



MEMENTO

OF THE EMPLOYER 03



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PARENTAL LEAVE: UNDER WHICH RULES?

A growing number of workers are opting to take parental leave. This is governed by two separate legal instruments, namely:

- the Royal Decree (regulations) of 29 October 1997 introducing a career break parental leave entitlement;
- Collective Agreement No. 64 of 29 April 1997 establishing a parental leave entitlement.

The National Labour Council recently concluded Collective Agreement No. 64bis of 24 February 2015 bringing Collective Agreement

No. 64 into compliance with European Directive 2010/18/EU of the Council of 8 March 2010.

This is a good moment for a comparative look at the two sets of regulations which are looking increasingly similar but yet still differ in significant respects.

This comparison will help towards identifying the best set of rules on which to base an application to an employer for leave in a specific set of circumstances.

01

WHO CAN CLAIM LEAVE?

1 UNDER THE ROYAL DECREE

The Royal Decree of 29 October 1997 applies to workers and employers who fall within the Collective Agreements and Joint Bargaining Committees Act of 5 December 1968.

This covers private sector employees (e.g., non-manual and manual employees, etc.) and workers performing work under the direction of another person other than under an employment contract.

The leave entitlement is exercisable by all employees whatever their type of employment contract (fixed-term or permanent) or working time arrangements (full-time or part-time), but there are length of employment requirements to meet (see below).

The Royal Decree was also expressly made applicable to tenured and contract staff of provincial, municipal and metropolitan area authorities, those of local authority associations and those of statutory agencies and public organizations operating under the foregoing authorities.

**! NB**

While the Royal Decree does not strictly cover public sector staff (contract and tenured), they are generally granted parental leave entitlement under specific regulations.

qualify for the entitlement; apprentices (working for self-employed traders; industrial apprentices), for example, cannot claim the leave entitlement under Collective Agreement No. 64...!

Collective Agreement No. 64 also makes the leave entitlement personal, meaning that it cannot be transferred to another person (e.g., grandparent, uncle, aunt, brother or sister).

2 UNDER COLLECTIVE AGREEMENT NO. 64

All employees (men and women) whatever their working time arrangements (full-time or part-time) have a parental leave entitlement. Persons performing work under the direction of another person other than under an employment contract, however, do not

Note also that parental leave can now be granted to a same-sex couple where both parents are adopting. Also, since 1 January 2015, the co-mother (or co-parent) whose parentage in relation to the biological mother's child is established can also claim this entitlement (likewise where the Royal Decree applies).

02**PURPOSE AND TIMING OF LEAVE****1 UNDER THE ROYAL DECREE**

Workers are entitled to parental leave to look after their child's welfare in two specific cases:

- for a child born to them: the leave must be taken in the period between the child's birth and its **12th birthday**;
- for a child adopted by them: the leave must be taken in the period starting on the date when the child is registered as a member of the family either on the population register or register of foreign nationals for the borough in which the worker lives and ending not later than the child's **12th birthday**.

The age limit is set at **21 years**, however, for a disabled child with at least a 66% physical or mental impairment or a medical condition qualifying for at least 4 points in Pillar I of the medical and social services scale within the meaning of the child benefit regulations.

Two things to bear in mind regarding the age requirement:

- The 12th (or 21st) birthday requirement must be met at the latest during the parental leave

period. This means that the parental leave must start before this birthday but can continue after it for the length of the period specified in the request to the employer.

Also, if the leave is not all taken in one go (see "Forms and duration of leave"), the age requirement (under 12 or under 21) must be met during the first part of the leave – i.e., the first fraction of split leave – but it is enough that it does so (C. Trav. Brussels, 23 April 2014, Docket No. 2012/AB/920).

💡 EXAMPLES

01 – A woman worker wants to attend to the upbringing of a child aged 11 years and 9 months. She can claim parental leave even if she takes it as a reduction from full-time hours to half-time and the leave continues after the child's 12th birthday.

02 – Parental leave is taken after an adoption. The child is registered as a member of the family at the age of 5. In this case, the leave can be taken in the period between the date of registration in the population register and the date of its 12th birthday.

- The 12th (or 21st) birthday cut-off date can be overshoot, however, where leave is postponed at



the employer's request and provided the worker has put in a regulation written request (see below).

