

# m&mento

of the employer 6

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# Employing a student

The summer holiday period is almost upon us, and with it come all the questions about student jobs. You can either take on a student under an ordinary employment contract, or under a special work agreement called a “student employment contract” (*contrat d’occupation d’étudiant*). Now seems a good time for a recap of the rules governing student jobs and their social security and tax implications.

## 01 Who is a “student”?

A “student” is defined as not only any young person enrolled in higher education or at university but also those in middle or upper secondary artistic or technical education, as well as those self-studying for the external Central Board upper secondary exams. But not all young people who qualify as students can enter into a student employment contract.

### 1 Students who qualify

Student employment contracts can only be entered into by:

- young people aged 15 and over in full-time education;
- students no longer subject to compulsory education, i.e., who are at least 18 years of age or have completed their secondary education;

- youngsters aged 15-18 who are in part-time education or training and not receiving a transition allowance – but for these students, only during school holidays.

### 2 Students who do not qualify

The following cannot be employed under a student employment contract:

- young people aged under 15 (16) who are therefore still subject to full-time compulsory education;
- students who have worked for more than 12 months (previously, more than 6 months) since 1 January 2012 who are therefore considered to be ordinary workers (see below);
- students enrolled in a night school or in part-time





education; however, students in part-time education or training who are not in receipt of a transition allowance under the Royal Decree (regulations) of 7 August 1984 remain subject

during school holiday periods to the provisions of Title VII of the Act of 3 July 1978<sup>1</sup>;

- work experience students carrying out unpaid work as part of their studies.

## 02 Characteristics of the student employment contract

### 1 Form and content of the contract

**Must be in writing** – The student employment contract must be in writing and drawn up for each student individually no later than the time when their employment starts. It must be drawn up in duplicate. If no Dimona Declaration (immediate e-notice of a worker starting or leaving employment) is submitted, a third copy must be sent to the FPS Employment, Labour and Social Dialogue's Employment Laws Inspectorate.

The contract must contain a certain number of particulars – a contract template is available on the Partena website ([www.partenahr.be](http://www.partenahr.be)) under Produits et services > Publications > Modèles de documents sociaux > Contrats de travail.



**NB** – The student employment contract is a compulsory employment document. It must be kept at the place where the student is employed and retained for 5 years from the day after the day on which the contract ends. Employers who breach the provisions on drawing up and keeping the student employment contract may incur criminal liability.

**Penalties if there is no written contract or it is not compliant** – If there is no contract in writing, or the contract does not contain all the mandatory particulars, or the employer has not made a Dimona Declaration, the student can terminate the contract at any time without notice or payment in lieu (Article 126, para. 1).

Furthermore, if the contract is not in writing or contains no mention of the contract start and end dates, working hours or reference to the applicable working hours stated in the works rules, the employer will be bound by the rules applicable to permanent employment contracts and will therefore have to give the ordinary periods of notice to terminate the contract unless he can show that the failure to state the working hours or refer to the applicable working hours stated in the works rules is not harmful to the student.

### 2 Fixed-term contract

A student employment contract is a fixed term contract, so the employer must specify the contract start and end dates. In any event, the contract can only be for **12 months at most**, whatever the working time arrangements (full- or part-time); this means that a student can be hired to work on one day (or for a few hours) every weekend throughout the year ...

The FPS Employment Labour and Social Dialogue considers that a student who is **continuously employed for at least 12 months** with the same employer (under one or more successive student employment contracts) must be deemed to be an ordinary worker (after the first 12 months' employment) and the conditions of employment in force for that category of workers will automatically become applicable.

On the other hand, as soon as there is a proper or **genuine break in continuity of employment**, e.g. of a month or more (and not a fictitious break), the student may be taken on for a further period of employment not exceeding 12 months under a student employment contract...

<sup>1</sup> Exclusion provided for by Article 1 of the Royal Decree of 14 July 1995, Belgian Official Gazette 08.08.1995. Such student-workers are considered as ordinary workers such that they may only be taken on under a contract of employment for a non-manual worker, manual worker, sales representative or domestic worker.



### 3 Probationary period and other particulars

**Probationary period** – For contracts entered into from 1 January 2014, the first 3 working days as a student worker are now automatically considered to be a probationary period within which either party may terminate the contract without notice or payment in lieu.



**NB** – No reference is now made to the probationary period provisions in a manual worker's employment contract because that scheme was abolished on 1 January 2014.

**Bed and board** – If the student is to be provided with lodging and meals, this should be mentioned in the contract. "Bed and board" are in-kind benefits that form part of the student's wage and will be deducted from their net pay.

