at www.socialsecurity.be, in which case the employer has to hand a print-off of the electronic declaration to the employee.

2. ECONOMIC REDUNDANCY OF WHITE-COLLAR STAFF

Total or partial suspension of employment contract performance is also applicable to white-collar staff and employers falling under the ambit of the Act of 5 December 1968 on CBAs and joint committees (= private-sector white-collar staff and employers).

A. CONDITIONS

To lay-off white-collar staff on grounds of economic redundancy, certain conditions nonetheless have to be met.

➡ **Company in difficulties**

A company is deemed to be in difficulties where it is faced with one of the following situations.

- It has undergone a **substantial drop of 10% or more in its turnover** (according to its VAT returns) in one of the four quarters preceding the application for redundancy measures compared to the same quarter in either 2008 or one of the two calendar years preceding submission of the request to take redundancy measures. If the reduction does not occur in the last quarter preceding the redundancy application, the downward trend then has to be confirmed in one of the other quarters preceding the application.
- It has undergone a **substantial drop of 10% or more in its orders** in one of the four quarters preceding the application for redundancy measures compared to the same quarter in either 2008 or one of the two calendar years preceding submission of the request to take redundancy measures. If the reduction does not occur in the last quarter preceding the redundancy application, the downward trend then has to be confirmed in one of the other quarter(s) preceding the application.
- **Its blue-collar staff have been laid off on grounds of economic redundancy for a number of days equal to 10% or more of the total numbe**r of days (blue- and white-collar combined) reported to the National Social Security Office during the quarter preceding that during which the National Employment Office has been notified that the company is in difficulties. The 10% are calculated based on the number of days, not hours, for both full-time and part-time workers.

➡ **CBA or company plan**

For redundancy purposes, companies in difficulties also have to be signatory to a CBA under the relevant joint committee (sector CBA), failing which they have to have signed a company CBA or an approved company plan (section 77/1(2)). The (sector or company) CBA or company plan has to include certain details and be lodged with the registry of the General Directorate for Collective Industrial Relations at the FPS Employment, Labour and Social Dialogue.

B. COMPULSORY PROCEDURE FOR DECLARING REDUNDANCIES

Aside from drawing up a CBA or company plan, employers first have to abide by a two-phase procedure.

➡ **"Special form C106A" sent by recorded delivery**

The employer has to send a recorded delivery notice to the company's local National Employment Office's unemployment bureau in which it certifies that it meets one of the requisite conditions to qualify as a company in difficulties (see above). The form can be downloaded from the National Employment Office's website (www.onem.be).

On the **same day** on which the recorded delivery letter is sent to the National Employment Office, the employer also has to send a copy of the notice to the **works council**, failing which the trade union chapter.

➡ **Notice posted up in the company, electronic notification to the National Employment Office and notification to the works council**

Three specific formalities have to be gone through.

- The employer has to post up a document in a clearly visible place in the company's premises **no earlier than 14 days after sending the recorded delivery "form C106A"** to the National Employment Office's unemployment bureau (see phase one, above) and **at least a week before the first day's economic redundancy** of the company's white-collar workers. The document has to state:
  - the surnames, first names and local authority of residence of the white-collar workers whose contracts are being suspended;
  - the number of days of suspension and the dates for which each employee's contract will be suspended;
  - the start and end dates for total contract suspension or short-time working.

Instead of a poster, there can be **written notification**, at the same times, to each white-collar employee being laid off.

- on the **same day as the notice is posted up** in the company (or the individual notices are handed out), the employer also has to tell the **National Employment Office electronically** (www.securitesociale.be) the same information as in the document posted up in the company (or intimated individually to the workers);

- plus, on the **same day as posting up the document**, the employer is under a duty to inform the **works council**, failing which the trade union chapter, of the economic causes resulting in the temporary lay-offs.

> **NOTE**
>
> Aside from the notification of lay-offs of one or more white-collar employees to the National Employment Office (referred to above), the employer also has to **immediately inform the National Employment Office electronically** of the **first actual day of suspension** of the contract on grounds of economic redundancy in each calendar month. This notification is given according to the same procedures as for blue-collar workers (see above).

