MEMENTO

OF THE EMPLOYER 1

TOPIC

CASE LAW

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THE IMPLEMENTATION OF THE SUMMER AGREEMENT

The Summer Agreement of the Michel government has already caused a great deal of ink to flow. A number of measures are entering into force as from 1 January 2018. A number of others are however still awaiting approval by the federal parliament.

The Summer Agreement appeared to comprise a set of measures that were more or less uniform. That idea has now been completely rejected. The government has spread the Summer Agreement over four texts: 1) a programme law, 2) a law reforming the corporate tax, 3) a law on economic recovery and improvement of social cohesion, and 4) a law providing for various work regulations. In this way, the measures of the Summer Agreement were combined with other measures. In the meantime, the programme law, the law reforming the corporate tax and the law on various work regulations have been fully implemented.

In this issue, we provide a general overview of the state of affairs, using six topics that are important for you.

1. Purchasing power and wage costs;
2. Flexibility and competitiveness;
3. New forms of compensation;
4. End of employment agreement;
5. Protection and well-being of employees;
6. Working longer.

The profit bonus is one of the most eye-catching measures.
You can read more about this new form of remuneration in last year's December issue.

Other topics covered in this issue

A. Scientific research: Exemption from payment of withholding tax;
B. Expansion of flexi-jobs to businesses and pensioners;
C. Pseudo "trial period": a more gradual build-up of notice periods;
D. E-commerce: night work on Sundays and public holidays in e-commerce.

01 OVERVIEW

Our guiding principle here is to explain what the Summer Agreement means for your human resources policy. (We will not discuss here the measures directed at self-employed workers and civil servants.)
For each topic, we list for whom it is important (employers, employees or both), what the impact is, and the date that the measure takes effect.

Some measures were initially high on the agenda, but at present are still in the pipeline. We clearly indicate where this is the case in the overview.

Purchasing power and wage costs			
Measure	**For whom?**	**What impact?**	**Start date?**
Tax shift, phases 2 and 3	Employers	Reduction of the employer social security contribution to 25% (especially attractive in the case of low wages).	2018-2019-2020
	Employees	Increase in net wages	2018-2019
Building sector shift work	Employers	Expansion of the exemption from payment of withholding tax	Still in the pipeline
			Was initially planned for 1 January 2018
Starter jobs for young people under 21	Employers	Reduction of labour costs while maintaining employee net salary	Still in the pipeline
			Was initially applicable to new employment agreements entered into as from 1 July 2018
Scientific research	Employers	Expansion of the exemption from payment of withholding tax to those with bachelor's degrees	1 January 2018

Flexibility and competitiveness			
Measure	**For whom?**	**What impact?**	**Start date?**
Temporary work	Employers	Approval for all sectors (inland shipping & removals)	Still in the pipeline Was initially planned for 1 January 2018
Expansion of flexi-jobs to businesses and pensioners	Employers	Special employer contribution of 25%	1 January 2018
	Employees	Gross wages = net wages	
Sharing economy Work for associations Citizen2Citizen	Employers Employees	Exempt from taxes and social security contributions up to EUR 6,000 per year	Still in the pipeline Gradual implementation was planned as from 20 February 2018. The French Community invoked a conflict of interest. The different federal states must now enter into consultation, a procedure that can take up to 120 days.
Student work	Employers Students aged 16 to 18	Also on Sundays	No concrete proposals available
E-commerce: night work on Sundays and public holidays	Employers	Simplified implementation	1 January 2018

New forms of compensation			
Measure	**For whom?**	**What impact?**	**Start date?**
Profit bonus	Employers Employees	Attractive tax and social security regime Simple procedure Does not count towards the wage standard	1 January 2018
Private supplementary pension	Employees	Financing of 2nd pillar pension via deduction from wages At the employee's request Favourable tax regime	No concrete documents available

