MEMENTO OF THE EMPLOYER 10

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PARTENA PROFESSIONAL

WHAT EFFECT DOES STRIKING HAVE ON AN EMPLOYMENT CONTRACT?

The wave of province-wide strikes and the general strike that took place in autumn and winter against the measures contained in the "Michel I" government agreement prompt a look at various aspects of the right to strike.

This article will consider the procedures to be followed before coming out on strike in order for a strike to be "valid", whether a strike-hit firm can mount a minimum service, and the lawfulness of conduct that often accompanies the exercise of the right to strike.

It will also look at the consequences of a strike on the pay of striking and non-striking workers, third parties affected by the dispute and, more generally, its impact on the performance of the employment contract.

01 IS THERE A PROCEDURE TO FOLLOW BEFORE INITIATING A STRIKE?

A strike is conventionally defined as the collective and concerted refusal of a group of employed workers to perform their work with the immediate aim of stopping one or more businesses from running in order to put pressure on the employer or third parties with a view to securing improvements in their working conditions.

While strikes are neither defined nor regulated by any provision of Belgian law or the Constitution, the fact remains that "going on strike" is a right; be it a sympathy strike, labour dispute strike or a political strike, the right to strike has long been recognized by Belgium's courts and tribunals, and by the Act of 11 July 1990 approving the European Social Charter of 18 January 1961.

The exercise of the right to strike is not unconditional, however; it is subject to certain restrictions, in particular compliance with the collective agreements that regulate it.

Employers' organizations and trade unions have concluded collective agreements in many sectors to restrict the number of work stoppages by requiring the parties to comply with a specific procedure before initiating a strike.

These collective agreements also generally contain a strike-avoidance "industrial harmony" clause.

1 PRE-STRIKE PROCEDURE

Various industry collective agreements require the parties to go through a **conciliation procedure** and/or to serve a **strike notice** before being able to initiate a strike.

If there is no industry provision, such clauses could be included in works collective agreements or works rules.

EXAMPLE FROM THE JOINT BARGAINING COMMITTEE FOR THE FOOD INDUSTRY – CP 118:

"Where a dispute arises with company management, the shop stewards' committee shall do everything possible to resolve the dispute through negotiation. If the action taken by the shop stewards' committee does not result in an agreement being reached with the business owner/manager (...), the shop stewards can refer to the permanent representatives of their workers' organizations to pursue consideration of the matter. In such a case, the business owner/manager may be assisted by representatives of his professional organization. After all avenues of negotiation have been exhausted, the parties may refer the dispute to the conciliation panel of the joint bargaining committee for the food industry. A strike notice may only be lodged by a workers' organization in writing after the conciliation panel has given its decision. The strike notice (...) must give at least 14 calendar days' notice for a sector, and 7 calendar days for a business. It starts to run on the Monday following the week in which it was lodged"(Collective Agreement on the status of the shop stewards' committee concluded on 10 July 2009 in the Joint Bargaining Committee for the food industry).

2 INDUSTRIAL HARMONY CLAUSE

A collective agreement may also include an industrial harmony clause.

An industrial harmony clause is a provision by which the parties to the collective agreement undertake for its entire duration not to make demands contrary to the spirit or letter of the agreement (**relative** industrial harmony clause) or, more generally, no demands at all (**absolute** industrial harmony clause).

SAMPLE RELATIVE INDUSTRIAL HARMONY CLAUSE:

"The workers' and employers' organizations shall not make other demands that go beyond the application of this collective agreement, either nationally or regionally or at company level and shall not provoke or initiate any dispute" (Collective Agreement on the 2013-2014 sectoral agreement concluded on 19 December 2013 in the Joint Bargaining Committee for the food retail trade – CP 119).

SAMPLE ABSOLUTE INDUSTRIAL HARMONY CLAUSE:

"This collective agreement shall ensure industrial harmony in the sector for the entire duration of the agreement. Accordingly, no general or collective demand whether national, regional or in individual businesses shall be made"(Collective Agreement on the 2013-2014 national agreement concluded on 27 February 2014 in the Joint Bargaining Committee for garage businesses – CP 112).

3 WHAT HAPPENS IF THE STRIKE AVOIDANCE PROCEDURE IS NOT FOLLOWED?

A strike initiated without following the procedures laid down in a collective agreement for prior conciliation and a strike notice is not, by that fact alone, invalid.

Before concluding that a lightning strike is invalid, the cause of the action and the surrounding circumstances must be considered, and in particular whether it was preceded by honest and continued attempts to reach an amicable settlement to the dispute.

"In principle, a strike initiated without following the prior notice and conciliation procedures laid down by the agreements entered into or derived from the principle of good faith performance of contracts, as well as a strike in pursuance of unreasonable objectives or ones which the employer is not able to satisfy, is invalid.
A worker's participation in an invalid strike, however, is not grounds for dismissal where the invalidity of the action results from the employer's prior breach, in particular where he has unilaterally thrown into question an agreement with the trade unions on working conditions" (Brussels Labour Tribunal, 28 June 1996, JTT 1996, p. 504-507).

Whether the strike is valid or not can eventually also be looked at by reference to the industrial harmony clause – if there is one – contained in the collective agreement governing the matter to which the demands relate.