EXAMPLE

A worker applies in August for parental leave for a child aged 11 years 8 months; the normal start date would be 10 November. The employer exercises his right to delay it for 5 months citing special operational exigencies (see below); the postponement means that the child will be older than 12 on the start date but that will not invalidate the parental leave entitlement.

NB

There is a separate leave entitlement for **each child** who meets the age requirement. Also, each of the two spouses has their own separate entitlement provided they meet the requirements (see below).

EXAMPLE

A couple has 2 children aged 1 and 3 years, respectively. A leave entitlement arises in respect of each child and can be taken by both the mother and the father at the same or different times.

2 UNDER COLLECTIVE AGREEMENT NO. 64

The purpose of this collective agreement is similar to that of the Royal Decree; creating a parental leave entitlement for workers due to the birth or adoption of a child.

There is one major difference, however, in respect of the age requirement that must be met during the parental leave period.

Leave will be granted:

- for a child born to them, up to the child's **8th birthday**; note that this age requirement (although raised by Collective Agreement No. 64bis from 4 to 8 years from 24 February 2015) is still lower than that provided by the Royal Decree ...!);
- for a child adopted by them, with effect from the date when the child is registered as a member of the family either on the population register or register of foreign nationals for the borough in which the worker lives and ending not later than the child's **8th birthday**. The child's 8th birthday requirement must be met at the latest during the parental leave period, but this date can be overshoot for leave deferred at the employer's request (see below).

03

CONDITIONS TO BE MET BY THE WORKER

Both the Royal Decree and Collective Agreement No. 64 lay down two essential conditions that must be met by workers wanting to take parental leave. They are identical in both cases. The worker must:

- 1) have been employed under a contract of employment by the employer for **at least 12 months** (unbroken or otherwise) in the 15 months immediately preceding the date on which the written request for parental leave is notified to the employer. Note that the National Employment Office allows no exceptions to the length of employment

requirement, even where agreed by employer and worker.

What is meant by "12 months' employment" is not defined, so the assumption is that all actual work performance and contract breaks under the provisions of law or collective agreements will be taken into consideration when determining if the length of employment requirement is met;

- 2) supply not later than the start date of parental leave **the document(s) certifying the child's birth or adoption** (see below).



04

FORMS AND DURATION OF LEAVE

1 UNDER THE ROYAL DECREE

Parental leave can be taken in three different ways, with a different maximum time for each. The three ways that leave can be taken are:

➔ Full contract break

The worker may take **up to 4 months** off work for each child.

It need not be an unbroken period of 4 months' leave; it can be split into monthly blocks either at the worker's request or if it is postponed by the employer for justifiable reasons related to the operation of the business.

➔ Reducing working hours to half-time

Parental leave can also be taken as a reduction in working hours to half-time **for a period of up to 8 months**, but only by full-time workers.

So, part-time workers however long their working hours (3/4, 4/5^{ths}, etc.) cannot choose the half-time working option.

Belgium's Constitutional Court, however, has ruled that the situation of an employee working full-time by combining two half-time jobs with two separate employers was comparable to that of a worker employed full-time with one employer, making differential treatment unlawful.

The Court therefore saw no reason why the worker and each half-time employer should not agree to two sets of 4 months' parental leave so as to make up the 8 month entitlement.

Where there are multiple births (e.g., twins, triplets), the 8 months' leave can be repeated for each child (e.g., 16 months in all for twins, 24 months for triplets).

Note also that the leave does not necessarily have to be taken in an unbroken stretch of 8 months; the worker can choose to split the maximum of 8 months' leave into periods of 2 months or a multiple thereof.

The leave may also be split if it is postponed by the employer for justifiable reasons related to the operation of the business (see below).

➔ Reducing working hours by 1/5th

This 3rd form of leave is also restricted to full-time employees only: they can reduce their working hours by 1/5th per child for **up to 20 months**.

This type of leave can also be split, but only into periods of 5 months or a multiple thereof (10, 15 or 20 months).

! NOTE

Full-time employees can combine the different forms of parental leave, either alternating or following on: full contract break, cutting working hours to half-time or working 4/5^{ths} time.

When switching between forms of leave, the general rule is that 1 month's full contract break is equivalent to 2 months' reduction to half-time working and 5 months' reduction to 4/5^{ths} working hours.