End of employment agreement			
Measure	**For whom?**	**What impact?**	**Start date?**
Pseudo "trial period"	Employers	Gradual build-up of notice period from 1 week (<1 month) to 5 weeks (<6 months)	Still in the pipeline 1st day of 2nd month after publication in the Belgian Official Gazette
Outplacement	Employees	Employees cannot participate in outplacement due to chronic health conditions: right to full severance pay	15 February 2018 (10th day after publication in Belgian Official Gazette)
Construction sector	Employers Employees	Notice periods: adjustment of non-standardised system	As from 1 January 2018, the ordinary regulation for notice periods applies to all employees

Protection and well-being of employees			
Measure	**For whom?**	**What impact?**	**Start date?**
Burn-out projects	Employees	Financing via high-risk groups (0.10%) Sector level or company level	Still in the pipeline Was initially planned for 1 January 2018
Disconnecting	Employees	Consultation with prevention and protection committee	Still in the pipeline Was initially planned for 1 January 2018
Mystery calls	Employees	Fight against discrimination on the labour market	1 April 2018 (1st day of 2nd month after publication in the Belgian Official Gazette)

Working longer			
Measure	**For whom?**	**What impact?**	**Start date?**
Partial pension	Employers Employees	Combination of pension and continuing to work while accumulating additional pension rights	No concrete documents available
Older employees: additional compensation for reduction of working time	Employees	• As from age 60: switch from full-time to part-time (4/5 time) • As from age 58: switch from shift and night work or switch to lighter work • Compensation exempt from social security	No concrete documents available

A. SCIENTIFIC RESEARCH: EXEMPTION FROM PAYMENT OF WITHHOLDING TAX

Companies employing researchers with specific master's or doctor's degrees, or with a civil engineering degree, in research or development projects or programmes benefit from an exemption from payment of withholding tax. This degree condition is being relaxed. Since 1 January 2018, the exemption also applies to researchers in possession of a bachelor's degree in a specific field of study.

THE EXEMPTION FROM PAYMENT OF WITHHOLDING TAX

The exemption from payment of withholding tax for researchers with a bachelor's degree is equal to:

- 40% of the calculated withholding tax for remuneration granted or paid since 1 January 2018;
- 80% of the calculated withholding tax for remuneration granted or paid as from 1 January 2020.

Moreover, the amount of the exemption for researchers with a bachelor's degree is limited to 25% or 50% of the exemption for those with a master's or doctoral degree.

- The exemption is limited to 25% of the total amount of the exemption that was calculated for the researchers with a specific master's or doctoral degree or with a civil engineering degree.
- The percentage of this limitation is increased to 50% for companies categorised as small companies (Article 15, §§1-6 of the Companies Code) for the tax year associated with the taxable period in which the remuneration is paid.

SPECIFIC BACHELOR'S DEGREES

The exemption from payment of withholding tax does not apply to all bachelor's degrees. The researcher must be in possession of:

- One of the following **academic bachelor's degrees** (or equivalent degrees) in these areas of study or combinations thereof:

For the Flemish Community	For the French Community
Sciences	Sciences
Applied sciences	Engineering
Applied biological sciences	Agricultural and biological engineering
Medicine	Medicine
Veterinary medicine	Veterinary medicine
Pharmaceutical sciences	Biomedical and pharmaceutical sciences
Biomedical sciences	Architecture and urban planning
Industrial sciences and technology	Industrial sciences
Nautical sciences	Industrial agricultural sciences
Biotechnology	
Architecture	
Product development	

- One of the following **professional bachelor's degrees** (or equivalent degrees) in these areas of study or combinations thereof:

For the Flemish Community	For the French Community
Biotechnology Health care Industrial sciences and technology Nautical sciences Commerce and business administration - limited to programmes that focus mainly on computer science and innovation	Paramedical Technical degrees - limited however to programmes that focus mainly on biotechnology, industrial sciences, technology, nautical sciences, product development and computer science

B. EXPANSION OF FLEXI-JOBS TO BUSINESSES AND PENSIONERS

Flexi-jobs are a new form of employment that make it possible to earn extra income. They have existed in the hospitality sector since 2015. As from 2018, flexi-jobs are also permitted in businesses, and there are flexible entry conditions for pensioners.