4 WHAT IF NO PRIOR PROCEDURE IS LAID DOWN?

If there is no requirement to comply with a prior procedure in a collective agreement, the social dialogue principle that governs the resolution of labour disputes in Belgium and the good faith

performance of collective agreements would seem to make it "advisable" for the workers to try and resolve their demands through negotiation.

This can give the employer a reasonable breathing space in which to assess the cause of the workers' grievances and his intended stance.

02

HOW CAN THE EMPLOYER ENSURE A MINIMUM SERVICE?

The exercise of the right to strike can bring the running of the business or service concerned to a total halt, "imperilling" production facilities, or particular collective and general needs of the population as a whole.

While all workers have a recognized right to strike, some may be required to provide a minimum service and therefore continue to perform their work duties.

1 SECTOR MEASURES

Under the Public Interest Services (Peacetime) Act of 19 August 1948 (*Belgian Official Gazette*, 21 August 1948) some sectors have specified basic needs whose provision must be assured in case of a collective work stoppage and the measures and procedures to be followed to implement the operation of a minimum service. A selected number of workers will therefore be required to perform their work duties so that priority tasks for the common good are fulfilled.

Such is the case, for example, in the hospital sector, support and intake facilities for certain vulnerable groups, the hospitality industry, the oil retail trade, the food industry and retail trade, etc.

Lesser (level 2) criminal penalties (Article 207 of the Employment Criminal Code) are also provided against workers who refuse to perform the measures, work duties or services to be carried out during a strike, namely either a criminal fine of between €300 and €3000 (with surcharges), or an administrative fine of between €150 and €1500 (with surcharges).

As things stand, the Act of 19 August 1948 only applies in the private sector and therefore does not constitute a sufficient legal basis for requisitioning workers in the public sector.

2 IF THERE ARE NO SECTOR MEASURES

A company collective agreement could lay down the organizational arrangements for providing a minimum service during strikes if the business is in a sector for which no measures to ensure such minimum service have been taken.

NOTE

The payment of a bonus to non-striking workers as an encouragement to work would constitute discrimination, infringe the right to strike and therefore be illegal!

03 WHAT REQUIREMENTS GOVERN THE NORMAL EXERCISE OF THE RIGHT TO STRIKE?

Striking is defined as the right of a group of workers to stop work in order to put pressure on their employer or a third party. In and of itself, that is all the right to strike implies.

However, the exercise of the right to strike is often accompanied by means or actions to make it more effective (in the workers' view at least). These may, for instance, include the non-peaceful occupation of business premises, pickets, obstruction of access roads, or blocking of goods deliveries.

These various activities carried out ancillary to exercising the right to strike may be such as to infringe certain rights of the employer, non-striking workers or third parties and may, therefore, constitute a threat of unlawful force, i.e., illegal acts interfering with the rights of others.

A party who considers themselves to be subjected to a threat of unlawful force can make an emergency application to the president of the court of first instance for an injunction against the illegal act. The court's order is not a decision as to the dispute and does not prejudge the outcome of it through the negotiations between management and labour. It does no more than rule on the legality or illegality of the means used in the dispute.

Injunctions against such threats of unlawful force are frequently made subject to a recurring penalty payment order, i.e., an order to pay a sum of money for non-compliance with the court order.

NOTE

Some labour courts accept picketing and occupation of business premises as lawful if such "strike actions" are properly proportionate to their purpose and the limits of the right to strike (as to which, see the Liège Labour Court judgement of 14 January 2010 (RG2010 / RQ / 4- INBEV case).

04 PROHIBITION ON THE USE OF OUTSIDE WORKERS

An employer cannot under any circumstances respond to a strike by hiring outside workers. This is forbidden by two provisions of law.

Article 19 of Collective Agreement No. 108 of 16 July 2013 on temporary work and temporary agency work prohibits temporary employment agencies from sending or keeping temporary agency workers on assignment (working) with a user in the event of a strike or lockout.

The Brussels Labour Tribunal (7 October 2005, Chr.DS, 2006, p. 385) has held that this prohibition applies whether all or only some of the company's employees are striking.

Some, including the multi-sector employers' organization FEB (Circular MNV/RB/S.2071 – C18-041F.MNV of 1 October 2008), take a less hard-and-fast view and consider that temporary agency workers can continue to work where:

- what is involved is a protest, i.e., action by a trade union other than a strike (the distinction between the two is, however, very tenuous, and, indeed, a protest may lead to a strike ...);

- only one category of employees or place of business of the legal entity is affected by the strike.

Such an interpretation of Collective Agreement 108 is arguably "risky" considering the sanctions to which the user leaves himself open:

- having to take on the temporary agency worker as a permanent employee. Article 41 of Collective Agreement No. 108 provides that where the user continues to employ a temporary agency worker after being notified by the temporary work agency of its decision to withdraw the worker, then the employment contract between the temporary work agency and the temporary agency worker is terminated and that worker and the user have entered into a permanent employment contract;
- a lesser (level 2) criminal penalty under Article 176 of the Employment Criminal Code, i.e., a criminal fine of between €300 and €3000 (with surcharges), or an administrative fine of between €150 and €1500 (with surcharges), multiplied by the number of workers for whom an infringement is established.

It is also unlawful to employ outside workers under a replacement contract to make good the absence of workers whose employment contract is interrupted due to a strike (Section 11*ter* of the Contracts of Employment Act of 3 July 1978).