Also, when switching between forms of leave the minimum periods into which the form chosen can be split must be kept to (see above).

EXAMPLE – A worker wants to take 1 month's parental leave as a full contract break. For the same child, the worker can subsequently extend the leave as a reduction to 4/5^{ths} time for 5 months. After this 2nd period, the worker can use up their remaining parental leave entitlement either as a further reduction to 4/5^{ths} time for 10 months, reduce their working hours to half-time for 4 months, or again opt for a total contract break of 2 months.



2 UNDER COLLECTIVE AGREEMENT NO. 64

The general rule is that parental leave granted under Collective Agreement No. 64 must be taken as a **full break** in the employment contract for a **period (since 24 February 2015) of 4 months maximum** (previously 3 months).

If the parties agree, the 4 months' leave entitlement can be split, i.e., need not be taken all at once: it can be taken as several short periods of full contract break (e.g., periods of 1 week, a fortnight, 1 month), until the 4 months' "credit" period is all used up.

The parties can also agree that the parental leave of up to 4 months (as a full break) can be taken as a reduction in working hours. For this, Collective Agreement No. 64 cites 8 months working half-time by way of example.

Other forms of working hours reduction may also be considered, such as an agreed reduction of full-time working hours by 1/4th (for 16 months), by 1/5th (for 20 months), etc.

The parties may also agree that these reduced working hours periods shall be split into multiple shorter periods of a few weeks (or months) until the full authorized period for reduced hours working (8 months, 12 months, 16 months, 20 months, etc.) is completely used up.

If there is no agreement between employer and employee on the arrangements for exercising the leave entitlement (which has to be reached within a month of the written notice given by the worker), the worker will have to take the leave as a full contract break for up to 4 months starting on the date specified in the written notice!

05

NOTICE TO THE EMPLOYER, LEAVE START DATE AND POSSIBLE DELAY

A worker who wants to take parental leave must obviously give their employer notice, i.e., put in a written request.

This has to be done no later than 2 and no earlier than 3 months in advance; Collective Agreement No. 64 simply refers to a period of 3 months in advance.

The parties can agree on a shorter notice period.

Notice must be given by registered post or handing over a written notice with a duplicate that must be signed for receipt by the employer. The worker's notice must specify their preferred arrangements (full break or reduced working hours) and the start and end dates of the leave.

If the leave is to be split, the worker must (it is important to point this out) put in a separate request for each period of leave.

The worker also has to produce the document(s) certifying the birth or adoption of the child no later than the start date of parental leave.

➔ Can parental leave be delayed?

The short answer is - yes.

Within the month after receiving the notice, **the employer may postpone the parental leave in writing** (by days, weeks, or months) for "justifiable reasons related to the operation of the business"; however, the parental leave must start **no later than 6 months** after the date of the justifiable postponement.

There is a similar provision in Collective Agreement No. 64 which, however, specifies that "justifiable reasons related to the operation of the business" are where:

- the work is seasonal;
- no replacement can be found within the notice period;
- a significant proportion of the employees are applying for parental leave at the same time;
- the specific job is of strategic importance.



Collective Agreement No. 64 also provides that in addition to a postponement at the employer's behest, the social partners can authorize special arrangements to meet the organizational needs of SMEs (fewer than 50 employees).

That being said, parental leave is an entitlement that

can be exercised and must start **at the latest 6 months** after the month in which it was postponed with reasons (Collective Agreement No. 64, article 12), unless the employer and employee agree other arrangements such as extending the postponement period (e.g., postponement for 9 months); such an extension seems not to be allowed under the Royal Decree.

06

PAYMENT OF A CONTRACT BREAK ALLOWANCE

1 UNDER THE ROYAL DECREE

A worker who takes parental leave as a contract break (i.e., under the Royal Decree of 29 October 1997) can claim a monthly career break allowance payable by the NEO.

It is paid as a lump sum, the amounts of which differ with the worker's age and whether they have taken time out from work or simply reduced their working hours.

The table below shows the amounts in force since 1 December 2012 (last index adjustment).

! NB

Contract break allowances will be paid for the 4th month full contract break (7th and 8th month half-time or 16th to 20th months of 4/5^{ths} working hours) only if the child for whom the leave is taken was either born or adopted on or after 8 March 2012.