The value of these benefits must also be equal to the fixed per diem amounts set for calculating social security contributions, i.e., €0.55 for breakfast; €1.09 for the midday meal; €0.84 for the evening meal; €0.74 for lodging.

**Sick or injured students** – If the employer has contracted to provide the student with accommoda-

tion and the student suffers a work incapacity, the employer must provide him with suitable accommodation and appropriate care for as long as necessary. The employer is not liable for medical, surgical, pharmaceutical and hospitalisation costs.

The employer must also notify the parents or guardians of an under-age student, or do so on request if the student is an adult.



**NB** – A student worker suffering a work incapacity is entitled to a guaranteed wage on the same conditions as for non-manual employees, manual workers or domestic workers depending on the type of work done.

### 4 Terminating the contract

A student employment contract terminates automatically on the date specified in the written contract without the requirement of notice. However, the student or the employer may terminate the contract before the contractual end date by written notice given in accordance with the rules applicable to ordinary employment contracts.

Notice starts to run on the first Monday after the date on which it is given. The notice periods are:

Duration of job	If notice is given by:	
	employer	student
1 month or less	3 calendar days	1 calendar day
more than one month	7 calendar days	3 calendar days





NB

- if the contract was not put into writing or if no Dimona Declaration was submitted, the student may terminate the contract without notice or payment in lieu;
- if there is no written contract or certain mandatory particulars are omitted, the contract is governed by the rules applicable to permanent contracts; the employer will have to terminate it by giving the ordinary periods of notice;
- for termination during the probationary period, see before;
- if the student is off sick for more than 7 days, the employer may terminate the contract after the 7th sick day but then must pay compensation equal to the amount of pay in lieu of notice or that part of the notice still to run.

## 03 Administrative formalities

The employer must generally submit a Dimona Declaration whether there is a written student employment contract or not. He must also apply for a work permit for students from some foreign countries.

### 1 Submitting a Dimona Declaration

Employers are generally required to submit a Dimona Declaration for all the workers they hire, which therefore includes young people employed under a student employment contract.

However, no Dimona Declaration need be submitted for some categories of worker, e.g., young people employed as socio-cultural and sports activity coaches or leaders for up to 25 days a year.

For these, the employer must send to the FPS Employment, Labour and Social Dialogue's Employment Laws Inspectorate within 7 days after contract commencement:

- a copy of the student employment contract (= 3rd copy);
- a copy of the student's acknowledgement of receipt of the company's current works rules; like any other regular worker, students must be given a copy of the works rules; when they are handed over, the employer must get the student to sign a receipt.

### 2 Application for work permits for certain foreign students

Some foreign students may only be employed if an application for a work permit is made and granted first. There is a difference between students who are nationals of an EEA country or Switzerland and those who are not.

#### Students who are nationals of an EEA country or Switzerland

Students who are nationals of a Member State of the European Economic Area (EEA, i.e., the Member States of the European Union plus Norway, Iceland and Liechtenstein) or Switzerland can be employed without special formalities both during the academic year and during school holiday periods.



**NB** – Until **30 June 2015**, Croatian nationals must in principle be in possession of a work permit. Croatian students are therefore temporarily equated to students who are not nationals of an EEA country (see below).

#### Students who are not nationals of an EEA country or Switzerland

There is a difference according to whether they are employed during the school holidays or during the academic year.





**Employment during school holidays** – Foreign students who are not nationals of an EEA country or Switzerland (e.g., students from Rwanda or Zaire), who are in possession of a valid residence permit and are in full-time education in Belgium do not require a work permit if they are only working during school holiday periods (e.g., summer, Christmas or Easter holidays). The employer therefore need not apply for employment authorization.

**Employment during the school year** – Foreign students who are not nationals of an EEA country or Switzerland, but are in possession of a residence permit to undertake full-time education in Belgium, can be employed during the school year provided they are not employed for more than 20 hours a week and this does not interfere with their studies. They must apply for a C work permit before their employment begins. The employer has no obligation to obtain an employment authorization first.

The student must apply for a C work permit, submitting the following documents:

- an application for a C permit using the model form

issued by the relevant regional authority, completed and signed by the applicant worker<sup>2</sup>;

- a copy (front and back) of the current residence permit;
- a sheet of particulars to be filled in and certified by the local council for the young person's place of residence;
- a copy of the certificate of registration in the register of foreign nationals;
- a certificate of enrolment in an educational institution in Belgium to attend a course of full-time education, and, in the event, a certificate of attendance;
- a copy of the student employment contract or other document mentioning the agreed hours of work (maximum 20 hours per week not interfering with studies, i.e., outside normal tuition hours).

