MEMENTO OF THE EMPLOYER 08

TOPICS

NEWS

PARTENA PROFESSIONAL

REST OR WORK ON SUNDAYS? STATUS REPORT

Should the principle of a ban on working on Sundays be maintained, or should the possibilities for allowing shops to open on Sundays be expanded? This is a hotly-debated issue! This issue gives us the opportunity to recall the regulations in force in the run-up to the year-end holiday season which is also a time during which Sunday work and employment may be authorized under certain conditions.

01 GENERAL PRINCIPLE AND SCOPE

The Labour Act of 16 March 1971 (Art. 11) lays down a general principle according to which it is prohibited to employ workers on Sunday, the day of Sunday being understood in the astronomical sense, i.e. from 00:00 to 24:00 (from midnight on Saturday to midnight on Sunday).

This is a matter of public policy that employers and workers cannot derogate from, even by agreement!

This prohibition applies to all employers and workers, except the following categories of persons:

- home workers;
- persons employed by a family business;
- persons employed by educational establishments;
- persons employed by the State, the provinces, the boroughs, public institutions, except if they are employed by institutions exercising an industrial or commercial activity or institutions providing health care, preventive care or hygiene services;
- doctors, veterinarians, dentists, specialist doctors in training and trainees preparing to exercise such occupations;
- seagoing personnel of fishing companies;
- aircrews employed for air transport operations;
- ship's crews employed for water transport operations, excepting workers bound by an employment contract for inland waterway vessels services.

REMARK

It must be noted that under Article 38*ter* of the Act of 16 March 1971, the daily rest period of 11 consecutive hours between stopping and resuming work must, per period of 7 calendar day, be added to the Sunday rest so that the worker may benefit from a weekly rest period of 35 consecutive hours!

02 EXEMPTIONS TO THE PRINCIPLE OF SUNDAY REST

The employment prohibition referred to above is not absolute. Why?

Some work may not be performed on any other day than Sunday (e.g.: monitoring premises; works needed to deal with an actual or imminent accident) and it is also necessary to permit exemptions for the performance of certain specific activities or works or for companies/institutions whose activities cannot be interrupted (e.g.: continuous work, activities of hospitals, nursing homes and care homes, entertainment enterprises).

These exemptions provided for by the Act of 16 March 1971 or by a Royal Decree are total, which means that they can apply for all Sundays of the year or be partial, which is to say that they only apply for certain hours of Sunday or are established only for a specific number of Sundays per year.

1. EXEMPTIONS APPLICABLE IN ALL COMPANIES WITHOUT RESTRICTION

Provided that the normal operation of the business does not allow them to be performed on another day of the week, the following activities may be performed on a Sunday (art. 12):

- monitoring the premises assigned to the company (watchmen, caretakers);
- cleaning, repair and conservation works (machine maintenance) necessary for the regular continued operation as well as the works (except production works) necessary for resumption of work on Monday (inventories performed in a store which does not close on Sunday);
- works performed to deal with an actual or imminent accident;
- urgent works to be performed on the machinery or equipment as well as the works required due to unforeseen circumstances;
- the works required to prevent the deterioration of raw materials or products (e.g.: urgent sale of products that may otherwise lose their freshness).

The above-mentioned activities may be performed by workers employed by the company concerned or by other workers employed by third-party companies called on to meet the above-described needs.

2. EXEMPTIONS FOR SPECIFIC INDUSTRIES OR COMPANIES WITHOUT LIMITATION

Under Article 66 of the Act of 16 March 1971 an provisionally, i.e. until a Royal Decree relating to the same type of activity has been adopted pursuant to Article 13 of the same Act, workers may be employed on Sunday in the following companies or for the following work:

1) hotels, motels, campgrounds, restaurants, catering companies, caterers, tearooms and pubs and bars;
2) entertainment and public games enterprises (cultural, sports and leisure activities);
3) newspaper enterprises (writing, printing and shipping newspapers);
4) information agencies (tourist information on cities, attractions, etc.) and travel agencies;
5) ship repair and maintenance companies;
6) companies retailing fuels and oils for motor vehicles, but only for sales staff;
7) companies operating motor vehicle parking locations;
8) companies producing, transforming or transporting gas, electricity, steam or nuclear energy and water distribution companies;
9) establishments and services providing health care, preventive care or hygiene care;
10) urgent or essential farm work (milking cows, feeding cattle, bringing in the harvest and hay);
11) industries in which the work, because of its nature, cannot be interrupted or delayed (continuous work);
12) land and air transport companies, as well as fisheries.
NOTE. Ship's crews are already excluded from the prohibition of Sunday rest;
13) pharmacies, drugstores and medical and surgical appliance stores;
14) photography companies, only in respect of film camera operators filming individuals on public thoroughfares;

15) film industry companies providing news reports with regard to the workers tasked with the work inherent to the visual media (development, reviewing, editing, synchronization, etc.);
16) companies producing films for cinema and television, with regard to the manual workers tasked with lighting works, machinery, construction and dismantling of scenery;
17) radio broadcasting and television broadcasting distribution companies;
18) food companies whose products are intended to be delivered immediately to consumers (bakeries, pastry shops, fish markets, slaughterhouses, dairies, ice cream parlours);
19) companies whose object is the retail of fuel or food;
20) tobacconists and natural flower shops;
21) public baths;
22) companies renting means of locomotion;
23) employment agencies;
24) companies dealing with foreign exchange transaction in railway stations, in airports and ferry terminals;
25) motor vehicle and automatic distribution machines breakdown repair work;
26) participation in events of all kinds, namely trade fairs, exhibitions, museums, trade, industrial and agricultural fairs, markets, street markets, parades and sporting events;
27) loading, unloading and moving works in ports, docks and resorts;
28) the work of game wardens and fish wardens.