C. PERMITTED SCHEMES AND PERIODS OF ECONOMIC REDUNDANCY

➡ **Principle**

Employers can opt for

- **total suspension** of contract performance; or
- **short-time working, with at least two days of work a week.**

➡ **Minimum and maximum periods**

The redundancy scheme (total suspension or two days or more short-time working) has to be introduced for at least one week.

In addition, the maximum period **per calendar year** is:

- **16 weeks** for **total suspension** of working;
- **26 weeks** for **short-time working** of at least two days a week.

➡ **Ability to combine the two schemes**

Employers can combine the two schemes (total suspension of working and short-time working). If they do, **one week of total suspension equals two weeks of short-time working**. To determine how many weeks are still available under one scheme or the other where they are combined, the following formulae are applied. *See the table below.*

D. WORKERS' COMPENSATION

During the redundancy period, workers can claim unemployment benefit from the National Employment Office regardless of status ("head of household", "single person", "cohabitee") of **65%** of their average gross daily pay. This average gross daily pay on which the allowance percentage (65%) is calculated has, however, been capped since 1 July 2015 at EUR 96.0547 per day on a 6-day working week (or a monthly cap of EUR 2,497.42).

In addition, for each day's redundancy, employers have to pay **additional compensation on top of the unemployment benefit** paid by the National Employment Office unless payment of the supplement has been detailed to a Minimum Subsistence Fund by a CBA rendered obligatory by royal decree.

Type of scheme	Maximum length of scheme per calendar year
Total suspension	(16 calendar weeks) - (number of short-time working weeks /2) - (number of weeks' total suspension)
Short-time working (at least 2 days a week)	(26 calendar weeks) - (number of weeks' total suspension x 2) - (number of weeks' short-time working)

The level of the additional compensation depends on how the economic redundancy scheme is introduced (under a CBA or a company plan) and depending on whether or not the company employs blue-collar staff. Without going into detail, the minimum figure is EUR 2 or EUR 5 per day not worked.

E. OFFICIAL FORMALITIES

As for blue-collar staff, economic lay-offs require various unemployment forms to be prepared and issued to a white-collar worker.

Employers must:

- issue a C3.2.A check form no later than the first day's actual redundancy of each month that the white-collar worker is laid off. The C3.2A is also a numbered form that has to be entered in the validation register;
- issue a C3.2 Employer (partially completed), which will enable the white-collar worker to claim unemployment benefit. An additional copy of the C3.2 Employer has to be prepared and issued in certain situations;
- at the end of each month, issue another copy of the C3.2 Employer, which constitutes "evidence of the hours of temporary redundancy" (indicating the days and hours not worked during the month).

At the end of the month of economic redundancy, the white-collar worker sends the form C3.2A and the C3.2 Employer to their payment body (union or CAPAC/HVW). the forms enable the payment body and the National Employment Office to calculate the number of daily allowances due to the white-collar employee.

Francis Verbrugge, Senior Legal Counsel

SOCIAL NEWS

WAGE ASSIGNMENT PROCESS: SIMPLIFICATION OF THE PROCEDURE

The procedure for the wage assignment process shall henceforth be simplified because of the reduction of certain formalities and the introduction of certain electronic steps in the procedure.

This simplification, laid down by the Act of 7 March 2016 relating to simplifying the procedure for the wage assignment process (Belgian Official Gazette 21.03.2016), has entered into force on **31 March 2016**.

WHAT IS A WAGE ASSIGNMENT PROCESS?

The wage assignment process is the result of an agreement (drawn up either by notarial deed either by private deed) on the basis of which a worker (the debtor assignor) assigns the available part of his wage which is indebted to him by his employer (creditor assignee) to his creditor (the transferee creditor). This agreement is usually concluded to ensure debt (e.g. repayment of a loan).

WHAT IS THE PROCEDURE TO BE FOLLOWED?

The **creditor** must follow a specific procedure to implement a wage assignment process [(1)], which can be defined as follows:

1) notify the worker of his intention to implement the wage assignment procedure;
2) provide the employer with a copy of the notification sent to the worker;
3) deposit a notice of wage assignment;
4) send the employer an authenticated copy of the wage assignment document and this after the opposition deadline has expired (10 days).