05 ARE WORKERS WHO ARE ON STRIKE, NOT STRIKING OR NOT INVOLVED IN THE DISPUTE STILL ENTITLED TO PAY?

Business activity tends to be totally disrupted due to work stoppages by striking workers and/or pickets that prevent workers from getting to their work station.

Additionally, where the strike action affects public transport, some workers may arrive late at their workplace or not be able to attend work at all.

A strike lawfully interrupts performance of the employment contract and the obligations arising out of it.

Does the employer have to pay for "time not worked"?

Various scenarios must be considered.

1 STRIKING WORKERS

A striking worker is absent for a valid notified reason, and such absences are not paid by the employer.

Subject to the conditions which they have set, the trade unions that have endorsed the strike will, in the event, pay their striking members "strike pay".

If the striker also happens to be an employee representative on the works council, health and safety committee or a shop steward, the strike day may, under industry collective agreements on the matter (or the works rules), be considered as facility time for trade union duties.

Strikers who are not union members will get no pay of any kind. But they can always take their absence out of holiday entitlement or other days off (working time reduction hours, contractual leave days, etc.).

2 NON-STRIKING WORKERS

In a strike, it may be impossible even for non-striking workers to work:

- either because of a strike in their firm (or a third-party firm);
- or due to strike action affecting public transport.

➡ **Unable to work due to a strike in the firm (or a third-party firm)**

Workers – whether union members or not – who cannot carry on working due to strike action in which they are not taking part must as far as possible be assigned by the employer to perform other tasks. If not, they will have no right to pay from the employer.

A strike therefore discharges the employer's obligation to pay the worker's wages/salary if:

- it was not foreseeable;
- the employer cannot be held at fault;
- and it completely prevents him from putting the non-striking worker to work.

Likewise, no pay will be owed to:

- workers – whether union members or not – who are prevented from working by pickets outside company premises. Where a picket is at the entrance to an industrial estate on which the company premises are situated and prevents non-striking workers from entering, some commentators argue that the employer must pay those workers who were unable to access their place of work their normal day's pay. This would classify as an impediment on the way to work giving rise to the application of Section 27, para. 1.1° of the Contracts of Employment Act of 3 July 1978;
- workers – whether union members or not – who are prevented from working by a strike at another firm such as a supplier, customer, etc.

Non-striking workers who are prevented from working could qualify for temporary unemployment benefits subject to approval by the National Employment Office's (NEO) Management Committee; when considering an authorization to award benefit, the Management Committee will take into particular consideration the fact that the workers are not members of the striking work unit and cannot have an interest in the outcome of the striking workers' demands.

For a general strike, the Committee will make a collective rather than an individual assessment.

The Management Committee's view is that general strikes serve the interests not only of the strikers but also those of non-strikers. This is why non-strikers are not entitled to unemployment benefits in a general strike.

That notwithstanding, the employer will provide the workers concerned with the requisite unemployment forms – i.e., the C.3.2A control form and the C3.2 Employer form which acts as a payment and unemployment benefit application form.

➡ Worker's late or non-attendance due to strike action affecting public transport

Under Section 27.1° of the Contracts of Employment Act of 3 July 1978, a worker who is fit for work at the time of setting out for work and who, proceeding to his work as normal, is unable to get there on time or at all, is entitled to the pay to which he would have been entitled had he been able to perform his daily duties as normal where such late or non-attendance is due to a cause beyond his control occurring on the way to work.

A worker claiming his pay (guaranteed wage) must prove that:

- he was fit for work at the time of going to work;
- he was proceeding to work as normal, i.e., in normal conditions of time, place and manner;
- the cause of the late or non-attendance:
  - occurred on the way to work: i.e., the worker must have left home. The strike must therefore occur after the worker has set out. Accordingly, where a strike is announced and widely reported in the press, and when a strike continues, Section 27 does not apply and the worker loses his right to guaranteed pay entirely if he fails to get to his workplace and partly if he gets there late.
  - is beyond his control.

Common sense must be exercised, however, as has been held by the Mons Labour Court: *"Payment of the wage or salary guaranteed by Section 27.1° of the Act of 3 July 1978 is not dependent on proving force majeure. The provision requires only for the worker to proceed to work as normal, and not for him to take extraordinary measures to mitigate the consequences of abnormal incidents encountered en route"*. (C. Trav. Mons, 20 June 1986, *JTT* 1987, p. 224)

NOTE

So far as the non-striking worker's job allows, and provided he has the necessary equipment (e.g., a laptop and connection to the company network), a day's teleworking has become a (the) solution that will address both the interests of the worker – who will not have to forfeit a precious day off – and those of the employer, whose business will be less paralyzed thereby. In such a case, the employer should check with the industrial injuries insurance company whether any specific arrangements require to be made.

06

CONSEQUENCES OF THE STRIKE ON OTHER MATTERS

A strike interrupts performance of the contract so the worker will, in principle, receive no pay for the period of that interruption.

But what other impacts might a strike have on performance of the employment contract?

1 STRIKE AND CALCULATION OF HOLIDAY ENTITLEMENTS AND HOLIDAY PAY

When calculating manual workers' and apprentices' holiday entitlements, days on which no work is performed due to:

- participating in a strike that has taken place in the business, for those workers who took part in it on condition that such strike was endorsed or supported by one of the general trade union organizations represented in the National Labour Council;
- lay-off due to strike, for unemployed workers recognized as unemployed under Article 73 of the Unemployment Regulations Royal Decree of 25 November 1991 and subject to the approval of the Management Committee of the National Annual Holidays Board are treated as actual working days.