2 UNDER COLLECTIVE AGREEMENT NO. 64

Unlike contract break leave, parental leave taken under Collective agreement No. 64 carries no entitlement to **any form of replacement income** (such as a contract break allowance) **or payment of wages/salary** unless otherwise agreed by the employer and employee, in which case it will be for them to fix how much will be paid and for how long.

In other words, the parental leave provided for by Collective Agreement No. 64 is unpaid leave or leave for "overriding family reasons", but spread over a longer period.

The unpaid nature of this scheme is one of the most striking differences from the parental leave established by the Royal Decree of 29 October 1997.



Type of contract break	Monthly allowance (since 01.12.2012)	
	Workers under 50	Workers 50 and over
Full contract break	€ 786.78 ^{(1) (2)}	€ 786.78 ^{(1) (2)}
Reduced working hours		
• 1/5 th s time	€ 133.45 ⁽³⁾	€ 266.91 ⁽³⁾
• 1/5 th s time - lone parent worker ⁽⁴⁾	€ 179.47 ⁽³⁾	€ 266.91 ⁽³⁾
• Half-time	€ 393.38 ⁽³⁾	€ 667.27 ⁽³⁾
• Part-time worker (working 3/4 of full time) reducing working hours to half-time	€ 393.38 ⁽³⁾ proratable	€ 667.27 ⁽³⁾ proratable

(1) Proratable for part-time workers.

(2) Before deduction of 10.13% PAYE income tax (no reduction for dependents).

(3) Before deduction of 17.15% PAYE income tax (no reduction for dependents).

(4) «Lone parent worker» means a worker living alone with one or more dependent children.

07

ADAPTED WORKING ARRANGEMENTS OR HOURS AFTER PARENTAL LEAVE

Workers who have taken parental leave may be able to adapt their working arrangements or hours **for up to 6 months** after the end date of parental leave (e.g. ., returning to work part-time).

For this, the worker must make a written request to the employer at least three weeks before the parental leave end date giving reasons connected with achieving a better work/family life balance.

The employer must reply in writing to this request no later than one week before the end date of the leave stating how he has taken his own needs and those of the worker into account.

He could, therefore, for instance, refuse an adaptation on work organization grounds (subject to proving the actual existence and importance of the organizational problems!).

The same provisions now also apply to parental leave taken under Collective Agreement No. 64 since 24 February 2015.

Note, however, that unlike the Royal Decree, Collective Agreement No. 64 expressly gives workers returning from parental leave the right to be reinstated in their job or if that is not possible, an equivalent or similar job consistent with their contract!



08

PROTECTION AGAINST DISMISSAL

Workers on parental leave (either under the Royal Decree of 29 October 1997 or Collective Agreement No. 64) enjoy special protection against dismissal.

1 WHAT KIND OF PROTECTION?

During what is known as the protected period (see below), the employer cannot unilaterally terminate the employment relationship except where there is **urgent cause** or **sufficient grounds** for doing so - which may be left to the discretion of the employment courts and tribunals - whose nature and origin are unconnected with an application for and/or exercise of parental leave.

"Sufficient grounds" may be economic or technical (e.g., restructuring, significant loss of customers, decreased turnover), but may also be attributable to the worker's conduct (e.g., insubordination, unjustified absences, professional misconduct, etc.).

2 PROTECTED PERIOD

The protection period starts **on the date of the worker's request** (and under Collective Agreement No. 64 no earlier than 3 months before the leave start date) and ends **3 months (2 months** for parental leave under Collective Agreement No. 64) after the end of the full contract break or reduced working hours period.

Collective Agreement No. 64 further specifies that:

- the worker remains protected against dismissal during any period in which parental leave is postponed by the employer;
- where leave is split (see above), the prohibition on dismissal ends no later than at the end of 9 months from the normal start date of leave, i.e., the date which would have been the start date had it not been postponed.

3 PENALTIES

If the employer terminates the worker's employment summarily or with notice during the protected period without being able to prove an urgent cause or sufficient grounds that would have been recognized as such by an employment court or tribunal, he will be liable to pay fixed compensation equal to **6 months' pay** without prejudice to any compensation payable for breach of the employment contract, even if the notice given has been worked out.