All these documents will then be forwarded to the regional employment office of the FOREM (Wallonia), VDAB (Flanders), Actiris (Brussels) or Arbeitsamt (German region). If a notice of rejection is issued by the "immigration" department of the region concerned, the employment must be terminated immediately.

## 04 Social security implications

An employed student normally has to be enrolled in the social security scheme and ordinary social security contributions paid. However, students who are not employed for more than a set number of work days in a year with one or more employers do not have to be enrolled in the social security scheme.

### 1 Enrolment not required for less than 50 days' work a year

Since 1 January 2012, a young person hired under a student employment contract does not have to be enrolled in the employed workers' social security scheme (so no need to calculate and pay ordinary social security contributions) if he does not work for more than **50 days per year**, which can be spread throughout the calendar year as the student wishes, with one or more employers.

In order for the earnings for the first 50 days' work in

a calendar year to be exempted from ordinary social security contributions, the student must be employed:

- under a student employment contract; and
- during periods when attendance in educational institutions is not compulsory.

#### Three examples:

*10 days working for employer A in July, 20 days for employer B in August and 10 days for employer C spread over the other months / quarters of the calendar year (total, 40 working days).*

*20 days working in July for Employer A and 26 days of a Saturday job with employer B worked over the calendar year.*

*One day a week (Saturday) on almost every weekend of the year.*



<sup>2</sup> The form can be obtained from the Actiris Regional Office (Brussels), FOREM (Wallonia), VDAB (Flanders) or Arbeitsamt (German region).



### What is meant by “work days”?

A “work day” is any day paid by the employer under a student employment contract. Practically, these are:

- days actually worked;
- days on which no work is performed, but for which the worker retains his right to pay on which social security contributions are levied (e.g., legal public holidays, lieu days for legal public holidays, short-time working days, statutory or additional leave days for non-manual workers, days when work is interrupted on full or partial pay);
- compensatory days off other than compensatory time off in the construction industry;
- days and hours of legal holidays for manual workers.

#### Two further details:

- 1 Any day on which work has been performed is reckoned as a work day regardless of the hours of work performed in the day (e.g., 3 hrs, 4 hrs, 7 ½ hrs, etc.).
- 2 Where a student works on the same day for two or more employers, each job will be counted as a separate day..., with the result that a whole day will be deducted from the 50-day quota for each job! To avoid this, it must be shown that work was done for different employers on the same day.

## 2 Deduction of a solidarity levy

While a student employed in the conditions described above is not liable to ordinary social security contributions, the employer must deduct a solidarity levy from his earnings and pay it to the NSSO within the same deadlines as ordinary social security contributions.

The rate of this levy is equal to 8.14% of the gross earnings amount (5.43% payable by the employer and 2.71% payable by the student).

## 3 What happens if the student exceeds his 50-day quota?

A student who works more than the maximum allowable work days (50) will, in principle, fall into the employed workers’ social security scheme and

hence be liable to payment of ordinary social security contributions. There is an important difference here between whether he works more than the allowable maximum for one single employer or as a result of different jobs with multiple employers.

### Exceeding the 50-day quota with a single employer

An employer submits a Dimona Declaration for more than 50 work days and is advised that the 50 work day quota has been exceeded ...

If then in his DmfA (Multifunctional Declaration to the NSSO) the employer declares all the work days (the first 50 days + exceedance days) as “student/solidarity levy” work days, ordinary social security contributions will be payable on **all the work days**.

However, if the employer declares in his DmfA only the first 50 days as student work days subject to the solidarity levy and the exceedance days as “ordinary worker/ordinary social security contributions” work days, the ordinary social security contributions will only be calculated on the pay for the **exceedance days**.

### Exceeding the 50-day quota with another employer

Where a student exceeds the maximum allowable work days (50) as a result of having different jobs with multiple employers, both the student and the employer who is employing him when the limit is exceeded will be liable to pay ordinary social security contributions from the 51<sup>st</sup> **work day** provided the employer has submitted a correct DmfA Declaration on the 51<sup>st</sup> day.

There is an important clarification to be made here. For the NSSO, the date when the Dimona Declaration is submitted, not the period for which the student has actually been employed, is what will determine the relevant employer with whom the 50-day quota is exceeded (and who will therefore be liable for the payment of ordinary social security contributions).