Days on which no work is performed as a result of participation in a strike that has taken place in the business are treated as working days for calculating the holiday entitlements and holiday pay of non-manual employees and non-manual trainees.

2 STRIKE AND WORK INCAPACITY

A manual worker is entitled to his normal pay only for those normal business days for which he would have been entitled to his pay had he not been in a position of being unable to work.

Accordingly, a manual worker who falls ill before a strike is initiated or during the strike will be entitled to his guaranteed wage only if the employer was able to provide him with work.

There is no provision of law which provides that the guaranteed wage is payable to a non-manual employee only for normal business days for which he would have been entitled to his pay had he not been in a position of being unable to work.

Accordingly, a non-manual worker is entitled to his guaranteed salary even if he was unable to work in the firm because of a strike. However, the work incapacity must have started before the strike.

3 STRIKE AND LAY-OFF

Where a strike is initiated during a period in which the workers are already laid off (for economic or technical reasons, inclement weather or force majeure), the National Employment Office considers that the non-working period is due to the lay-off (and not to the strike) such as not to prejudice an entitlement to benefit from the unemployment insurance scheme.

By contrast, where a strike notice is issued, or where the strike starts before the lay-off regime is notified and/or takes effect, the NEO may refuse to pay unemployment benefit for the lay-off if it transpires that the reason for the employer declaring lay-offs stems from the strike action.

If, however, it is clear from the facts that the strike is not the reason for the lay-off (e.g., because there was no strike action in the region concerned, or the employer has already laid-off workers in the past), the head of the competent unemployment office may approve the application for lay-off (i.e., temporary unemployment) benefit.

4 STRIKES AND LEGAL PUBLIC HOLIDAYS

A worker is entitled to pay for each legal public holiday or lieu day for a legal public holiday on which he has not worked, and for every day of time off in lieu.

He will not, however, be entitled to such pay if he is absent without good reason on the normal business day preceding or following the legal public holiday.

Good reason for absence will include absence due to a strike taking place within the firm:

a. for workers who have participated in it on condition that such strike was endorsed or supported by one of the general trade union organizations represented in the National Labour Council. This will apply even where the trade union organizations gave their support only after the strike had started.
b. for workers recognized as unemployed under Article 73 of the Employment and Unemployment Regulations Royal Decree of 25 November 1991.

5 STRIKES AND SEVERANCE NOTICES

The period of notice given by the employer is suspended only in the statutory cases: *"The period of notice given by the employer ceases to run only in those cases where performance of the contract is interrupted referred to in Sections 28, 1°, 2° and 5°, 29 and 31 of the Contracts of Employment Act of 3 July 1978"* (Act of 3 July 1978, s. 38, paragraph 2, indent 2).

A strike is not a statutory cause of interruption (i.e., a cause provided for under the Act of 3 July 1978); it does not, therefore, stay the commencement date and/or continuance of severance notice given by the employer.

6 BREACH OF THE EMPLOYMENT CONTRACT

A strike never in and of itself terminates an employment contract. It simply interrupts it.

A worker cannot be dismissed for taking part in a strike (as strike leader or an "ordinary" striker), even where it is a wildcat strike. Dismissal on such grounds alone would be treated as unfair.

But a strike does not in and of itself confer impunity, and punishable acts committed during a strike or circumstances external to the strike action may result in a breach of the employment contract or constitute serious misconduct within the meaning of Section 35 of the Act of 3 July 1978 where the right to strike is exercised unreasonably or unlawfully.

Brigitte Dendooven and Cathérine Legardien,
Legal Counsel

SOCIAL NEWS

NON-RECURRING PERFORMANCE-RELATED BENEFITS (COLLECTIVE AGREEMENT NO. 90): 2015 INDEXED CAPS

The caps set by the NSSO (social security) and tax authorities on non-recurring company performance-related benefits will be indexed on 1 January 2015.

GENERAL RULE

The industry agreement for 2007-2008 between management and labour established a bonus system commonly known as "CTC 90" or "non-recurring performance-related benefits".

The system allows workers to be paid a social security- and tax-concessionary bonus under certain conditions.

SOCIAL SECURITY CAP

A bonus awarded under CTC 90 is not classed as pay liable to social security contributions if it does not exceed the social security limit set per worker per calendar year.

A 13.07% solidarity levy will, however, be deducted from the amount paid to the worker; while the employer will have to pay a special employer's levy of 33% on the bonus.

If the bonus actually awarded exceeds the limit, ordinary social security contributions will be due on the excess portion.

The social security cap in 2014 is € 3,131.
This limit is indexed annually. The amount as of **1 January 2015 will be €3,130** (subject to official confirmation) – i.e., €1 lower than the 2014 amount.

TAX CAP

The bonus awarded under CTC 90 is exempt from personal income tax up to an annual ceiling of €2,722 (2014 amount). If the tax cap is not exceeded, no PAYE will have to be deducted at source from the bonus awarded.

The annual limit is indexed annually: as of **1 January 2015 it will be €2722** (subject to official confirmation) – i.e., no change in 2015.