Such compensation can nevertheless not be combined with:

- compensation for manifestly wrongful dismissal;
- compensation for dismissal of a worker who is pregnant or on maternity leave; or
- compensation for dismissal of a protected worker who is a member of a works council, health and safety committee, or union delegation.

4 SPECIFIC CALCULATION OF SEVERANCE PAYMENT IN PARENTAL LEAVE CASES

Where the contract is terminated with a severance payment during a period of parental leave working reduced hours, the severance pay must be calculated on the basis of the pay to which the worker would have been entitled had he not been working shorter hours, i.e., on his full-time pay.

! NB

Any protection compensation payable must be calculated on the same basis as ordinary severance pay, i.e., the pay entitlement before the reduced hours parental leave was taken.



09

WHICH LEGAL BASIS IS BEST?

A parental leave entitlement has existed under two legal instruments since 1 January 1998.

Although the two schemes show increasing similarities, they are not (yet!) completely identical; differences remain, although they are increasingly less distinct as time goes by as a result of adaptations made both to the Royal Decree and Collective Agreement No. 64.

The worker can choose between the two schemes, but it is important to note that they are mutually exclusive, i.e., they cannot be combined; a worker who takes parental leave under Collective Agreement No. 64 cannot later claim parental leave for the same child under the Royal Decree, and vice versa. Any parental leave taken under Collective Agreement No. 64 will be deducted from any leave entitlement under the 1997 Royal Decree and vice versa...

So, as to which legal basis a worker should choose, the answer is that, generally, they should opt for

the scheme introduced by the Royal Decree, which incorporates parental leave into the career break system, entitling them to a replacement income in the form of a contract break allowance.

It is also important to note that parental leave taken under the Royal Decree for the birth or adoption of a child can be taken up to the child's 12th (or 21st) birthday... whereas under Collective Agreement No. 64, the age limit is 8 years (since 24 February 2015) ...

While parental leave under Collective Agreement No. 64 is a less attractive prospect, it may be of interest to part-time workers wanting - with their employer's consent - to work shorter hours without a complete contract break (e.g., a 3/4th time worker wanting to go half-time), as well as full-time employees wanting to take leave in other forms than those provided by the Royal Decree, like working 1/4 time or 1/3 time (rather than the Royal Decree forms limited to half-time or going 4/5th time) ...!

Summary table – Parental leave under the Royal Decree and Collective Agreement No. 64

Implementing rules	Parental leave under the Royal Decree of 29 October 1997	Parental leave under Collective Agreement No. 64 of 29 April 1997
Eligibility	Private sector employees (and equivalent situations) and tenured and contract staff of provincial, municipal and metropolitan area authorities (plus those of local authority associations and statutory agencies and public organizations operating under such authorities).	Private sector employees under a contract of employment. NB – Also available to same-sex couples where both parents are adopting (and co-mothers whose parentage with regard to the biological mother's child is established).
Child's upper age limit	Granted in respect of the birth or adoption of a child up to its 12th birthday (21st birthday for a physically or mentally disabled child). NB – The 12 or 21 age limit can be overshot if leave is delayed at the employer's request.	Granted in respect of the birth or adoption of a child up to its 8th birthday (previously and up to 23 February 2015 – 4 th birthday). NB – The 8 age limit can be overshot if leave is delayed at the employer's request.