**Example** – Employer A engages a student to work for a period of 42 (work) days between 1 August and 15 September and every Saturday after that period. The student employment contract is entered into on 20 February and the employer submits the Dimona Declaration on 21 February. Employer B hires the same student for the Easter holidays in April for a period of 12 work days. The student employment





*contract is signed on 15 March and Employer B submits the Dimona Declaration on 16 March. The acknowledgment of receipt of Employer B's Dimona Declaration will include notification that the 50-day quota has been exceeded by 4 days (50 – 42 – 12). The 50 work day quota is exceeded during the period of employment with Employer B even though the effective date of the student's employment with Employer B predates the effective date of his employment with Employer A!*

*This means that Employer B and the student will be liable to the solidarity levy for 8 work days only, after which ordinary social security contributions will be owed on the remaining 4 days' pay.*

Note also that ordinary social security contributions will be levied only on the pay for the exceedance days (from the 51st day onwards) regardless of how the employer (with whom the exceedance occurred) declared the work days in the DmfA Declaration – i.e., even if the employer declared the days after the 50th day as subject to the solidarity levy ...

#### 4 Dimona Declaration and consulting a meter on the 50 work day quota

Since 1 January 2012, an employer who concludes and signs a student employment contract must submit a specific Dimona Declaration in which, in addition to the usual information, he must state the number of days on which the student will work in each quarter. These data will be put into a 50-day quota counter which the student can consult via the online application "student@work50days" on the website [www.studentatwork.be](http://www.studentatwork.be).

Practically, this means that students can connect to this application using their electronic identity card to see how many days are left in their 50-day quota, check the periods of employment scheduled with one or more employers and keep track of the work day count (days provided in the student employment contract, days already worked, days still to be worked).

The student can also use this application to generate a certificate for a potential employer stating how many days remain in the 50-day quota on a specific date. This certificate will tell the employer how many days' work he can still count on within the 50-day

quota before he enters into a student employment contract with the young person. The student can also give the employer a code to enable him to log into the student's counter and see how many days are left in it at the time of consultation.

#### Two further details:

- 1 The principle that students employed for no more than 50 days a year are not liable to social security contributions generally remains applicable to young people in the year in which they complete their education (e.g., 30 June) for a student job worked in July, August or September of the same year.
- 2 A student who has been exempted from liability to social security contributions on a student job for up to 50 days in the period 1 January to 30 September and is then hired under a standard fixed-term or permanent employment contract in the final quarter of the calendar year (October to end of December), will not, in principle, have his situation reviewed by the NSSO.

#### 5 Combining a student job with other work

Various combinations are possible.

- A young person can combine a student job (in accordance with the terms and conditions described above) with a job as a socio-cultural and sports activity leader which fulfils the requirements for exemption from social security contributions laid down by Article 17 of the Royal Decree of 28 November 1969.

This provides that persons (e.g., students) who perform certain social-, cultural- or sports-related social activities (e.g., summer camp coach, socio-cultural and sports activity leader) are not liable to social security contributions if:

- the activity is not performed for more than 25 work days in a calendar year with one or more employers; and
- the employer declares the activity to the FPS Social Security's Social Inspectorate before the person is employed.

Subject to compliance with the conditions of each situation, therefore, a student could work during a calendar year for up to 25 days in a socio-cultural or







sports activity as mentioned above and also under a student employment contract for up to 50 days which can be distributed freely throughout the calendar year.

- A student job can also be combined with casual work in agriculture and horticulture. In this case, the number of days worked as a student will be deducted from the maximum number of days that can be worked as a casual worker with an employer falling under the joint bargaining committees CP 145 for horticultural enterprises or CP 144 for agriculture.

In other words, where a student works in the agriculture or horticulture sectors for which casual work is allowed for a maximum in principle of 30 or 65 days, his student status will prevail over his casual worker status, such that he will be considered first as a student and therefore first be governed by the specific rules for students (quota of 50 days maximum) and then - for the amount exceeding the “student quota” of work days – by the rules on casual work within the allowable limits.

- Finally, since 1 October 2013, students can combine their 50-day student quota with the 50-day quota allowed to a casual worker in the hospitality (HORECA) sector.

However, for the first 50 days of “student” employment in the year, whether as casual work in the hospitality (HORECA) sector or employment in another sector, the worker will be granted student status only; this means that they must first be declared as such in the Dimona Declaration (“STU” code) and during the first 50 days, a solidarity levy (see above) must be calculated on the actual wages paid to them.

Once the first 50-day quota has been used up, students still have a further 50-day quota in which they can work as a casual worker in the hospitality (HORECA) sector (reported in the Dimona Declaration using the code “EXT”) under the reduced social security contributions scheme calculated on a fixed hourly wage of €7.50 or daily wage of €45.00.

## 05 Tax implications

The student’s tax situation is governed by certain specific provisions and special cases.

### 1 No PAYE withholding liability

As a general rule, the employer must make **PAYE income tax deductions** from the wages paid to the student at the rates applicable to ordinary workers.

However, there is no PAYE withholding liability on wages paid to students hired under a written contract of employment for a period not exceeding 50 work days in any calendar year, provided that no contributions other than the solidarity levy are due on the wages paid.