You can get bespoke support in introducing a bonus system and answers to legal queries from our legal department on legal@partena.be

Peggy Criel, Legal Counsel

SOCIAL NEWS

YOUNG WORKERS AND MINIMUM AVERAGE MONTHLY INCOME ON 01/01/2015

As from 1 January 2015, no more degressivity rates shall be applicable to the minimum average monthly income of young workers aged 18, 19 and 20 years.

Reminder: in the 1st quarter of 2013, the social partners agreed to phase out the reduced minimum wages for young workers **aged 18 to under 21 years** who work with an employment contract.

This phasing out has been enforced in 3 stages (see below) and has given rise to the conclusion of 3 interprofessional collective bargaining agreements (cba no. 43*duodecies*, 43*terdecies* and 50*bis*, all declared binding by Royal Decree of 10 October 2013 – Moniteur Belge 22.10.2013, 2nd Ed.).

AS FROM 1 APRIL 2013 (TRANSITIONAL PERIOD)

Since 1 April 2013, young workers aged 18, 19 and 20 years are entitled to a minimum average monthly income amounting to the percentages below. These percentages were applied to the income that was guaranteed to workers aged 21 years and over (€ 1,501.82 on 01.04.2013):

- aged 20 years: 96 % (on a fixed amount of € 1,501.82 on 01.04.2013);
- aged 19 years: 92 % (on a fixed amount of € 1,501.82 on 01.04.2013);
- aged 18 years: 88 % (on a fixed amount of € 1,501.82 on 01/04/2013).

Moreover, the above minimum wages have become a mandatory minimum income for all sectors. Consequently, these minimum wages could not be applied supplementary.

AS FROM 1 JANUARY 2014 (TRANSITIONAL PERIOD)

The percentage to be applied to the income that is guaranteed to workers aged 21 years and over has been further increased on 1 January 2014.

As from that date, workers aged 18, 19 and 20 years are entitled to a minimum average monthly income amounting to the percentages below.
These percentages had to be applied to the income that was guaranteed to workers aged 21 years and over (€ 1,501.82 since 01.04.2014):

- aged 20 years: 98 % (on a fixed amount of € 1,501.82 on 01/04/2014);
- aged 19 years: 96 % (on a fixed amount of € 1,501.82 on 01/04/2014);
- aged 18 years: 94 % (on a fixed amount of € 1,501.82 on 01/04/2014).

AS FROM 1 JANUARY 2015 (DEFINITIVE SYSTEM)

As from 1 January 2015, there will be no more degressivity rates for young workers aged 18, 19 and 20 years.

The minimum income for these young workers is henceforth established in accordance with the data in the table below, according to their length of service in the company.

However, for young workers aged 16 and 17 years, collective bargaining agreement no. 50 and a degressive rate will remain applicable. See the comments below the table.

Average minimum monthly income on 01.01.2015 for young workers	
Age of the young worker	**Average minimum monthly income on 1 January 2015**
aged 21 years and over	€ 1,559,38 (1)
aged 20 years	€ 1,559,38 (2)
aged 19 years	€ 1,541,67 (3)
aged 18 years	€ 1,501,82 (4)
aged 17 years	€ 1,141.38 (= 76 % of € 1,501.82) (5)
aged 16 years and under	€ 1,051.27 (= 70 % of € 1,501.82) (5)

(1) As from 1 January 2015, the length of service condition is no longer required for workers aged 21 years and over.
(2) However, for the granting of this amount, the young worker must have a length of service of 12 months in the company.
(3) However, for the granting of this amount, the young worker must have a length of service of 6 months in the company.
(4) This is the amount of the minimum average monthly income on 31.12.2014 as granted to a worker aged 21 years or over with less than 6 months length of service.
(5) Degressive rate applied to the minimum average monthly income granted as from 1 January 2015 to a young worker aged 18 years.

REMARKS

- Young workers aged 17 years and under who work with an employment contract shall remain liable to the supplementary application of the collective bargaining agreement no. 50, i.e. a percentage of the guaranteed income as defined in the collective bargaining agreement no. 43 (amounting to 76 % for a young worker aged 17 years and 70 % for a worker aged 16 years and under).
- Young workers aged under 21 years who are bound by an employment contract for students and young workers under 21 years who are involved in work-lined training (e.g. apprenticeship contract, 'convention d'insertion socioprofessionnelle', vocational immersion contract, 'contrat d'alternance'), shall remain liable to the supplementary system of the collective bargaining agreement no. 50 (see above).
- Reminder, the guaranteed minimum income provided by the collective bargaining agreement no. 50 does not apply to young workers who are employed in a family business or who are usually employed for periods of less than one calendar month (e.g. seasonal workers, students).

Francis Verbrugge, Senior Legal Counsel

SOCIAL NEWS

THE END OF THE YEAR, A TIME OF GOOD CHEER!

Next to granting gifts or gift vouchers, a lot of companies traditionally arrange Christmas or New Year festivities for their staff. A drinks reception may be held at the office or a dinner party may take place at a restaurant.

Below, we focus on the social and tax aspects of the benefits that workers enjoy as a result of these annual celebrations.

SOCIAL ASPECT

The social contributions are calculated on the basis of the worker's wages. The legal concept 'wages' includes:

- the wages in cash the worker is entitled to from his/her employer in respect of his/her employment;
- the benefits assessed in cash the worker is entitled to from his/her employer in respect of his/her employment.

The concept 'wages' applies if the following conditions are satisfied:

- the benefit must be assessed in cash;
- the worker must be entitled to the payment of the benefit;
- the payment must be borne by the employer;
- the payment must be granted as a result of the employment.