Under Article 13 of the Act of 16 March 1971, Sunday work was also allowed by way of example for the companies and types of work mentioned below: control and monitoring work in cinemas, the manufacture and installation of fire protection equipment, domestic workers (1 in every 4 Sundays), residential homes and shelters, the European Centre for missing children, fitness and slimming centres, socio-cultural sector companies.

It must also be noted that a general authorization to work on Sundays was granted:

- to workers employed by drug wholesalers - distributors (JBC No. 321) and tasked with carrying out the distribution of pharmaceutical products (Royal Decree of 12 August 2000 – Belgian Official Gazette of 19.09.2000, Ed.2);
- to workers employed in the Joint Bargaining Committee of funeral directors (JBC No. 320) and who, as part of their on-call duties, perform work that is urgent and inherent to the business (Royal Decree of 28 April 2015 – Belgian Official Gazette of 11.05.2015);
- to administrative staff employed in out-of-hours medical posts (JBC No. 335) (Royal Decree of 7 June 2015 – Belgian Official Gazette of 25.06.2015).

3. EXEMPTIONS SPECIFIC TO THE DISTRIBUTION SECTOR

Special provisions apply to staff employed in retail stores in the distribution sector, i.e. those that fall under the following joint bargaining committees:

- food trade joint bargaining committee (JBC No. 119), excluding workers employed in wholesale trade activities;
- independent retail joint bargaining committee (JBC No. 201);
- chain food store joint bargaining committee (JBC No. 202);
- major retail companies joint bargaining committees (JBC No. 311);
- department stores/supermarkets joint bargaining committees (JBC No. 312).

In this sector, the employment of workers may be authorized either for the full day of Sunday and for the whole year, or for a given number of Sundays per year, or even for Sunday morning only.

A. EMPLOYMENT FOR THE FULL DAY OF SUNDAY AND THROUGHOUT THE WHOLE YEAR

Pursuant to the Royal Decree of 3 December 1987 (Belgian Official Gazette of 08.12.1987), work is authorized throughout the full day of Sunday and throughout the whole year in (Art. 2):

- butcher shops, bakeries and pastry shops;
- food shops with less than 5 workers in service at the time at which use is made of the exemption; only the persons usually employed in the shop and who are recorded in the staff register are considered workers;
- newspaper companies (= newsagents);
- businesses retailing fuels and oils for motor vehicles, only in respect of sales staff;
- medical and surgical appliance stores;
- tobacconists;
- natural flower shops.

In addition, distribution sector employers (see above) may also employ workers during the full day of Sunday during fairs, trade fairs, exhibitions, shows, markets or sports events, provided that such work is performed outside of the company's and its outbuildings' premises, such as parking lots and warehouses for storing goods (Royal Decree of 3 December 1987, Art. 2, 3rd dash).

B. EMPLOYMENT ON CERTAIN SUNDAYS

In distribution sector companies other than those listed under the preceding paragraph, the Royal Decree of 3 December 1987 (art. 3) authorizes work to be performed on the full day of Sunday for specific and transient reasons, or during events of any kind or a street market, for:

- 3 Sundays per calendar year of the employer's choosing (e.g.: the Sunday before Christmas);
- as well as for 3 additional Sundays of the employer's choosing per calendar year. This additional possibility must be regulated by a sectoral CBA. Failing a sectoral CBA, and provided that a Works Council or a union delegation were established within the company, the employer must enter into a corporate collective agreement before employing workers during the 3 additional Sundays.
  Failing a corporate collective agreement (and provided that a Works Council or a union delegation have been established), the employer will be required to enter into an individual settlement stipulating that the Sunday work performed on the 3 additional Sundays must be paid with an increase of at least 100 % compared to the wages due for the work performed during the week.

Employment of workers during the Sundays (3 or more) is only authorized subject to fulfilling the following conditions:

- the employed worker must volunteer to do so;
- the worker must normally be employed in the shop;
- the worker must be a member of the company's staff performing his work in the shop;
- the employer must communicate the Sunday opening to the Employment Legislation Inspectorate of the place where the shop has its place of business and to the union delegation, at least 24 hours in advance.
  However, there are specific rules for retail stores located in seaside and health resorts or in tourist centres; see above.

Employment during a given number of Sundays per year may also be provided for by specific Royal Decrees.
Thus, in retail stores mainly selling furniture for private use and garden furniture, the workers may be employed for a maximum of 40 Sundays per year (Art. 4 of the Royal Decree of 30 May 1997 – Belgian Official Gazette of 07.06.1997).

See also the "Please note!" section below on the quota of Sundays during which work in authorized.

C. EMPLOYMENT ON SUNDAY MORNING ONLY

In retail stores other than those in which work is authorized throughout the full day of Sunday (see above), workers may be employed on Sunday from 08:00 to 12:00.
However, Royal Decrees may, in certain boroughs:

- either prohibit work on Sunday morning or limit its duration;
- or authorize work on Sunday for a period of 6 weeks per year at most, to other hours, or for a greater number of hours when specific circumstances so require.