### 2 Submission of a personal tax return

Income earned by a student is to be considered as personal income, and therefore not to be combined with the parents’ income. The student must therefore submit his own **personal income tax return**, for which the employer must issue him with a 281.10 annual tax slip showing the total taxable earnings received by the student and the PAYE income tax deducted, if any.

### 3 Student financially dependent on parents

A student who forms part of his parents’ household (i.e., lives with them) remains their tax dependent if





his net annual income does not exceed a set maximum (see table below).

The net annual income amount varies with the student's family situation and for 2014 (tax year 2015) is.

### Student's situation

Student's situation	Maximum net annual income in 2014 <sup>(1)</sup>	Maximum gross taxable amount in 2014 <sup>(2)</sup>	Maximum gross amount in 2014 net of a 2.71% solidarity levy <sup>(4)</sup> .
Dependent of a household	€ 3.110	€ 3.887,50 + € 2.590 <sup>(3)</sup>	€ 6.657,93
Dependent of a taxpaying single person	€ 4.490	€ 5.612,50 + € 2.590 <sup>(3)</sup>	€ 8.430,98
Disabled dependent of a taxpaying single person	€ 5.700	€ 7.125,00 + € 2.590 <sup>(3)</sup>	€ 9.985,61

(1) Under Articles 136 and 141 of the 1992 Income Tax Code, the basic amounts are set at €1,800, €2,600 and €3,300, respectively.

(2) In order to determine whether a person is a dependent of a taxpayer, if there is no conclusive proof, deductible expenses fixed at 20% of the gross amount of income with a minimum of €430 (in 2014) must be reckoned in if that income consists of earnings from waged employment or gains (1992 Income Tax Code, Article 142, para.2).

The annual gross taxable amount will therefore be obtained from the annual net amount multiplied by the fraction 100/80 (e.g., 3,110 x 100/80 = 3,887.50).

(3) Income band exempted if the work is done under a student employment contract; see point 4 below.

(4) The annual gross amount is calculated by multiplying the taxable amount by the fraction 100/97.29, 100/86.93 (non-manual worker) or 100/85.88 (manual worker) according to whether a solidarity levy (2.71%) or normal personal contribution of 13.07% has to be deducted.



**NB** – In order to continue qualifying as a dependent, the student may not have been employed by his parents and have received income which constitutes deductible business expenses for them.

To qualify as a “young worker”, the worker must meet the following conditions:

- be out of compulsory education;
- have completed or undertaken certain studies (in particular, full-time upper secondary general education or lower secondary technical, artistic or business education), an apprenticeship or training;
- have ceased all the activities required by the programme of studies, apprenticeship or training undertaken. ■

## 4 Exemption from PAYE withholding liability

Since the 2001 tax year (income arising in 2000) wages paid to young workers have been exempted from PAYE income tax deductions if:

- their employment contract commences in October, November or December; and
- the monthly taxable amount of their earnings does not exceed €2,700 from 01.01.2014.

**Francis Verbrugge, Senior Legal Counsel**



## Social news

## Company managers and rent benefits (2014)

When a **company manager** (administrator, manager or liquidator) rents a building (of which he is the owner, proprietor, leaseholder, building lease holder or beneficial life interest holder) to the company or association in which he conducts his activity, the rent benefits he receives by virtue of article 32, 3°, WIB 92 are considered as a professional income, provided that the rent does not exceed 5/3 of the revalorized cadastral income. The **added value coefficient** for the cadastral income is set at **4,23** for the **tax year 2015** (income 2014).

**Withholding tax** shall be applied on the part qualified as professional income. When the rent is paid **monthly**, the part of the rent income that is considered as a professional income must be treated as a

periodic remuneration; it can be added to the remuneration of the month concerned and it is subject to withholding tax, just as the periodic remuneration. The amount must also be stated on the tax form of the company manager (tax form 281.20).

***Example** – An administrator rents a building with a cadastral income of € 2,000.00 to his company. The annual limit is € 14,100 (= 2,000 x 4.23 x 5/3). The company pays a monthly rent of € 1,500, i.e. € 18,000 per year to the administrator; consequently, there is a positive balance of € 3,900. This amount of € 3,900 is considered as a professional income and it must be subjected to withholding tax. ■*

***Isabelle Caluwaerts**, Legal Counsel*



## Social news

# Preventing workplace psychosocial hazards: new rules from 1 September 2014

Extensive changes will be brought in to the rules on violence, bullying and sexual harassment in the workplace on **1 September 2014**.

The aim is to put in place a general framework for preventing workplace psychosocial hazards including stress, violence, bullying and sexual harassment at work. The focus of the rules will therefore no longer be just on preventing violence, bullying and sexual harassment in the workplace.