Taking the foregoing into account, non-individualized benefits are not considered as wages to the extent they cannot be assessed in cash for each individual worker. This category mainly comprises the benefits that are granted under a collective mechanism that does not allow to determine the benefit that each worker receives.

In this case, an office drinks reception organized by the employer or a dinner party at a restaurant as part of the seasonal festivities can be considered as benefits granted on a collective basis, for which the benefit each worker individually receives cannot be determined. Because the benefits cannot be individualized, they cannot be assessed in cash for the worker. As a consequence, such benefits do not fall within the concept of 'wages' as regards social security and therefore they are not subject to social security contributions.

TAX ASPECT FOR THE WORKER

As an example of a collective social benefit that is exempt for workers, the administrative commentary on the WIB (Income Tax Code) in particular mentions attendance at Christmas and New Year's parties for staff.

As a consequence, the workers' attendance at the office drinks reception or the dinner party at a restaurant offered by the employer as part of the seasonal festivities are in principle exempt social benefits. As such, they are exempt from tax (and therefore they are not subject to withholding tax) on the part of the worker.

Patricia Weber and Isabelle Caluwaerts,
Legal Counsel

SOCIAL NEWS

COMPANY VEHICLES: INDEXED RISE IN CO_2 EMISSION LEVY ON 1 JANUARY 2015

The formula for calculating the employer's solidarity levy on company vehicles will be adjusted with effect from 1 January 2015.

An employer's solidarity levy on company vehicles based on their CO_2 emission rate was introduced on 1 January 2005. The levy is calculated monthly and paid quarterly to the social security office NSSO within the same times as employee social security contributions.

Specifically, the levy is calculated on the vehicle's CO_2 emission rate plus a fixed amount related to the type of fuel, which is indexed on 1 January each year. From 1 January 2015, the formula for calculating the employer's solidarity levy on company vehicles will be as written below.

The index coefficient will rise on 1 January 2015 from 1.2048 to 1.2051 compared to 2014.

Also from 1 January 2015, the amount of the CO_2 levy can never be less than €25.10 for vehicles other than electric vehicles.

Fuel type	Basic formula	Index coefficient
Petrol	{[(CO_2 emission rate x € 9) – 768] / 12} x	1.2051
Diesel	{[(CO_2 emission rate x € 9) – 600] / 12} x	1.2051
LPG	{[(CO_2 emission rate x € 9) – 990] / 12} x	1.2051
Electric	€ 20,83 x	1.2051

EXAMPLE

A worker uses a SKODA SUPERB, 1.6 CRDTI Classic company car for private use. The car runs on diesel. The emission rate for this category of vehicle is 130 g/km. The 2015 CO_2 levy will be €57.24 per month (= (((130 x 9) - 600) / 12) x 1.2051) or €171.72 per quarter.

Anne Ghysels, Legal Counsel

WAGE ADJUSTMENTS

WAGE ADJUSTMENTS IN DECEMBER 2014

Index figures for November 2014

Consumer price index 2013: ▸ 100.09 (- 0.13)
Health index 2013: ▸ 100.28 (+ 0.00)
Averaged quarterly health index: ▸ 100.19 (- 0.04)

Collectively-negotiated indexations and increases: selected forecasts

Joint Bargaining Committee (CP) 218: ▸ approx. +0.05% indexation in January 2015
Average monthly minimum wage/Welfare benefits: ▸ +2% in June 2015

Wage indexations and adjustments in December 2014	
100	**Auxiliary joint bargaining committee for manual workers:** +2.5% collectively-negotiated only on wages actually paid, only in companies with no wage indexation arrangements and for manual workers paid more than the minimum hourly wage. Net of actual pay rises and/or other new or increased company-awarded fringe benefits in 2013-2014 apart from bonuses granted under Collective Agreement No. 90.
102.1	**Belgian blue and white limestone quarries in the province of Hainaut:** Award of a €35 gift voucher (Saint Nicolas).
102.4	**Sandstone and quartzite quarries throughout Belgium apart from quartzite quarries in the province of Walloon Brabant:** Firms in the Province of Liège: award of a €17.35 St. Barbara's Day bonus (4 December). Other firms: Award of a €24.79 gift voucher (Saint-Nicolas).
102.6	**Open-cast gravel and sand pits in the provinces of Antwerp, West Flanders, East Flanders, Limburg and Flemish Brabant:** wet sand MHL operators, MHL machine operators, MHL weighbridge operators and Dessel crane operators: Award of a gross fixed annual bonus of €250 (replacing the dust bonus).
102.9	**Uncut limestone quarries and lime kiln works, dolomite quarries and dolomite kiln works throughout Belgium:** Award of a €24.79 gift voucher to all workers on the company's books on St. Barbara's Day (4 December).
106.1	**Cement works:** -0.04% index adjustment on minimum wages only.
112	**Garage businesses:** Award of eco vouchers to a value of €125 by 15.12.2014 at the latest, unless other arrangements made in works collective agreement. Qualifying period from 01.06.2014 to 30.11.2014. Prorated for part-timers.
115.3	**Glazing/stained glass:** Award of a €35 annual gross bonus in a group insurance scheme (otherwise as eco vouchers). Qualifying period from 01.12.2013 to 30.11.2014.
117	**Oil industry and retail trade:** -0.04% index adjustment on minimum wages only.
119	**Food retail trade:** Recurring annual bonus of €112.20.
120.3	**Manufacture and sale of jute or substitute material bags:** Award of a €30 gift voucher for workers in service on 30.11.2014.
132	**Agricultural and horticultural engineering work contractors:** Award of a maximum net bonus of €250 in the form of eco vouchers, luncheon vouchers or increased amount of existing luncheon vouchers, gift vouchers or a combination of any of the foregoing. Qualifying period from 01.12.2013 to 30.11.2014. Prorated for part-timers.
140.1	**Buses and coaches:** Garage staff (buses and coaches): Award of eco vouchers to a value of €125. Qualifying period from 01.06.2014 to 30.11.2014. Prorated for part-timers.