Summary table – Parental leave under the Royal Decree and Collective Agreement No. 64		
Implementing rules	Parental leave under the Royal Decree of 29 October 1997	Parental leave under Collective Agreement No. 64 of 29 April 1997
Conditions to be met by claimants	<ul style="list-style-type: none"> • have been employed under a contract of employment by the employer for at least 12 months (unbroken or otherwise) in the 15 months immediately preceding the date on which the written request for parental leave is notified; • supply not later than the start date of parental leave the document(s) certifying the child's birth or adoption. 	<ul style="list-style-type: none"> • have been employed under a contract of employment by the employer for at least 12 months (unbroken or otherwise) in the 15 months immediately preceding the date on which the written request for parental leave is notified; • supply not later than the start date of parental leave the document(s) certifying the child's birth or adoption.
Forms and duration of leave	<p>The only ways that leave can be taken are:</p> <ul style="list-style-type: none"> • a full contract break – taking up to 4 months off work. This period can be split into whole months; • reducing working hours to half-time (full-time employees only) for up to 8 months. This period can be split into periods of 2 months or multiples thereof; • reducing working hours by 1/5th (full-time employees only) for up to 20 months. This period can be split into periods of 5 months or multiples thereof. 	<p>The leave can be taken as:</p> <ul style="list-style-type: none"> • a full contract break – taking up to 4 months off work; • reducing working hours: <ul style="list-style-type: none"> • to half-time: for up to 8 months; • by 1/3rd time: for up to 12 months; • by 1/4th time: for up to 16 months; • by 1/5th time: for up to 20 months; • or any other form agreed by employer and employee.
Notice to employer and leave start date	<p>Written request notified to the employer at least 2 and at most 3 months in advance (parties can agree shorter notice) stating duration, start date of the leave and arrangements by which employee intends to exercise their right.</p> <p>NB – Employer can postpone the leave by up to 6 months for justifiable reasons related to the operation of the business.</p>	<p>Written request notified to the employer 3 months in advance (parties can agree shorter notice) stating duration, start date of the leave and arrangements by which employee intends to exercise their right.</p> <p>NB – Employer can postpone the leave by up to 6 months for justifiable reasons related to the operation of the business, unless parties agree on other arrangements such as extending the postponement period.</p>
Award of a contract break allowance	<p>Monthly contract break allowance payable by the National Employment Office throughout the leave period.</p> <p>It is a fixed, employee's age-related amount that varies with whether the employee takes a full contract break or just reduces their working hours (to half-time or 4/5th time). See table above.</p> <p>NB – No allowances for the 4th month full contract break (7th and 8th month half-time or 16th to 20th months of 4/5th working hours) if the leave is taken for a child born or adopted before 8 March 2012!</p>	<p>No entitlement to any form of replacement income.</p>





Summary table – Parental leave under the Royal Decree and Collective Agreement No. 64		
Implementing rules	Parental leave under the Royal Decree of 29 October 1997	Parental leave under Collective Agreement No. 64 of 29 April 1997
Adapted working arrangements or hours after parental leave	<p>At least 3 weeks before the leave end date, employee can make a written request to adapt their working arrangements or hours for up to 6 months after the end date of parental leave.</p> <p>The employer must reply in writing to this request no later than one week before the end date of the leave.</p>	<p>At least 3 weeks before the leave end date, employee can make a written request to adapt their working arrangements or hours for up to 6 months after the end date of parental leave.</p> <p>The employer must reply in writing to this request no later than one week before the end date of the leave.</p> <p>NB – Collective Agreement No. 64 expressly gives employees returning from parental leave the right to be reinstated in their job or if that is not possible, an equivalent job.</p>
Protection against dismissal	<p>Employees are protected against dismissal.</p> <p>Protection starts: from the date of the request (= date of the written notice to the employer).</p> <p>Protection ends: 3 months after the parental leave end date.</p> <p>Penalty: protection compensation equal to 6 months' pay plus compensation in lieu of notice.</p> <p>NB – If the contract is terminated with a severance payment during a period of parental leave working reduced hours, the severance pay plus any protection compensation owed must be calculated on the basis of the pay to which the employee would have been entitled had he not been working shorter hours.</p>	<p>Employees are protected against dismissal.</p> <p>Protection starts: from the date of written notice to the employer (= request), i.e., no earlier than 3 months before the leave start date.</p> <p>Protection ends: 2 months after the parental leave end date.</p> <p>If the leave is split, protection ends no later than at the end of 9 months from the normal start date of leave, i.e., the date which would have been the start date had it not been postponed.</p> <p>Penalty: protection compensation equal to 6 months' pay plus compensation in lieu of notice.</p> <p>NB – If the contract is terminated with a severance payment during a period of parental leave working reduced hours, the severance pay plus any protection compensation owed must be calculated on the basis of the pay to which the employee would have been entitled had he not been working shorter hours.</p>

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INDEX SKIP CONFIRMED FROM MARCH 2015!