This article **briefly** reviews the **main** changes.

## Workplace psychosocial hazards

“Psychosocial hazards” will mean *“the probability of psychological harm which may also be accompanied by physical harm being sustained by one or more workers as a result of exposure to elements that make up the work organization, job content, working conditions, the conditions of working life and interpersonal relationships in the workplace on which the employer has an impact and which objectively pose a danger”*.

## Risk analysis

In addition to the general risk analysis (which will specifically include identifying situations that might give rise to workplace psychosocial hazards), a workplace psychosocial hazard risk analysis can be done for a specific work situation in which a danger is identified (in compliance with specific conditions/procedures).

Depending on the outcome, the employer will then take the appropriate preventive measures (in compliance with specific conditions/procedures).

## What can workers do?

Workers who consider that they have sustained psychological harm, which may also be accompanied by physical harm, arising out of workplace psychosocial hazards including violence, bullying and sexual harassment in the workplace, can take their complaint:

- directly to the employer/a line superior/a member of the workplace prevention and protection committee /a union official (in compliance with specific conditions/procedures); or to
- the designated support person (“*personne de confiance*”) or psychosocial hazards prevention adviser through internal procedures to make (in compliance with specific conditions/procedures):
  - an “informal request for psychosocial intervention”; or
  - a “formal request for psychosocial intervention”; this will be either a request mainly of a group nature (if the situation described by the complainant mainly relates to hazards to a group of workers), or a request mainly of an individual nature (if the situation described by the complainant mainly relates to hazards specific to the individual); or
  - if the application relates to acts of violence, bullying or sexual harassment in the workplace, a “formal request for psychosocial intervention for acts of violence, bullying or sexual harassment in the workplace”.

The employer will take the appropriate preventive measures (in compliance with specific conditions/procedures).



**NB** – The designated support person and psychosocial hazards prevention adviser have specifically defined statuses and roles (among other things) in connection with these procedures.



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## Protection against dismissal

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The following workers will be protected against dismissal:

- workers who make a formal request for psychosocial intervention for acts of violence, bullying or sexual harassment in the workplace in accordance with procedures in force;
- workers who file a complaint with the relevant authorities because they consider that their formal request for psychosocial intervention for acts of violence, bullying or sexual harassment in the workplace has not resulted in the acts complained of being stopped;
- etc.

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## Works rules

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The works rules must mention:

- the contact details of the psychosocial hazards prevention adviser or the workplace prevention and protection service for which the adviser carries out his duties, and the contact details of the designated support person if there is one;
- procedures directly accessible to a worker who considers they have sustained harm (see above).

The works rules must be adapted accordingly within six months from the entry into force of the new regulations.

Partena will support you through the changes and will be sure to keep you informed ... ■

**Catherine Mairy**, *Legal Counsel*



## Social news

# CO<sub>2</sub> levy: what's new?

The national social security office's (NSSO) 2<sup>nd</sup> quarter 2014 guidance to employers has clarified some matters relating to the CO<sub>2</sub> levy.

Essentially, they relate to:

- The private use presumption for general-purpose vehicles;
- What is meant by "a fixed place of work";
- What is meant by "very occasional" private use.

## 1 Fixed place of work

### Generally

The CO<sub>2</sub> levy is payable if the worker travels between his home and a fixed place of work using a general-purpose vehicle provided by the employer. As a general rule, no levy is due for travel between home and a non-fixed place of work.

The question, therefore, is: when is a place of work a fixed place of work?. The NSSO's administrative guidance for the 2<sup>nd</sup> quarter 2014 spells out the two criteria that determine whether a place of work is fixed.

### New definition

The NSSO now defines a fixed place of work as being a place of work (business premises, worksite, customer's premises, etc.) that meets **both** of the following two **conditions**:

- The worker actually does **a significant amount of work** there.

*Examples:*

*The work done by a technician who works at his normal place of employment all morning repairing machinery which he will then install on customers' premises in the afternoon before returning directly home is sufficiently significant to meet the first criterion.*

*By contrast, a technician who comes to his normal place of employment in the morning just to load goods which he will then deliver to customers all day before returning directly home does not meet the first criterion.*

- The worker travels in the vehicle to the same place on **at least 40 days a year**, which may but need not be consecutive. Once that 40 day total is reached for a place, the CO<sub>2</sub> levy is due for the entire year. It may if applicable be limited to the period for which the vehicle was provided where, for example, it was purchased during the year.

### The situation now

If the worker travels between his home and a fixed place of work in a general-purpose vehicle and the place of work meets both of the above conditions, the CO<sub>2</sub> levy must be calculated and deducted.