These formalities must be notified either by registered letter or by writ by a court office.

Since 31 March 2016 steps 2. and 4. are simplified

Concretely, the sending of a copy of the notification to the worker (step 2.) will be replaced by **the sending to the employer of a confirmation that the notification to the worker has been effectively made**.

The delivery to the employer of an authenticated copy of the wage assignment document (step 4.) will be replaced by **the notification to the employer of his decision to proceed to the implementation of the wage assignment** (after the opposition deadline of 10 days has expired).

These two formalities may at all times be fulfilled by registered letter or by writ by a court office. The Act of 7 March 2016 however introduces the possibility to fulfil these formalities electronically provided that this has been agreed beforehand between the creditor and the employer.

However, the terms and conditions for the electronic transmission still have to be clarified by royal decree, after receiving the opinion of the Commission for the Protection of Privacy. Only when this royal decree enters into force, the creditor will be able to do his communications to the employer electronically provided that the latter agrees to this.

Catherine Legardien, Legal Counsel

(1) This procedure varies according to whether the agreement of wage assignment has been drawn up by notarial deed or by private deed. The simplification of the procedure above only refers to the wage assignment by private deed.

SOCIAL NEWS

THE LABOUR LAW IMPLICATIONS OF THE IMPLEMENTATION OF A KILOMETRE-BASED TOLL ON HIGHER-WEIGHT VEHICLES

Since 1 April 2016, higher-weight vehicles over 3.5 tons must pay a kilometre-based toll. However, a number of vehicles (e.g. vehicles used for medical purposes or by the defence department, fire-brigades, etc.) may be exempted from this obligation.

KILOMETRE-BASED TOLL

Non-exempt domestic and foreign vehicles must pay a toll for most of the Flemish and Walloon and Brussels motorways and motorway rings they use.

Specifically, vehicles liable to the kilometre-based toll must be equipped with an 'on board unit' (OBU). By satellite navigation technology, the number of kilometres is registered after which a kilometre-based toll will have to be paid.

Of course in the first place this is the responsibility of the holder of the vehicle (in whose name the vehicle is registered).

However, also the driver of the vehicle can be held accountable when for example during a roadside check, it would turn out that the toll was not paid. Afterwards, the driver can try to recover the amount of the toll and the possible administrative fine.

In addition, the introduction of the kilometre-based toll also involves a number of specific obligations for the drivers of the vehicles.

LABOUR LAW IMPLICATIONS

Since the drivers of the vehicles concerned often have an employee status, the implementation of the kilometre-based toll also has labour law implications.

As mentioned above, the legislation provides for a number of obligations for the vehicles' drivers.

In the first place the driver must check whether the required OBU device is present. In addition, the driver must ensure that the distance travelled is effectively being registered. If problems in this respect arise, the driver must ensure that the supplier of the OBU device is contacted immediately.

Since the service agreement with the supplier of the OBU device may be suspended when the device is not properly used, when a visible failure is not reported or when the use instructions are not followed, all the obligations of the driver-employee are best laid down in (an appendix to) the employment regulations. The failure to comply with these obligations could have serious consequences for the employer and could be qualified as serious misconduct.

In view of the fact that the OBU device contains navigation technology, it may occur that the employer wishes to use the registration for purposes other than those for which it is intended. This might involve the submission of proof that the employee has travelled to a certain location against the instructions or without the knowledge of the employer. In that case, the presence of a tracking device also be formalised in the employment regulations.

Of course, Partena can assist and advise you in this matter.

Annemarie Vanderpoorten, Legal Advisor

SOCIAL NEWS

HAS AN EMPLOYER THE RIGHT TO ASK AN APPLICANT QUESTIONS ABOUT A POTENTIAL PREGNANCY?

Many employers ask themselves what questions they may ask to applicants. And more specifically, has an employer the right during the recruitment process to ask a female applicant whether she is pregnant or whether she wants to start a family soon?

IN THEORY, QUESTIONS RELATED TO PREGNANCY ARE FORBIDDEN!

In Belgium, the questions an employer may ask applicants during the recruitment or selection process are regulated by the collective bargaining agreement concluded in the Belgian National Labour Council, namely CBA No 38.