The Government took the decision on Friday, 27 February 2015 on a proposal from Employment Minister Kris Peeters and Social Affairs Minister Maggie De Block giving Cabinet approval to a **draft bill** on employment promotion. The draft law aims to reduce Belgian firms' labour cost handicap against their French, Dutch and German counterparts (recently estimated at 2.9%) over this parliamentary term. It implements in full the 2015-2016 draft industry-wide agreement concluded with the social partners and the final points of the first phase of harmonizing the employment status of manual and non-manual workers.

01

CONTENT OF THE DRAFT BILL

Specifically, the bill contains the following key **measures**:

- the averaged quarterly health index is frozen from March 2015 so the 2% index skip can be effected;
- public corporations are now subject to the Act of 26 July 1996;
- criminal and administrative penalties are provided for employers who breach wage restraint or index freeze measures;
- implementation of the rules on the training efforts is temporarily shelved;
- dismissal compensation may also be awarded to those classed as manual workers before 1 January 2014 but reclassified as non-manual workers after 31 December 2013;
- an alternative calculation of the insertion allowance is provided to enable employers to receive it in respect of workers already under contract before the entry into force of the single status calculated on the basis of notice under the previous rules;
- the rates of the quarterly levy for manual workers' holidays are reduced;
- the waiting day for work incapacity benefit claims is scrapped;



- permitted Saturday working hours in the construction industry are increased from 64 to 96;
- the time frame for gender neutrality checks on job classifications drawn up by joint bargaining committees is extended from 31 December 2014 to 30 April 2015.

Some of these measures will be reviewed in more detail over coming weeks via our traditional information channels. Here, we focus on the government's flagship measure – the 2% index skip.

02

WHAT IS THE “INDEX SKIP”?

Basically, it is a **freeze** on wage index adjustments to save employers the **2%** pay rise they would have had to give had the index adjustment not been skipped.

It will give business estimated savings of €2.9 billion. The benefit in terms of employment is less easy to put numbers on, but Belgium's

National Bank believes that the index skip will create 33,000 jobs.

The index skip will apply to private and public sector workers, as well as benefit claimants.

03

WHAT WILL HAPPEN IN PRACTICE?

Belgium's index-linking system is based on the averaged health index, i.e., the average of the previous 4 months of the Consumer Prices Index calculated on changes in the prices of some 600 goods and services excluding alcohol, tobacco and fuels.

The averaged health index is meant to reflect cost of living trends, and is today used as the basis of automatic wage indexation. Public sector pay, for example, is increased by 2% in the 2nd month following that in which the averaged health index exceeds a set threshold index. Welfare benefits are index-adjusted one month earlier than civil service salaries.

The government has decided to freeze the averaged health index from March 2015 until the time when wages should have been increased by 2%. Without going into too much detail, the averaged health index is frozen at 100.55 from March 2015 until such time

as a benchmark index (a new concept corresponding to the “averaged health index x 0.98”) has risen by approximately 2%.

The latest Federal Planning Bureau forecasts suggest that the threshold index is likely to have been exceeded in early 2016. This means that there will be no 2% increase next year but that, based on reasonable inflation expectations, it will probably only be in **early 2018** or even later before welfare benefits (and the industry average monthly minimum wage) and public sector pay are adapted to the cost of living.

The government's decision will be a bit less straightforward to implement in various private sector industries. Most joint bargaining committees (CPs) do not always operate the same system as applies to welfare benefits and public sector pay. Some sectors provide for index-linked pay rises on a fixed



date: annually, quarterly, half-yearly, two-monthly or monthly. The applicable rise is not always 2% and does not always apply to all components of pay.

The principle is still the same. The averaged quarterly health index is frozen at 100.55 from March 2015 until such time as the benchmark index has risen by approximately 2%.

Sectors in which index adjustments take place at a fixed time other than monthly may still be able to operate a partial index adjustment during the freeze by applying industry index-linking mechanisms.

EXAMPLE

Firms under CP 218 will still get an index-linked pay rise of + 0.32% at 01.01.2016 under the industry indexation formula. Then, it is more than likely that the next index-linked rise – which will likely be only a small one – will not happen until 1 January 2018.

The sectors that will experience a partial index adjustment in the coming months are those under CPs No: 109, 110, 111.1-2-3, 112, 118.1 to 22, 119.1 to 3, 121, 129, 136, 140.1 (garage staff and operating personnel for coaches), 140.3, 140.4, 140.5, 142.1, 142.4, 144, 145.1 to 5 149.1 to 4, 209, 215, 218, 220, 221, 222, 302, 306, 323, 333.