1. THE MAIN ADVANTAGE OF FLEXI-JOBS: GROSS WAGES = NET WAGES

Flexi wages and flexi holiday pay (7.67%) are not subject to ordinary social security contributions. There are no employee contributions. However, the employer must make a special discharging employer contribution of 25%.

Flexi wages and flexi holiday pay are not subject to personal income tax. The employer is not obligated to deduct withholding tax. Furthermore, flexi wages, flexi holiday pay and the special employer contribution of 25% are deductible business expenses.

In addition, an advantage for the employer is that the sectoral salary scales do not apply to flexi-jobs. Regardless of a flexi-job employee's position, he or she is entitled to a minimum basic wage of EUR 9.18 per hour excluding holiday pay, or EUR 9.88 including holiday pay.

2. WHICH EMPLOYERS?

Flexi-jobs are solely intended for employers in the following sectors/joint committees:

- bakeries, patisseries and patisserie teashops (joint committee 118.03);
- food product businesses (joint committee 119);
- independent retail businesses (joint committee 201);
- food product retail businesses (joint committee 202);
- medium-sized food product businesses (joint committee 202.01);
- hospitality (joint committee 302);
- large retail businesses (joint committee 311);
- department stores (joint committee 312);
- hairdressing and beauty salons (joint committee 314).

Flexi-jobs can also exist in the temporary employment agency sector. Temporary workers must however work for a user who falls under one of the preceding joint committees or subcommittees.

3. WHICH EMPLOYEES?

In the sectors that are permitted, two categories of employees can hold a flexi-job:

- pensioners, who do not have to prove a main work activity
- persons who are not yet on a pension, and who do have to prove a main work activity

Conditions for pensioners and non-pensioners:

- The flexi-job cannot be combined with an ordinary employment agreement with the same employer that is for at least 4/5 of full-time working hours (periods in another flexi-job or as a student, for example, do not count);
- The flexi-job cannot be held during a period covered by severance or redundancy pay paid by the same employer;The flexi-job cannot be held during a period covered by a notice period involving the same employer.

Additional condition for non-pensioners:

- In the third quarter of last year, there was full social insurance for at least 4/5 of full-time working hours with one or more other employers.

4. FORMALITIES

Four formalities must be completed.

- **A one-off framework agreement**
  The framework agreement states the intention of the parties to proceed with employment in a flexi-job and lays down the terms under which this will take place.
- **One specific employment agreement per job**
  When the employer effectively calls upon the employee to come and work as a flexi-job employee, it must enter into an employment agreement with this employee. This may be done both verbally and in writing. The employment agreement is entered into for a definite period or for a clearly defined job.
- **A prior Dimona** (declaration of employment)
- **A daily record of attendance**
  For each flexi-job employee, the employer must register and keep track of the beginning and end of each period worked.

If even one of these four conditions is not complied with, the flexi-job status will lapse. It then becomes a job under an ordinary employment agreement. The salary scale for the sector then becomes mandatory, and the employee is presumed to be employed full-time. Moreover, the compensation is subject to the normal social security contributions and personal income tax/withholding tax.

5. THE EUROPEAN BAN ON STATE AID

During any given three-year period, a company may never receive government aid exceeding EUR 200,000. The expansion into new sectors increases the risk that some employers will surpass this limit, meaning that part of the aid may be recovered. The Belgian government is not organising any checks for now, but the principle remains unchanged.

C. PSEUDO "TRIAL PERIOD": A MORE GRADUAL BUILD-UP OF NOTICE PERIODS

In the Summer Agreement, the government planned a more gradual build-up of notice periods during the first six months of employment. This change only applies in the event of dismissal by the employer. However, the Summer Agreement measure has not yet been approved by Parliament.