Besides, the Act of 10 May 2007 combating different types of discrimination applies to the applicants.

Article 11 of the CBA No 38 stipulates that 'private life of the applicant must be respected during the recruitment process. Such implies that questions about private life are only lawful when they are relevant given the nature and the conditions for carrying out the work.'

Questions about the state of pregnancy belong to the private sphere. As a consequence the employer is not allowed to ask a female applicant during the recruitment process whether she is pregnant or wants to have children.

There is one exception to this general principle: the question may be lawful when it is relevant given the nature and the conditions for carrying out the work. In other words, when the work that must be carried out could be dangerous for the mother and/or the child, the employer is allowed to ask the applicant questions about her 'state'. In case of doubt your prevention advisor or your external service for prevention and protection at work (ESPPW) can indicate whether the work to be carried out is dangerous for a pregnant woman.

The Act of 10 May 2007 on the other hand forbids - in particular - all types of discrimination on the ground of gender. As pregnancy is undeniably linked to the sex of the applicant, it is forbidden to select another worker on the mere ground that the female worker can possibly become pregnant.

HAS THE FEMALE WORKER THE RIGHT TO REMAIN SILENT OR LIE ABOUT HER STATE?

If you decide, in spite of the prohibition, to ask an applicant questions about a possible pregnancy, remind that the European jurisdiction gives the applicant the right to remain silent. So an applicant can refuse to answer a question without it being counted against her.

European jurisdiction even allows a woman **to lie** when asked about her possible state of pregnancy.

As a consequence the employer cannot invoke any mistake or vitiated consent when the applicant has lied, except, we recall, when the state of pregnancy can be dangerous to carry out the work.

WHAT SANCTION CAN BE IMPOSED AGAINST AN 'INCONSIDERATE' EMPLOYER?

What risk does an employer run when he asks an applicant questions about a future pregnancy anyway?

When an applicant is discriminated during the recruitment process on the basis of his gender, he can demand a compensation up to the amount of 6 months of gross wage.

Of course, the worker who believes he is discriminated against during the recruitment process must produce proof of the discrimination, which will not be easy.

To help discriminated workers the Act of 10 May 2007 has stipulated the **reversal of the burden of proof**.

When a woman makes out a case for discrimination against her, it is up to the employer to prove that she has not been the victim of any discrimination during the recruitment process!

She can for instance bring forward that during the interview she had been asked questions about a possible pregnancy (however difficult to prove), but also that, in spite of her certificate or equivalent or higher experience, a male candidate was selected for the vacant position.

ACCESS TO THE FILE

In general, an applicant who was not selected for a position can gain access to his recruitment files through the court.

The question whether the employer must obey the order was brought before the Court of Justice of the European Union (case C-45/10, Meister/Speech Design). The Court's answer was negative, though it clearly stated that such a refusal can be considered as prima facie evidence of the alleged discrimination.

So the employer better makes sure not to ask any 'inconsiderate' question and not to note anything prejudicial in the recruitment files!