The freeze will remain in place until the benchmark index goes above the averaged health index for February 2015 (100.55).

After the freeze, the averaged health index will be the arithmetic mean of the health indexes for the last 4 months times x 0.98, so that the impact of the index skip is extended in time.

Note also that any index-linked pay decrements will not be applied during the freeze in order to preserve workers' take-home pay.

Olivier Henry, Legal Counsel



SOCIAL NEWS

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

The rates of interests for determining the value of some benefits in kind have been published in the *Moniteur Belge*.
On the basis of these rates of interests, the value

can be determined of the benefits granted in 2014 (and 2015 pending the publication of the rates of interests 2015 and under an administrative tolerance) in the form of various loans.

Mortgage loans with a fixed rate of interest		
Year in which the loan agreement is concluded	Reference rate of interest	
	Loans guaranteed by a mixed life insurance policy	Other loans
2013	4.45%	3.20%
2014	4.16%	3.18%

Non-mortgage loans with a fixed term		
Year in which the loan agreement is concluded	Loans to finance the purchase of a car (monthly charge rate)	Other loans (monthly charge rate)
2013	0.12	0.23
2014	0.10	0.22

Non-mortgage loans without a specific term	
Year in which the borrower disposed of the loaned sums	Reference rate of interest
2013	8.80%
2014	9.20%

Isabelle Caluwaerts, Legal Counsel



WAGE ADJUSTMENTS

WAGE ADJUSTMENTS IN MARCH 2015

Index figures for February 2015

Consumer price index 2013: ▶ 100.26 (+ 0.41)

Health index 2013: ▶ 100.89 (+ 0.28)

Averaged quarterly health index: ▶ 100.55 (+ 0.16)

Collectively-negotiated indexations and increases: Selected forecasts

Joint Bargaining Committee (CP) 218: ▶ approx. +0.50% index in January 2018

Average monthly minimum wage/Welfare benefits: ▶ +2% in January 2018

Wage indexations and adjustments in March 2015

106.1	Cement works: 0.16% indexed increase on minimum wages only.
106.3	Fibrocement: +2% indexed increase on all wages.
113.4	Tile works: The negative indexation (-0,09% on all wages) will finally not be applied in January 2015.
117	Oil industry and retail trade: +0.16% indexed increase on minimum wages only.
216	Non-manual workers in notary/solicitor's firms: Award of eco vouchers to a value of €150, unless company provides equivalent benefit before 31.03.2012. Qualifying period from 01.01.2014 to 31.12.2014. Prorated for part-timers. Not applicable for non-manual workers having received an equivalent, recurring benefit since 2009-2010. Not applicable for students and non-manual workers employed under an employment contract, as part of a specific training, insertion or retraining scheme or supported by the government.
306	Insurance companies: Award of eco vouchers to a value of €190 to all workers bound by an employment contract on 31.03.2014 and paid more than €16 over the minimum wage scale (on 01.01.2012), unless company provides equivalent benefit. Qualifying period from 01.01.2014 to 31.12.2014.
308	Mortgage, savings and pension funding companies: +0.29% indexed increase on minimum wages only.
309	Brokerage firms: 28920% indexed increase on minimum wages and wages actually paid (up to the same amount).
310	Banks: +0.29% indexed increase on minimum wages only.
326	Gas and electricity industry: +0.16% indexed increase on minimum wages only.



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

COLOPHON

Partena – Non-profit-making association – accredited Payroll Office for Employers by ministerial decree of 3 March 1949 under no. 300
Registered office: 45, Rue des Chartreux, Brussels, 1000 | VAT BE 0409.536.968

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Subscriptions: Anne-Marie Delain, adelain@partena.be, tel. 02-549 32 57 - annual subscription: € 81,20 - price per issue: € 10,15 (VAT extra).
Monthly, except in July and August. Reproduction of any part is only allowed with the written permission of the editor and on condition that the source is stated.
The publishers pursue reliability of the published information but cannot accept responsibility for its accuracy.

37th year – Monthly review – General post office: Brussels X – Registration no.: P705107

More information on www.partena-professional.be