Below is a comparison between the current notice periods and those applying in the future.

Seniority	< 1 month	< 2 months	< 3 months	< 4 months	< 5 months	< 6 months	< 7 months	< 8 months
Today	2 weeks	2 weeks	2 weeks	4 weeks	4 weeks	4 weeks	6 weeks	...
Future	1 week	1 week	1 week	3 weeks	4 weeks	5 weeks	6 weeks	...

This measure would become applicable on the first day of the second month after its publication in the Belgian Official Gazette. The new notice periods also have an impact on current employment agreements.

If, as an employer, you sign the notice before this measure enters into force, the current notice periods will continue to apply.

D. E-COMMERCE: WORK AT NIGHT, ON SUNDAYS AND ON PUBLIC HOLIDAYS

E-commerce is a rapidly growing sector that brings a lot of additional employment, but it also faces competition from our neighbouring countries. In order for it to fully develop, it is important for this sector to allow staff to work at night and on Sundays and public holidays (thus derogating from the ban on night and Sunday work).

Since 1 February 2017, it has been possible to employ staff at night within the scope of e-commerce, i.e. "for the performance of all logistics and supporting services associated with electronic commerce". Under the law, this was feasible and manageable work. The Summer Agreement relaxes the procedure for night work in e-commerce.

In addition, a pilot project as it were is being launched. In 2018-2019, the procedure for implementing Sunday work will be harmonised. However, this harmonisation will only apply to e-commerce in the form of parcels and other moveable goods.

In addition, in 2018-2019, the Summer Agreement provides for the possibility of Sunday work in e-commerce.

1. E-COMMERCE IN GOODS AND SERVICES: SIMPLIFIED PROCEDURE FOR THE IMPLEMENTATION OF NIGHT WORK (= PERIODS WORKED BETWEEN 8 P.M. AND 6 A.M., OR BETWEEN 12 MIDNIGHT AND 5 A.M.)

As from 1 January 2018, a company with a *trade union delegation* may implement night work by entering into an ordinary company collective labour agreement[1] with a single representative employee organisation. It is therefore no longer necessary for this CLA to be entered into with all organisations represented in the trade union delegation.

2.E-COMMERCE IN MOVABLE GOODS: SPECIFIC FRAMEWORK FOR NIGHT AND SUNDAY WORK

A specific framework has been created for e-commerce in movable goods. This framework consists of all tasks that are required to deliver a finished product (movable good) to the consumer as efficiently as possible at the right time and to the right place. Some examples: order processing, packaging, dispatch, delivery, monitoring of the flow of goods, stock management, cargo handling, collection points, after-sales telephone service.

a. Night work: harmonisation of the procedure

The procedure to implement night work is being simplified. In principle, two situations must be clearly distinguished in this regard.

1) Situation 1: Employment of staff between 8 p.m. and 6 a.m., but not between 12 midnight and 5 a.m.
2) Situation 2: Employment of staff between 8 p.m. and 6 a.m., also between 12 midnight and 5 a.m. (= "working arrangement with night work").

For 2018-2019, this is a little simpler because the procedure is (temporarily) being harmonised: you may choose between amending the employment regulations or entering into an ordinary company CLA.

Situation 1: Employment of staff between 8 p.m. and 6 a.m., but not between 12 midnight and 5 a.m.

Before 01.01.2018	01.01.2018 through 31.12.2019
Procedure to amend employment regulations	Procedure to amend employment regulations[2] (remains possible) Or Entering into an "ordinary company CLA"[3] with a single representative employee organisation

This procedure applies whether or not there is a trade union delegation at the company.

You must also announce the amended employment regulations: notice to employees, notice to the social law inspectorate and keep a copy of them at each location where you employ employees.

Situation 2: Employment of staff between 8 p.m. and 6 a.m., also between 12 midnight and 5 a.m.