## 2 Very occasional private use

The NSSO specifies that if a vehicle (utility or general-purpose vehicle) is used for private purposes very occasionally (e.g., to move house over a weekend provided the vehicle is immediately returned to the place of employment afterwards), the CO<sub>2</sub> levy need not be calculated.

Note that "very occasional" use will be assessed in each individual case by the NSSO inspectorate, so employers should be circumspect in determining what counts as a "very occasional" use.

## 3 Private use presumption for utility vehicles

### Generally

On 1 July 2005, the NSSO introduced a presumption of private use for any vehicle registered in the



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employer's name or covered by a rental or leasing agreement or other vehicle use agreement provided to workers. This presumption was inserted into Section 38, § 3, quarter of the Social Security (Employed Workers - General Principles) Act of 29 June 1981.

The presumption initially applied to both utility vehicles and general-purpose vehicles, but has now been amended by the NSSO administrative guidance for the second quarter 2014. Note that at present, **only the NSSO guidance has been changed.**

### New definitions

For the presumed private use of a company vehicle, the NSSO now distinguishes between:

- **Utility vehicle:** Any vehicle classed as M1 (4-wheel passenger transport) or N1 (3- or 4-wheel carriage of goods) the use of which may incur a liability to calculate and pay the CO<sub>2</sub> levy. Specifically, it is "a vehicle with a windowless rear loading space in which passengers may not (legally) be transported."
- **General-purpose vehicle:** All other vehicles classed as M1 and N1 (private car, combined passenger/goods vehicle, minibus, people carrier/urban 4x4). Specifically, it is "a vehicle whose rear seat can be converted into a loading platform."

### The situation now

The NSSO's 2<sup>nd</sup> quarter 2014 administrative guidance specifies that there will be **no presumption of private use for utility vehicles.**

Based on this new guidance, therefore, travel between home and the place of work using a utility vehicle should not be treated as travel between home and the place of work for the purposes of calculating and deducting the CO<sub>2</sub> levy.

Three important points:

- 1 Private use of a utility vehicle for which the CO<sub>2</sub> levy must be calculated and deducted can always be established on the basis of evidence discovered by NSSO inspectors;
- 2 The private use presumption remains unchanged for general-purpose vehicles;
- 3 The Act of 29 June 1981 which introduced the private use presumption has not been amended. As things stand, therefore, the distinction between utility vehicles and general-purpose vehicles made by the NSSO administrative guidance has no statutory basis. ■

*Anne Beckers, Legal Counsel*



## Remuneration

# Wage adjustments in June 2014

### Index figures for May 2014

Consumer price index 2013: → 100,30 (- 0,11)

Health index 2013: → 100,29 (- 0,15)

Averaged quarterly health index: → 100,57 (- 0,08)