Observance of the rules on weekly rest

The authorization to employ staff on Sunday is not always automatically linked to the permission to open a business on Sunday (and vice versa)!

Pursuant to the Act of 10 November 2006 on opening hours in commerce, crafts and services (Belgian Official Gazette of 19.06. 2006, Ed. 2), retail sector shops are required to observe in principle the mandatory opening and closing hours as well as a weekly rest day.

Exemptions from the provisions of the Act may nevertheless be granted by the Borough Council of the boroughs in which the businesses and services covered are established.

Therefore, it is necessary to **request the appropriate information from the local authorities** on the general and specific conditions to meet to open on Sundays prior to employing workers on Sundays.

4. LIMITED AND/OR SPECIAL EXEMPTIONS

A. IN SEASIDE RESORTS AND HEALTH RESORTS, AS WELL AS IN TOURIST CENTRES

Workers employed in retail stores and hairdressers' located in seaside resorts and health resorts as well as in tourist centres may, pursuant to Article 14, § 2, and pursuant to Article 3 of the Royal Decree of 9 May 2007 (Belgian Official Gazette of, 03.07.2007), work on Sundays:

- from 1 May to 30 September;
- during the Christmas and Easter holidays of the education system organized, subsidized or approved by the Communities;
- outside the above-mentioned periods, during 13 Sundays per calendar year at most. In particular, these days must be:
  - either the Sundays on which there is an influx of tourists due to the existence of curiosities or famous cultural, historical or religious sites or due to the beauty of the flora;
  - or Sundays on which trade show, exhibitions, museums, trade, industrial and agricultural fairs, markets, street markets, parades and sports events are held.

The concepts of seaside resorts, health resorts and tourist centres are defined in the Royal Decree of 9 May 2007.

The following terms shall have the following meanings:

- seaside resorts: the towns that are not located more than 5 kilometres from the coast;
- health resorts:
  - most of the hotels in the resorts must be closed for at least 6 months per year;
  - the number of residents must increase significantly during certain periods of the year;
  - the staff employed in the hospitality industry must increase significantly in the resort during certain periods of the year;
- tourist centres: the areas recognized as such by the Minister of Employment. (e.g.: a part of the territory of the cities of Brussels, Antwerp, Liège, Tongres, the cities of St. Hubert, Beauraing, etc.). An application for recognition must therefore be submitted to the FPS Employment by the Borough Council of the borough concerned. Recognition (now granted for an **indefinite** period) is also linked to observance of certain conditions (see Article 4 of the Royal Decree of 9 May 2007).

PLEASE NOTE!

All exemptions to Sunday rest laid down by the Royal Decree of 3 December 1987 (= exemptions in distribution sector companies, such as the maximum of 40 Sundays per year in furniture and garden furniture retail) or by the Royal Decree of 9 May 2007 (see, for instance, the exemptions for retail stores in tourist centres) concern the **total number of Sundays during which the employer may employ** one or several workers and not the number of Sundays during which any given worker may be employed! The quota of Sundays during which work is authorized is established on a per-company basis and not on a per-individual worker basis (Cass., 3rd division, 10 Nov. 2014, J.T.T. 2015, p. 201). The practice of making staff work on all Sundays of the year through a rota system is therefore perfectly illegal!

B. IN SEASONAL BUSINESSES

In seasonal businesses, meaning those which are carried out during a portion of the year or which are carried out more intensely during certain seasons (e.g.: vegetable canneries) as well as outdoor business where work can be hampered by bad weather, a Royal Decree may authorize the employment of workers for 12 Sundays per year, without being able to use this possibility for more than 4 consecutive weeks.

The employer must also inform the Employment Legislation Inspectorate within 24 hours (Art. 15).

C. FOR WORKERS EMPLOYED IN SUCCESSIVE SHIFTS

Workers employed in successive shifts may be employed on a Sunday, provided that their work is interrupted once per week during 24 consecutive hours, 18 of which at least must be on a Sunday (Art. 17).
Thus, the worker of the last shift of the week must end work on Sunday at 6 o'clock in the morning and may not resume work before Monday morning at 6 o'clock at the earliest. The workers of the first shift of the next week may not start work before 6 o'clock in the evening on Sunday at the earliest.

D. FOR WORKERS EMPLOYED UNDER NEW WORK SCHEMES

An exemption from the principle of prohibition of Sunday work may be considered as part of the introduction of a "new work scheme" (or "great flexibility") covered by the Act of 17 March 1987 and by CBA No. 42. See, for instance, the CBA of 29 September 1988 on new work schemes concluded in JBC No. 200 (e.g.: JBC No. 218).
The introduction of the new work scheme and said exemption nevertheless require the observance of a specific procedure not detailed in this *Memento*.

03 SPECIFIC PROVISIONS ON SUNDAY WORK FOR YOUNG WORKERS

Preliminary explanation
"Young workers" shall mean minor workers (under the age of 18) who are 15 years of age or over **and** who are no longer subject to compulsory full-time education.

Principle
Unless an exemption is obtained, young workers may not be employed on Sundays.