Wage indexations and adjustments in December 2014	
140.2	**Taxi firms (garage staff):** Award of a €35 gift voucher for manual workers working full-time or more than half-time and a €17.50 voucher for part-time manual workers working half-time or less who have 2 years' length of service in the firm at 01.12.2014 and have at worked least 1 day in 2014. Taxi firms (on-board personnel) Award of a €35 gift voucher for manual workers working full-time or more than half-time and a €17.50 voucher for part-time manual workers working half-time or less who have 2 years' length of service in the firm at 01.12.2014 and have at worked least 1 day in 2014. Car hire with driver (on-board personnel): Award of a €35 gift voucher for manual workers working full-time or more than half-time and a €17.50 voucher for part-time manual workers working half-time or less who have 2 years' length of service in the firm at 01.12.2014 and have at worked least 1 day in 2014.
140.3	**Road transport and contract haulage:** Garage staff: award of luncheon vouchers or award of eco vouchers to a value of €250 to full-time manual workers. Qualifying period from 01.01.2014 to 31.12.2014. Prorated for part-timers.
140.4	**Airport ground handling staff:** Award of eco vouchers or a gift voucher for an amount of €35.
142.1	**Metal recovery:** Award of eco vouchers to a value of €125 unless other arrangements made in works collective agreement. Qualifying period from 01.06.2014 to 30.11.2014. Prorated for part-timers.
144	**Agriculture:** Award of eco vouchers to a value of €250 by the Social Fund, unless other arrangements made in works collective agreement notified to the Social Fund before 15.10.2014 (if eco vouchers commuted in 2014). Qualifying period from 01.07.2013 to 30.06.2014. Prorated for part-timers. Not applicable to seasonal and casual workers.
145.1 to 5 except 4	**Horticultural enterprises:** Award of eco vouchers to a value of €250 by the Social Fund, unless other arrangements made in works collective agreement notified to the Social Fund before 15.10.2014 (if eco vouchers commuted in 2014). Qualifying period from 01.07.2013 to 30.06.2014. Prorated for part-timers. Not applicable to seasonal and casual workers.
145.4	**Planting and upkeep of parks and gardens:** Award of eco vouchers to a value of €250 by the Social Fund, unless other arrangements made in works collective agreement concluded before 15.10.2014. Qualifying period from 01.07.2013 to 30.06.2014. Prorated for part-timers. Not applicable to seasonal and casual workers.
149.2	**Vehicle bodywork:** Award of eco vouchers to a value of €125 by 15.12.2014 at the latest, unless other arrangements made in works collective agreement concluded before 30.09.2011 (extended in the same conditions if need be). Qualifying period from 01.06.2014 to 30.11.2014. Prorated for part-timers.
149.4	**Metal trade:** Award of eco vouchers to a value of €125 by 15.12.2014 at the latest, unless other arrangements made in works collective agreement. Qualifying period from 01.06.2014 to 30.11.2014. Prorated for part-timers.
202 A/B	**Non-manual employees in the retail food trade:** recurring annual bonus of €148.74.
203	**Non-manual employees in Belgian blue limestone quarries:** Award of a gift voucher with a value of €24.79 (Saint-Nicolas), increased by €12.39 per dependent child.
226	**Non-manual employees in the international transport and distribution trade:** Award of eco vouchers to a value of €250 unless other arrangements made in works collective agreement concluded before 15.12.2013. Qualifying period from 01.01.2013 to 31.12.2013
302	**Hospitality industry:** Eighth and final phase of the operation to bring minimum wages up to the levels of allied industries. Award of eco vouchers to a value of €250, unless other arrangements made in works collective agreement concluded before 31.12.2013. Qualifying period from 01.12.2013 to 30.11.2014. Prorated for part-time and casual workers. Not applicable to students liable to "reduced" social security contributions.
303.3	**Cinema operation:** Gross bonus of €194.84 (+ eco vouchers to a value of €37.88), unless company provides equivalent employee benefit. Prorated for part-timers. Manual workers: Award of annual seniority bonus.
306	**Insurance companies:** Recurring annual bonus of €150 to supplement the year-end bonus unless equivalent employee benefit awarded. Only for employees in positions listed in the job classification. Prorated for part-timers.
308	**Mortgage, savings and pension funding companies:** Award of eco vouchers to a value of €180 unless other arrangements made in works collective agreement concluded before 15.12.2014. Qualifying period from 01.12.2013 to 30.11.2014. Prorated for part-timers. Recurring benefits introduced during the period 01.01.2011 to 06.07.2011 can be set off.