### Collectively-negotiated indexations and increases: selected forecast

Joint Bargaining Committee (CP) 218: → approx. +0.90% indexation in January 2015

Average monthly minimum wage/Welfare benefits: → +2% in January 2015

Indexation and wage adjustments for June 2014	
102.1	<b>Belgian blue and white limestone quarries in the province of Hainaut:</b> Increased employer's contribution to luncheon vouchers from 01.01.2014
102.3	<b>Porphyry quarries in the provinces of Walloon Brabant and Hainaut and quartzite quarries in the province of Walloon Brabant:</b> Award of eco vouchers to a value of €250 for all non-manual employees employed at least 4/5ths time, €200 for non-manual employees employed between 3/5ths and 4/5ths time, €150 for non-manual employees employed between ½ time and 3/5ths time and €100 for non-manual employees employed less than ½ time. Qualifying period from 01.06.2013 to 31.05.2014. Paid out between 15.06.2014 and 01.07.2014.
106.1	<b>Cement works:</b> -0.08% indexed increase on minimum wages only
112	<b>Commercial garages:</b> Award of eco vouchers to a value of €125 on 15.06.2014 at the latest, unless other arrangements made in works collective agreement. Qualifying period from 01.12.2013 to 31.05.2014. Prorated for part-timers.
117	<b>Oil industry and retail trade:</b> -0.08% indexed increase on minimum wages only
140.1	<b>Special bus service contractors:</b> Garage staff (buses and coaches): award of eco vouchers to a value of €125 on 15.06.2014 at the latest. Qualifying period from 01.12.2013 to 31.05.2014. Prorated for part-timers. Special bus services: Award of eco vouchers to a value of €125 for on-board personnel with a minimum of 5 years' service in the business in January 2014. Qualifying period from 01.01.2013 to 31.12.2013. Prorated for part-timers. Specific calculation procedures. Paid out no later than 30.06.2014. Coaches: Award of eco vouchers to a value of €125 for drivers with a minimum of 5 years' service in the business in January 2014. Qualifying period from 01.01.2013 to 31.12.2013. Prorated for part-timers. Specific calculation procedures. Paid out no later than 30.06.2014.
142.1	<b>Metals recovery:</b> Award of eco vouchers to a value of €125 on 15.06.2014 at the latest, unless other arrangements made in works collective agreement. Qualifying period from 01.12.2013 to 31.05.2014. Prorated for part-timers.
149.1	<b>Electricians:</b> installation and distribution: Length of service supplements capped at 13.5% (26 years' service) from 01.01.2014
149.2	<b>Vehicle bodywork:</b> Award of eco vouchers to a value of €125 on 15.06.2014 at the latest, unless other arrangements made in works collective agreement concluded before 01.10.2011. Only firms with an established exemption from the industry-wide eco voucher system can extend the exemption if need be. Qualifying period from 01.12.2013 to 31.05.2014. Prorated for part-timers.
149.4	<b>Metal trade:</b> Award of eco vouchers to a value of €125 on 15.06.2014 at the latest, unless other arrangements made in works collective agreement. Qualifying period from 01.12.2013 to 01.05.2014 3. Prorated for part-timers.
202/AB	<b>Employees in the food retail trade:</b> +1% on all wages Recurring annual bonus of €5/month. Qualifying period from 01.06.2013 to 31.05.2014. Prorated for part-timers. Not applicable if at least equivalent employee benefit provided in works collective agreement concluded before 30.11.2005. Award of eco vouchers to a value of €250 unless other arrangements made in works collective agreement concluded before 30.09.2014. Qualifying period from 01.06.2013 to 31.05.2014. Prorated for part-timers. Not applicable to students. Abolition of retirement ages and introduction of a student wage from 01.01.2014





218	<b>National auxiliary joint bargaining committee for non-manual workers:</b> Award of eco vouchers to a value of €250 for all non-manual employees employed at least 4/5ths time, €200 for non-manual employees employed between 3/5ths and 4/5ths time, €150 for non-manual employees employed between 1/2 time and 3/5ths time and €100 for non-manual employees employed less than 1/2 time. Qualifying period from 01.06.2013 to 31.05.2014. Not applicable if converted into an equivalent employee benefit before 31.03.2014 (31.05.2014 for new businesses).
309	<b>Brokerage firms:</b> Award of eco vouchers to a value of €250 unless other arrangements (luncheon vouchers, healthcare insurance, supplementary pension, pay rise or gross bonus) made in works collective agreement concluded before 30.04.2014. Qualifying period from 01.06.2013 to 31.05.2014. Prorated for part-timers.
311	<b>Large retail companies:</b> Recurring annual bonus of €5/month. Qualifying period from 01.06.2013 to 31.05.2014. Prorated for part-timers. Not applicable if at least equivalent employee benefit provided in works collective agreement concluded before 30.11.2005. Award of eco vouchers to a value of €250 unless other arrangements made in works collective agreement concluded before 30.09.2014. Qualifying period from 01.06.2013 to 31.05.2014. Prorated for part-timers. Not applicable to students.
312	<b>Department stores:</b> Recurring annual bonus of €5/month. Qualifying period from 01.06.2013 to 31.05.2014. Prorated for part-timers. Not applicable if at least equivalent employee benefit provided in works collective agreement concluded before 28.02.2006. Award of eco vouchers to a value of €250 unless other arrangements made in works collective agreement concluded before 30.09.2014. Qualifying period from 01.06.2013 to 31.05.2014. Prorated for part-timers. Not applicable to students. Introduction of a student wage from 01.01.2014
318.1	<b>Home help and elderly caregiver services of the French Community, the Walloon Region and the German-speaking Community:</b> Adaptation of pay scale wages from 01.01.2013
321	<b>Wholesale pharmaceutical distributors:</b> Award of eco vouchers to a value of €250 for all non-manual employees employed at least 4/5ths time, €200 for non-manual employees employed between 3/5ths and 4/5ths time, €150 for non-manual employees employed between 1/2 time and 3/5ths time, €120 for non-manual employees employed between 2/5ths and 1/2 time, and €90 for non-manual employees employed less than 2/5ths time. Qualifying period from 01.06.2013 to 31.05.2014. Not applicable if converted into an equivalent employee benefit before 30.10.2009. Not applicable to students.
323	<b>Building management, estate agents and domestic workers:</b> Adaptation of starting salary from 01.01.2014
328.3	<b>Regional and urban transport in the Brussels-Capital Region:</b> Adaptation of the uniform cleaning allowance from 01.01.2014



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