It must also be noted that in addition to Sunday rest, they must be granted an additional day's rest, being the day immediately preceding or following the Sunday (Monday or Saturday) (Art. 32, § 1, sub-paragraph 1). In other words, the law guarantees, in principle, two consecutive days off (48h) per week for young workers.

Authorized exemptions
Provided that the normal operation of the business does not enable them to be performed on weekdays, young workers may be employed on Sundays only for:

- works undertaken to deal with an actual or imminent accident;
- urgent works to be performed on machinery and equipment;
- works required due to unforeseen circumstances.

An employer making use of these exemptions must notify the Employment Legislation Inspectorate within 3 days of doing so.

A Royal Decree may also authorize young workers to work on a Sunday or a legal public holiday in certain industries, companies or occupations.

Thus, young workers may, on Sundays and legal public holidays (Royal Decree of 23.05.1972 – Belgian Official Gazette of, 07.06.1972):

- work as actors or extras in cultural, scientific, educational or artistic event, as well as fashion shows and presentations of clothing collections;
- take part in sporting events;
- be employed in artisanal bakeries and pastry shops;
- be employed to work during the Christmas and Easter school holidays, as well as during the period from Pentecost Sunday to 30 September in the following businesses, located in seaside resorts, health resorts or tourist centres:
  - retail stores;
  - hairdressers';
  - show and public games businesses;
  - businesses renting chairs, books and means of locomotion.

An employer who wishes to employ a young person in one of the above-mentioned situations must notify the Employment Legislation Inspectorate under whose jurisdiction the business falls, in writing at least 5 days in advance.

Some exemptions have also been authorized at sectoral level. This is the case for the hospitality sector (JBC No. 302) and in artisanal bakeries and pastry shops (JBC No. 118).

PLEASE NOTE!

Even with an exemption, young workers may not be employed more than one in every two Sundays, except with the prior authorization of the Employment Legislation Inspectorate (Art. 32, § 3).

04 WORKING CONDITIONS RELATING TO SUNDAY WORK

When work was performed on a Sunday, two questions must be answered:

- Is any recovery possible in the form of compensatory rest, and if so, under which conditions?
- Does Sunday work entitle the worker to a specific wage?

1. GRANTING OF COMPENSATORY REST

Workers employed on a Sunday are entitled to compensatory rest, except where the workers perform work in successive shifts and are employed for a maximum of 6 hours on a Sunday (see above), in which case no compensatory rest need be granted for work performed on a Sunday.

Compensatory rest is unpaid (given that the normal weekly rest day is also unpaid) although it must be granted within the 6 days following the Sunday (except in the case of an exemption granted by Royal Decree adopted on the advice of the Joint Bargaining Committee).

The duration of the rest must be:

- one full day if the work performed on Sunday lasted at least more than 4 hours;
- one half-day if the work performed on the Sunday did not exceed 4 hours.
  In this case, the compensatory rest must be granted before or after 13:00 and on that day the duration of the work may not exceed 5 hours.

The compensatory rest may coincide with the usual day of inactivity of the company (most often on Saturday), whether or not employment on Sunday is usual or occasional. It must not be deducted from the duration of the work.
However, the rest may not coincide with a legal public holiday, a day of compensatory rest granted under the law on public holidays or a day of compensatory rest granted under the law on the duration of work.
It also seems that the rest may not either coincide with a day during which the worker was not employed, but for which he was nevertheless entitled to a wage (e.g.: sick day, day off or a short-time working day).

REMARK

When young workers have been employed on a Sunday or on the additional day of rest (i.e. the day which immediately precedes or follows the Sunday; see above), they are entitled to a compensatory rest of the same duration and under the same conditions as that granted to adult workers (see above).

In such a scenario (Sunday work or work on the additional day), the young person will not necessarily be granted two consecutive days of rest, although one of the two days of rest must at least result in an interruption of work of at least 36 consecutive hours (Art. 33, § 2).

2. PAYMENT OF SUNDAY WORK

The worker shall, in principle, be entitled to his normal wage for work performed on a Sunday.
In some industries, however, Sunday work may also entitle the worker to a wage supplement (e.g.: 56% in the private hospitals sector).
The company may also decide to grant a wage supplement or a lump sum allowance.

PLEASE NOTE!

If the Sunday work is also overtime work, the worker shall be entitled to 100% extra pay. All overtime performed on a Sunday shall therefore be paid at 200% in total.

It is also important to note that most overtime performed on a Sunday (i.e. the hours exceeding the normal limits of working time) must give rise to the granting of paid compensatory rest. The paid compensatory rest must be real and may not coincide with days during which the worker would not normally have worked!

The cost of overtime work performed on a Sunday may therefore reach up to 300%!

Francis Verbrugge, Senior Legal Counsel

SOCIAL NEWS

EMPLOYER CONTRIBUTION IN CASE OF EXCESSIVE USE OF ECONOMIC UNEMPLOYMENT COLLECT AGAIN IN AUTUMN 2015

Once a year, employers that often appeal to economic unemployment must pay an additional employer contribution. The contribution for 2015 will be collected this autumn.

CONTRIBUTION FOR EMPLOYERS WHO DO NOT BELONG TO THE CONSTRUCTION INDUSTRY

The contribution is due for each worker with more than 110 days of economic unemployment in 2014. The amount per day increases with €20.00 for each higher bracket of 20 unemployment days. So the contribution increases exponentially as the number of unemployment days rises.