Wage indexations and adjustments in December 2014	
310	**Banks:** Recurring bonus of €148.74 in all banks (small and large) for full-time workers who meet all the following three conditions: be employed when the bonus is paid, have actually performed work activities during the year, and be on a permanent or at least 1 year fixed-term employment contract – Prorated for part-timers.
317	**Security guard and/or watchkeeping services:** Exceptional bonus of €157.02 for non-manual employees.
319	**Support and intake services and facilities for certain vulnerable groups:** Adjusted amount of the fixed 2014 year-end bonus: € 362.17.
319.1	**Support and intake services and facilities for certain vulnerable groups run by the Flemish Community:** Adjusted amount of the fixed 2014 year-end bonus: €128.56.
319.2	**Support and intake services and facilities for certain vulnerable groups run by the French Community, the Walloon Region and the German-speaking Community:** Adjusted amount of the fixed 2014 year-end bonus: €365.93 (Walloon Region: €467.16 / Cocof: €576.33).
324	**Diamond industry and trade:** Award of a €35 gift voucher paid by the National Holiday Fund for the Diamond Industry.
326	**Gas and electricity industry:** -0.04% index adjustment on minimum wages only.
327.1	**Adapted work enterprises subsidised by the Flemish Community or the Flemish Community Commission and social workshops approved and/or subsidised by the Flemish Community:** Support staff: adjusted amount of the fixed 2014 year-end bonus (€125.92).
327.3	**Adapted work enterprises in the Walloon Region and the German-speaking Community:** Walloon Region: adjusted amount of the fixed 2014 year-end bonus (€100.19).
329.1	**Sociocultural sector of the Flemish Community:** If provided for by the sector regulation (community work, community development and integration centres): adjusted amount of the fixed 2014 year-end bonus (€128.56). Dutch-speaking social and employment integration organisations in the Brussels-Capital Region: adjusted amount of the fixed 2014 year-end bonus (€332.19). Basic education: adjusted amount of the fixed 2014 year-end bonus (€750.12).
329.2	**Sociocultural sector of the French and German-speaking Communities of the Walloon Region:** Adjusted amount of the fixed 2014 year-end bonus (€366.30 for Brussels social and employment integration organizations recognized by Cocof / €368.76 + €101.14 supplement for AWIPH-approved vocational training and/or rehabilitation centres). For production workshops, libraries, cultural centres, youth centres, continuing education centres, sports federations, media libraries, youth organizations and local television stations (French Community), the amount is €362.17 but only in cases where the award of the year-end bonus has become a customary entitlement (being awarded for one year is not enough to turn it into a vested right). Training-through-work enterprises, social and employment integration organizations, regional integration centres for groups of foreign origin and Regional Employment Task Forces: an amount of €100.17 as a 2014 year-end bonus.
330	**Health care facilities and services:** Adjusted amount of the fixed 2014 year-end bonus (€332.19) if awarded under a collective agreement. Adjusted amount of the fixed 2014 year-end bonus (€493.59 for joint (language) community undertakings). Private hospitals, home nursing care, old people's homes, nursing and care homes, psychiatric nursing homes, sheltered housing schemes, day care centres, rehabilitation centres, integrated home care services, Belgian Red Cross blood donation service, paediatric medical centres and health centres: the amount of the 2014 employment incentive bonus is €614.47 or €626.77.
331	**Flemish social assistance and health care sector:** Adjusted amount of the fixed 2014 year-end bonus (€128.56) if awarded under a collective agreement. Amount does not apply to workers financed solely from the community services and amenities fund (FESC).

Wage indexations and adjustments in December 2014	
332	**French and German-speaking social assistance and health care sector:** Agencies falling under the collective agreement of 21.06.2011 in the Walloon Region: an amount of €99.71 as a 2014 year-end bonus. Coordination centres for home care and service provision (falling under the collective agreement of 18.04.2012): adjusted amount of the fixed 2014 year-end bonus (€431.90). Emotional support helpline centres (falling under the collective agreement of 09.05.2012): adjusted amount of the fixed 2014 year-end bonus (€461.86). Schools Health Promotion Service: adjusted amount of the fixed 2014 year-end bonus (€362.0936). Adjusted amount of the fixed 2014 year-end bonus (€362.17 according to the French Community). Cocof: adjusted amount of the fixed 2014 year-end bonus (€523.55).
336	**Professions:** +2.5% collectively-negotiated on salaries actually paid only (maximum €65) only in firms with no wage indexation arrangements and for workers paid more than the minimum monthly wage. Net of real salary increases and/or other firm-specific fringe benefits awarded in 2013-2014, apart from bonuses granted under Collective Agreement No. 90 and increases applied to effect automatic annual seniority/ experience-related increments resulting from a salary scale already applicable in the firm. Applied in the month after that in which workers with less than 12 months' service with the firm on 01.12.2014 complete 12 months' service.

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

Olivier Henry, Legal Counsel

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Responsible editor: Alexandre Cleven. Editor in chief: Francis Verbrugge, fverbrugge@partena.be, tel. 02-549 32 23.
Contributors: Isabelle Caluwaerts, Peggy Criel, Brigitte Dendooven, Olivier Henry, Catherine Legardien, Philippe Van den Abbeele, An Van Dessel, Patricia Weber.

Subscriptions: Anne-Marie Delain, adelain@partena.be, tel. 02-549 32 57 - annual subscription: € 80, price per issue: € 10 (VAT extra).

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