Christine Molitor, Legal Advisor

WAGE ADJUSTMENTS

SALARY ADJUSTMENTS FROM 1 APRIL 2016

Index March 2016
- (base 2013) 102,57
- (base 2004) 125,55

Health index
- (base 2013) 103,47
- (base 2004) 124,96

Average over the past four months
- 100,66

Salary adjustments from 1 April 2016	
128.01 – 128.05	**Joint Commission for the hides, skins and substitutes industry** **M&R (A)** CBA increase of €0.06. Adjustment of welfare allowance. Increase of the employer contribution in luncheon vouchers (nominal value of minimum €3.20 (employer contribution of €2.10 and worker contribution of €1.10)). Enterprises that already grant luncheon vouchers of more than €2.20: increase of the employer contribution in the luncheon vouchers of €1.
136.00	**Joint Commission for paper and paperboard converting** **(!) Only manufacturing of paper tubes:** change of index mechanism from **1 February 2015**: from now on annually on 1 January and 1 July. As a consequence the indexations of 1 April 2015 (0.20%) and 1 July 2015 (0.10%) are annulled and replaced by an indexation of 0.19% on **1 July 2015 (M&R (A))**.
140.01 (140.01)*	**Joint Commission for the buses and coaches** **Only VVM (public bus services):** increase of the employer contribution in the luncheon vouchers of €1. **(!) From 1 January 2016.**
143.00	**Joint Commission for offshore fishing** **Sector of warehouses:** annual gross bonus of €150. Not applicable if a company agreement provides for another regulation. Pro-rata grant for part-time workers.
201.00	**Joint Commission for independent retail** Grant of annual premium of €250 for all full-time workers. In the form of eco vouchers or an annual gross premium (incl. social employer contribution). Reference period from 1 April 2015 until 31 March 2016. Pro-rata grant for part-time workers. Not for students. Enterprises with a trade union delegation can agree upon a regulation proper to the company.
202.01 (202.03)*	**Joint Commission for the medium-sized food companies** Grant of annual premium of €250 for all full-time workers. In the form of eco vouchers or an annual gross premium (incl. social employer contribution). Reference period from 1 April 2015 until 31 March 2016. Pro-rata grant for part-time workers. Not for students. Enterprises with a trade union delegation can agree upon a regulation proper to the company.
207.00	**Joint Commission for the non-manual workers of the chemical industry** Only for scalable non-manual workers of the plastics processing industry in West-Flanders: increase of the luncheon vouchers. For enterprises that already grant luncheon vouchers: increase of the employer contribution by €1.40, limited to €6.91. Increase of the real wages with the part above € 6.91 multiplied by a factor €16.31. **(!) From 1 January 2016**
209.00	**Joint Commission for the non-manual workers of the metal manufacturing industry** **M* (S)** Only for scaled and scalable non-manual workers: increase of the guaranteed monthly minimum wage. **From 1 January 2016.**

Salary adjustments from 1 april 2016	
309.00	**Joint Commission for brokerage firms** **M* (S)** Adjustment of the scaled wages. **(!) From 1 January 2016.**
317.00	**Joint Commission for the security guard and watchkeeping services** **Non-manual workers: M&R (A)** CBA increase of €12.82. **(!) From 1 January 2016.** **Manual workers:** M&R (A) CBA increase of €0.08. **(!) From 1 January 2016.** **Manual workers and operational non-manual workers:** abolition of ARAB allowance, except for operating personnel value transport and 8th activity. **(!) From 1 January 2016.** **Manual and non-manual workers:** adjustment of premiums (Saturday, Sunday, holiday and night) because of the evolution (CBA increase) of the wage of category SB. **(!) From 1 January 2016.**
328.02	**Joint Sub-commission for the regional and urban transport in the Walloon Region** Increase of employer contribution in the lucheon vouchers and adjustment of the notion of seniority. **From 1 January 2016.**
328.03	**Joint Sub-commission for the regional and urban transport in the Brussels-Capital Region** Increase of the employer contribution in the luncheon vouchers of €1. **From 1 January 2016.**
336.00	**Joint Commission for liberal professions** **R* (R)** CBA increase of €14. Pro-rata grant for part-time workers. Not applicable when equivalent effective wage increases and/or other benefits granted in 2015-2016 on company level.
341.00	**Joint Commission for mediation in banking and investment services** **R* (R)** Indexation to be applied on the real wages and not on all wages. **(!) From 1 January 2016.**

( ) for internal use only*

(!) adjustment with retroactive effect due to a CBA concluded less than 5 working days prior to the beginning of the month of entry into force

Rules regarding the adjustment of the wages

M&R = A: adjustment for all wages (scaled wages and wages actually paid)

M: adjustment of all wages with the difference between the new scaled wage and the previous scaled wage

M* = S: adjustment of the scaled wages. No adjustment of the wages actually paid when paid more than the new scaled wage

M(+ wage differential)&R= P: the adjustment is calculated on the scaled wage with differential 100. The other scaled wages are adjusted according to their wage differential. The adjustment also applies for the wages actually paid, without taking into account the wage differential.

R* = R: adjustment of the wages actually paid. The adjustment is applied to all wages, but the scale does not change.

Voor indexverwachtingen in andere activiteitssectoren kunnen de aangesloten klanten van het Sociaal Secretariaat een e-mail sturen naar indexprognoses@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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