Number of unemployment days	Contribution per unemployment day
From 111 to 130	€ 20,00
From 131 to 150	€ 40,00
From 151 to 170	€ 60,00
From 171 to 200	€ 80,00
From 201	€ 100,00

EXAMPLE

Worker with 195 days of economic unemployment in 2014.
(€ 20,00 x 20) + (€ 40,00 x 20) + (€ 60,00 x 20) + (€ 80,00 x 25) = € 4.400,00

CONTRIBUTION FOR EMPLOYERS IN THE CONSTRUCTION INDUSTRY

Here as well, there is a contribution for each worker with more than 110 days of economic unemployment in 2014, but there is only one amount per day, set at **€ 46,31**.

EXAMPLE

Worker with 195 days of economic unemployment in 2014.
€ 46,31 x (195 – 110) = € 3.936,35

COLLECTION IN 2015

The NSSO calculates the contribution for 2015 per employer on the basis of the data of the individual workers in the four quarterly declarations of 2014. The result is transferred electronically to the payroll office. The employers will receive the invoice with regard to their contribution from the payroll office.

Planning for the collection of the contribution for 2015:

- for the construction sector, the NSSO calculates the contribution in the course of October - invoicing will be done when the amounts are known by the payroll office;
- for the other sectors, calculation and invoicing are planned at the end of the year.

Els Poelman, Senior Legal Counsel

SOCIAL NEWS

SINGLE EMPLOYMENT STATUS: THE CONSTITUTIONAL COURT CANCELS THE SYSTEM OF PERMANENT DEROGATION PERIODS OF NOTICE

In an order dated 17 September 2015, the Constitutional Court cancelled two provisions of the Single Employment Status Act: that providing the application of derogation periods of notice for certain manual workers belonging to joint committees (JC) No. 124 and 126 for an indefinite period (system of permanent derogation) as well as that excluding the same manual workers from the entitlement to the severance compensation benefit granted by the ONEm (national employment office).

The cancellation of these two provisions will take effect from **1 January 2018**.

THE SYSTEM OF PERMANENT DEROGATION PERIODS OF NOTICE

WHAT IS PROVIDED BY THE SINGLE EMPLOYMENT STATUS ACT?

The Single Employment Status Act harmonised the rules on notice periods for manual workers and non-manual workers (ordinary system[1]) starting on 1 January 2014.

However, it maintained the application of **less advantageous** notice periods for certain manual workers, either for a fixed period (temporary derogation system ending no later than 31 December 2017[2]), or for an indefinite period (permanent derogation system).

The **permanent derogation system** concerns manual workers who fulfil the following cumulative conditions:

- belonging to a joint bargaining committee which provided for, at 31 December 2013, by Royal Decree, specific notice periods lower (or just shy of) than those provided for by collective bargaining agreement No. 75;
- **not having a fixed place of work**;
- usually performing one or several of the **following activities** in temporary or mobile workplaces:
  a) excavation works;
  b) earthworks;
  c) foundation and reinforcement works;
  d) water works;
  e) road works;
  f) agricultural work;
  g) laying utility lines;
  h) construction works;
  i) assembly and disassembly works, namely of prefabricated elements, beams and columns;
  j) development or infrastructure works;
  k) conversion works;
  l) renovation works;
  m) repair works;
  n) dismantling works;
  o) demolition works;
  p) maintenance works;
  q) maintenance, painting and cleaning works;
  r) sanitation works;
  s) finishing works relating to one or several works mentioned above.

Specifically, the permanent application of derogation periods of notice applies to some workers of joint committees (JC) No. **124** (construction industry) and **126** (furniture industry and wood processing industry).

WHAT DOES THE CONSTITUTIONAL COURT SAY?

The Constitutional Court, considering that the application of derogation periods of notice to certain manual workers without limitation of time is discriminatory, **cancelled** the provisions relating to the system of permanent derogation periods of notice.

The cancellation shall, however, only take effect **from 1 January 2018**.

CONSEQUENCE

Derogation periods of notice (provided for under the permanent system) will **continue to apply until 31 December 2017**. After that date, the ordinary system of notice periods will apply to all manual workers.

SEVERANCE COMPENSATION BENEFIT

WHAT DOES THE SINGLE EMPLOYMENT STATUS ACT SAY?

At equal years of service, the difference in the duration of notice periods between **manual workers** for whom the performance of the contract started before 1 January 2014 (application of the step-up system) and those for whom the performance of the contracted started on or after 1 January 2014 (application of the "new" notice periods) can be significant.

In order to compensate for this difference and under certain conditions, manual workers for whom the performance of the contract started before 1 January 2014 will be entitled to receive, in addition to their notice period or their compensation calculated on the basis of the step-up system, a "**benefit**" enabling them to enjoy the same "protection" as workers for whom the performance of the contract started on or after 1 January 2014.

This benefit is granted by the **ONEm** in the form of a **severance compensation benefit**.

However, the manual workers to whom the (temporary or permanent) **system of derogation notice periods** applies are **excluded** from receiving this severance compensation benefit.

WHAT DOES THE CONSTITUTIONAL COURT SAY?

The Constitutional Court cancelled the provision excluding workers to whom the system of derogation periods of notice (temporarily or permanently) applies from the entitlement to the severance compensation benefit.

As with the system of permanent derogation periods of notice, the cancellation will only take effect from **1 January 2018**.

CONSEQUENCE

Manual workers dismissed with a derogation period of notice (in application of the temporary or permanent system) will continue to be **excluded** from the entitlement to the severance compensation benefit paid by the ONEm **until 31 December 2017**. After the date, all dismissed manual workers will benefit from the ordinary notice period system (see above). Provided that they fulfil certain conditions, they may also be granted the severance compensation benefit.

Source: order No. 116/2015 of 17 September 2015 of the Constitutional Court.

Catherine Legardien, Legal Counsel

---

1 Ordinary system is understood to mean:
- workers for whom the performance of the contract started before 1 January 2014: application of the step-up system;
- workers for whom the performance of the contract started on or after 1 January 2014: application of identical notice periods for manual workers and non-manual workers.

2 Initially, 12 joint committees (JC) were subject to the **temporary application** (up until 31 December 2017) of derogation periods of notice. These were JC No. 109, 124, 126, 128.01, 128.02, 140.04, 142.02, 147, 301.01, 324, 330.03 and 311. Since, then, some of these have entered into a collective bargaining agreement to anticipate the move towards the ordinary system, as authorized by the Single Employment Status Act. To day, 8 joint committees have anticipated the move to the ordinary system. These are:
- JC No. 109 (from 1 October 2014) ;
- JC No. 128.01 (from 1 December 2014) ;
- JC No. 128.02 (from 1 December 2014) ;
- JC No. 140.04 (from 22 May 2014) ;
- JC No. 142.02 (from 29 April 2014) ;
- JC No. 147 (from 15 August 2014 due to the repeal of JC No.147 on that date; employers and workers belonging to the former JC No.147 now belong to JC No.111) ;
- JC No. 311 (from 21 May 2014) ;
- JC No. 330.03 (from 1 January 2015).

Consequently, the workers of the following joint committees are still subject to the system of temporary derogation: JC No.124, 126, 301.01 and 330.03.

SOCIAL NEWS

TEMPORARY UNEMPLOYMENT AND APPRENTICES

Young people under a sandwich training contract (former apprentices) will be entitled to temporary unemployment benefits from 1 July 2015.

WHICH YOUNG PEOPLE UNDER A SANDWICH TRAINING CONTRACT?

This change in legislation is in line with the new definition of apprentices for social security purposes.

If the ONSS considers the young person an apprentice (i.e. if the young person meets the 6 conditions to be considered as following sandwich training), they are entitled to temporary unemployment benefits in the same way as an ordinary worker.

Reminder: the 6 conditions to be met as of 1 July 2015 in order to benefit from social security benefits as an apprentice are the following:

- The training consists of one part carried out in the workplace ("work") and one part carried out within or at the initiative and under the responsibility of an educational or training establishment ("studies"). Together, the two parts are aimed at achieving a single training plan and, to this end, are complementary of the other and alternate on a regular basis.
- The training leads to a vocational qualification.
- The "work" part provides for an average working week of at least 20 hours per week on an annual basis, without taking into account public holidays and holidays.
- The "studies" part is comprised, on an annual basis, of (number of hours calculated in proportion to the total duration of the training, including hours of classes for which the apprentice may receive an exemption granted by the above-mentioned educational or training establishment):
  - at least 240 hours of classes for young people subject to compulsory part-time education
  - at least 150 hours of classes for young people who are no longer subject to compulsory education.
- Both parts (work/studies) are carried out under and are covered by a contract signed by the employer and the young person.
- The contract provides for financial compensation to be paid by the employer and which is to be considered as remuneration.

If one of these 6 conditions is not met, the young person shall not be considered to be following sandwich training. In addition to the fact that they may not in principle be registered with the ONSS as an apprentice, the specific system for temporary unemployment benefits will not apply.

WHICH TEMPORARY UNEMPLOYMENT?

The causes for suspension of the sandwich training contract in question are lack of work for economic reasons, technical accidents, bad weather, force majeure, business closure for annual holidays and strikes.

WHAT BENEFITS?

Regardless of age, a young person who is not out of work and claiming benefits (which is in principle the case for a young person under a sandwich training contract) will receive the amount of the transition allowance for workers under the age of 18.

The employer is not required to pay them a supplement to the temporary unemployment benefits, unlike for ordinary workers. Young people under a sandwich training contract do not receive a wage but in fact receive a learning allowance.

NOTE

It must also be noted that, as regards industrial apprentices, it was decided to adjust the amount of their allowance with effect from 1 July 2015 (so that their system of compensation for temporary unemployment is made similar to that granted to all young people under a sandwich training contract).

QUELLES FORMALITÉS ?

The employer must comply with the same formalities for a young person under a sandwich training contract as those required for an ordinary worker, i.e.:

1. Carrying out the same formalities on communication of temporary unemployment to the ONEm:

- In the event of temporary unemployment due to lack of work: notify the planned unemployment ahead of time and make the monthly notification of the 1st day of actual unemployment.
  The employer is not required to send a separate communication for the apprentice (the latter may be mentioned along with ordinary workers);
- In the event of temporary unemployment due to a technical accident: notification of the date and nature of the technical accident and monthly notification of the 1st day of actual unemployment;
- In the event of temporary unemployment due to bad weather: monthly notification of the 1st day of actual unemployment.

2. Issue the required forms:

- To the young person under a sandwich training contract, every month, the numbered C3.2A control card before the first day of actual unemployment of the month. The young person must have the card in their possession from the 1st day of actual unemployment of the month and fill it in correctly (days of practical training are deemed to be work and must be crossed out). There is a specific control card for the construction sector (C3.2A Construction);
- At the end of the month: a C3.2 Employer form as proof of the hours of temporary unemployment (or DRS - Scenario 5);
- For the month during which the young person under a sandwich training contract is first made temporarily unemployed, a double C3.2 Employeur form as an application for benefits (or DRS - Scenario 2). The double form must also be issued after an interruption of benefits for at least 36 months and at each modification of the contractual duration of the contract (Q/S).

3. In the event of temporary unemployment due to bad weather and lack of work for economic reasons:

Register the numbered C3.2A control card in the validation register (paper or electronic). (does not apply for the construction sector).

The employer must also attach a certificate of attendance (form C98) to these forms. The certificate of attendance must state that the young person regularly follows classes. The certificate must also be attached for the months during which no classes are given (July and August for instance). The certificate must be filled in and signed by the training centre.

ENTRY INTO FORCE

These new rules enter into force on 1 July 2015. They apply to all young people who have entered into a sandwich training contract from said date and for young people under an approved apprenticeship in progress at the same date.

Anne Ghysels, Legal Counsel

SOCIAL NEWS

ABOUT COMPANY CARS AND CO_2-EMISSIONS

The fraud that was discovered last week with the CO_2 emissions of certain cars raises questions about the possible consequences for the worker and the employer, since the CO_2 emission rate is a determining factor in the calculation of the benefit of any kind of the worker and the CO_2 contribution for the employer.

BENEFIT OF ANY KIND

Making available a car that is used for private purposes to a worker or a company manager, provides the user with a flat-rate benefit of any kind on which they must pay taxes.

The flat-rate benefit is calculated by applying a CO_2 percentage to six seventh of the list price of the car which is made available free of charge.

The basic CO_2 percentage amounts to 5.5 % for:
- an approved CO_2 emission of 110 g/km (2015) for cars with petrol, LPG or natural gas engines;
- an approved CO_2 emission of 91 g/km (2015) for cars with diesel engines.

When the emission of the car concerned is higher (or lower) than the applicable approved emission, the basic rate of 5.5 % will be increased (or decreased) with 0.1 % per gram CO_2 with a maximum of 18 % (or a minimum of 4 %).

If it is found that the actual CO_2 emission is higher than the CO_2 emission indicated on the car's certificate of registration, this would in principle lead to an increase of the benefit of any kind. In addition, it is possible that the approved CO_2 emission (which among other things is calculated on the basis of the average CO_2 emission of the previous year) must be reviewed. The latter could affect the calculation of the benefits of any kind for all company cars.

CO_2 CONTRIBUTION

An employer who makes available a car to some of his workers, that they use for other than purely professional purposes, is due a CO_2 contribution. It is a contribution which is borne solely by the employer.

The contribution consists of a flat-rate monthly amount which is set on the basis of the CO_2 emissions of the car (see table below).

The amount of the CO_2 contribution shall in no case be lower than € 25.10 (in 2015) for non-electric-propelled cars.

If it is found that the actual CO_2 emissions are higher than the CO_2 emissions indicated on the car's certificate of conformity, this would in principle lead to an increase of the CO_2 contribution.

OTHER CONSEQUENCES

Not only the advantage of any kind and the CO_2-contribution are established by the CO_2-emissions,

Type of fuel	Basic Formula	Indexation Coefficient (2015)
Petrol	{[(CO_2-emission rate x € 9) – 768] / 12} x	1,2051
Diesel	{[(CO_2-emission rate x € 9) – 600] / 12} x	
LPG	{[(CO_2-emission rate x € 9) – 990] / 12} x	
Electric	€ 20,83 x	

so are the deductible professional cost for the employer and the tax levied when a car is first put on the road. Therefore it could have an impact on this as well.

TOLERANCE?

Various press releases state that Federal Minister of Finance Johan Overtveldt finds that citizens and businesses should not be disadvantaged on a tax level by the fraud of a car manufacturer. Therefore he is examining whether fiscal tolerance can be granted through a circular for the owners who are affected by the scandal.

It remains to be seen whether the emission fraud will have an impact on the calculation of the benefit of any kind for the worker and the CO_2 contribution...

Peggy Criel, Legal Counsel

SOCIAL NEWS

END OF CASH-IN-HAND PAYMENTS...

At present, the wage that is due to a worker can be paid in cash, i.e. cash-in-hand, or in transferable money, i.e. by transfer to a bank account, or by postal order, circular cheque or postal draft.

This will change in the course of the next year. In fact, the act of 23 August 2015 (B.M. 01.10.2015) modifies the act of 12 April 1965 on the protection of the workers' wages and stipulates that **wages may no longer be paid cash-in-hand as from 1 October 2016**.

However, there are some exceptions to the rule. The wage can still be paid in cash (cash-in-hand) when stipulated by a CBA in the sector, an implicit agreement or a custom in the sector.

Yet, a Royal Decree must still define and determine the procedures and rules for the conclusion and notification of these implicit agreements and sectoral customs.

The new legislation also holds a transitional measure in case the conclusion period is running on 1 October 2016. The employers of the sector concerned will then still be allowed to pay their workers cash-in-hand until the procedure is ended.

Francis Verbrugge, Senior Legal Counsel

WAGE ADJUSTMENTS

WAGE ADJUSTMENTS ON 1 OCTOBER 2015

Index September 2015
- (base 2013) 101,15
- (base 2004) 123,81

Health index
- (base 2013) 101,85
- (base 2004) 123,00

Average over the past four months
- 100,66

Wage adjustments on October 2015	
105.00	**Non-ferrous metals** Increase of the subsistence security allowance. **Not applicable if an equivalent benefit is specified in a company CLA concluded before 30 September 2011**: award of eco vouchers to a value of € 250 to all full-time, manual workers. Qualifying period from 01.10.2014 to 30.09.2015. Part-timers on a pro rata basis. A company CLA, concluded prior to 30 June 2014, may concretize the purchasing power differently: * wage increase of € 250 per year; * introduction or improvement of a hospitalization insurance worth € 250 per year; * improvement of a supplementary pension plan worth € 250 per year; * or a combination of these 3 options worth € 250 per year.
109.00	**Clothing and tailoring industry** **M&R (A)** Previous wages x 1,0011
111.01 and 111.02 (111.01 - 111.29)*	**Large and small-scale metal processing undertakings** **M* (S)** Increase of national minimum wage. Award of recurring eco vouchers to a value of € 250 for all full-time manual workers. Qualifying period from 01.10.2014 to 30.09.2015. Part-timers on a pro rata basis. A company agreement, concluded prior to 30 June 2014, may concretize the purchasing power differently. Companies without trade union delegation can only choose between: * introduction or improvement of a hospitalization insurance; * introduction or improvement of a supplementary pension plan; * a wage increase of € 0.0875 (regime of 38 hours/week).
111.03	**Outdoor mechanics bridges and trusses** Award of recurring eco vouchers to a value of € 250 for all full-time manual workers. Qualifying period from 01.10.2014 to 30.09.2015. Part-timers on a pro rata basis. A company agreement, concluded prior to 30 June 2014, may concretize the purchasing power differently. Companies without trade union delegation can only choose between: * introduction or improvement of a hospitalization insurance; * introduction or improvement of a supplementary pension plan; * a wage increase of € 0.0875 (regime of 38 hours/week).
113.04	**Tile works** Adjustment of the scaled wages by CLA of 18 September 2015. **From 1 January 2015.**
120.02	**Flax processing** **M(+wage differential)&R (P)** Previous wages x 1,0011
136.00	**Paper and paperboard converting** **No manufacture of paper tubes:** termination of payment of additional allowance in case of full unemployment. **From 1 July 2015.**

Wage adjustments on October 2015

140.01 (140.03)	**Buses and coaches** **M&R (A) Only for coaches and operating personnel:** previous wages x 1,0041
148.00	**Furs and pelts** **M&R (A)** Previous wages x 1,0011
209.00	**Metal manufacturing industry** **Companies not subject to the industry supplementary pension provisions:** * employer's contribution in 2009 above 1.1 % but below 1.77 %: award of balance of eco vouchers to all scaled and scalable full-time non-manual workers (a company CLA concluded prior to 30 June 2014 could opt for an improved supplementary pension plan for the non-manual workers). * employer's contribution in 2009 above 1.77 %: - award of eco vouchers to a value of € 250 for all scaled and scalable full-time non-manual workers. Qualifying period from 01.10.2014 to 30.09.2015. Prorated for parttimers. A company CLA, concluded prior to 30 June 2014, may concretize the purchasing power differently. Companies without a trade union delegation for non-manual workers may join and can only choose between: - wage increase of € 250 per year (€ 13.30 per month); - introduction or improvement of a hospitalization insurance; - introduction or improvement of a supplementary pension plan.
215.00	**Non-manual workers of clothing and tailoring industry** **M** Previous wages x 1,0011
307.00	**Insurance brokers and agencies** **Not applicable if converted into an equivalent benefit before 31 March 2014:** award of eco vouchers to a value of € 125 for all workers employed at least 80 %, € 100 for workers employed between 60 % and 80 %, € 75 for workers employed between 50 % and 60 %, € 62.50 for part-time workers employed half-time and € 50 voor part-time workers employed less than half-time. Qualifying period from 01.12.2014 to 30.11.2015. Paid in the 4th quarter of 2015.
320.00	**Funeral services** Award of eco vouchers to a value of € 250 for workers employed at least 80 % of full-time, € 200 for workers employed between 60 % and 80 % of full-time, € 150 for workers employed between 50 % and 60 % of full time and of € 1 for every 7 hours (worked or equivalent hours as provided by the annual holidays regulations) for workers employed less than half-time. Qualifying period from 01.10.2014 to 30.09.2015. A company CLA concluded before 1 January 2012 may provide for the conversion to luncheon vouchers.
330.00	**Health care facilities and services** **Service flats:** gross annual bonus of € 161.41 for each worker employed by the institution from 1 January until 30 September. Paid from October 2015. Part-timers on a pro rata basis.

Rules regarding the adjustment of the wages

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

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

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

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

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

.

Patrick Desmyter, Technical Expert

If you are a member of the Payroll Agency and index forecasts for other business sectors are of interest to you, you may sand an e-mail to indexprognoses@partena.be.