Company without a trade union delegation	
Before 01.01.2018	**01/01/2018 through 31/12/2019**
Procedure to amend employment regulations	Procedure to amend employment regulations[4] (remains possible) Or Entering into an "ordinary company CLA"[5] with a single representative employee organisation
Company with a trade union delegation	
Before 01/01/2018	**01/01/2018 through 31/12/2019**
Enter into company CLA with *all* organisations represented in the trade union delegation	Procedure to amend employment regulations[6] Or Entering into an "ordinary company CLA" with a single representative employee organisation[7]

Additional protective measures apply to night work between 12 midnight and 5 a.m. The prior consultative and informational procedure for the implementation of a "working arrangement with night work", as well as the supervisory measures such as those concerning the specific financial compensation to the employee (CLA 46 and 49) must always be respected.

Finally, you must notify the social law inspectorate that this is in application of the above-mentioned temporary option.

You must also announce the amended employment regulations: notice to employees, notice to the social law inspectorate and keep a copy of them at each location where you employ employees.

b. Work on Sundays and public holidays

For **2018 and 2019,** there is an option to have staff work on Sundays. This is done by following the procedure to amend the employment regulations or entering into an "ordinary company CLA" with a single representative employee organisation. After 31 December 2019, this may be confirmed by again entering into an ordinary company CLA. Employment on a public holiday is also possible based on this derogation.

3. EXEMPTION FROM PAYMENT OF WITHHOLDING TAX WITH NIGHT WORK

If you are planning night work which is performed between 12 midnight and 5 a.m., under certain conditions, you may obtain a contribution towards your wage costs as an employer. This is done by way of an exemption from payment of withholding tax on the part of the employer.

The employee must cumulatively meet the following conditions:

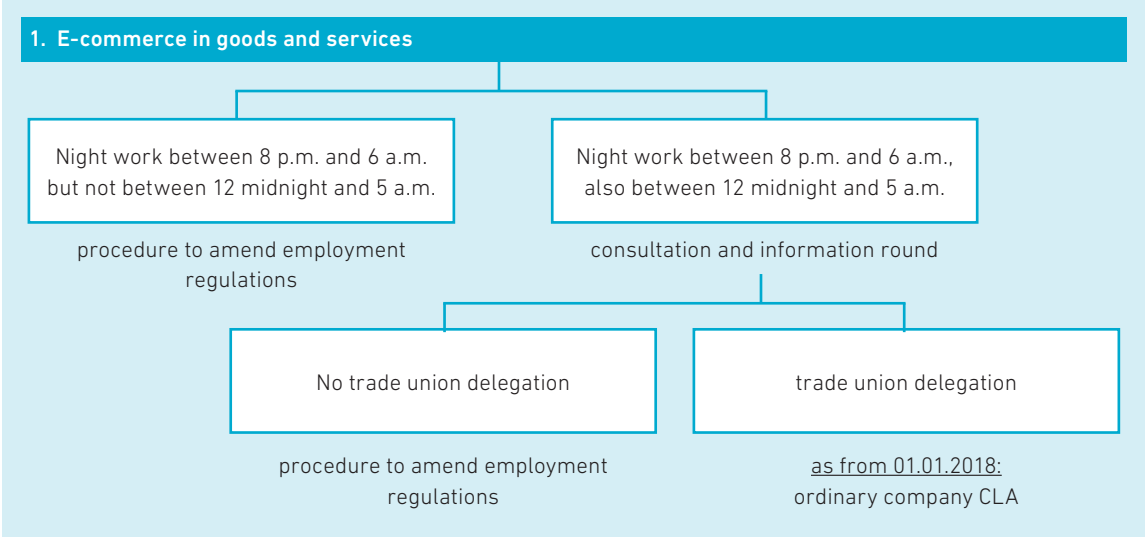
- The employee works at night (between 12 midnight and 5 a.m.) for at least one-third of his or her time during the month in question
- He or she receives a night premium subject to withholding tax
- He or she belongs to Category 1 of the structural reduction (profit sector and subject to all social security systems).

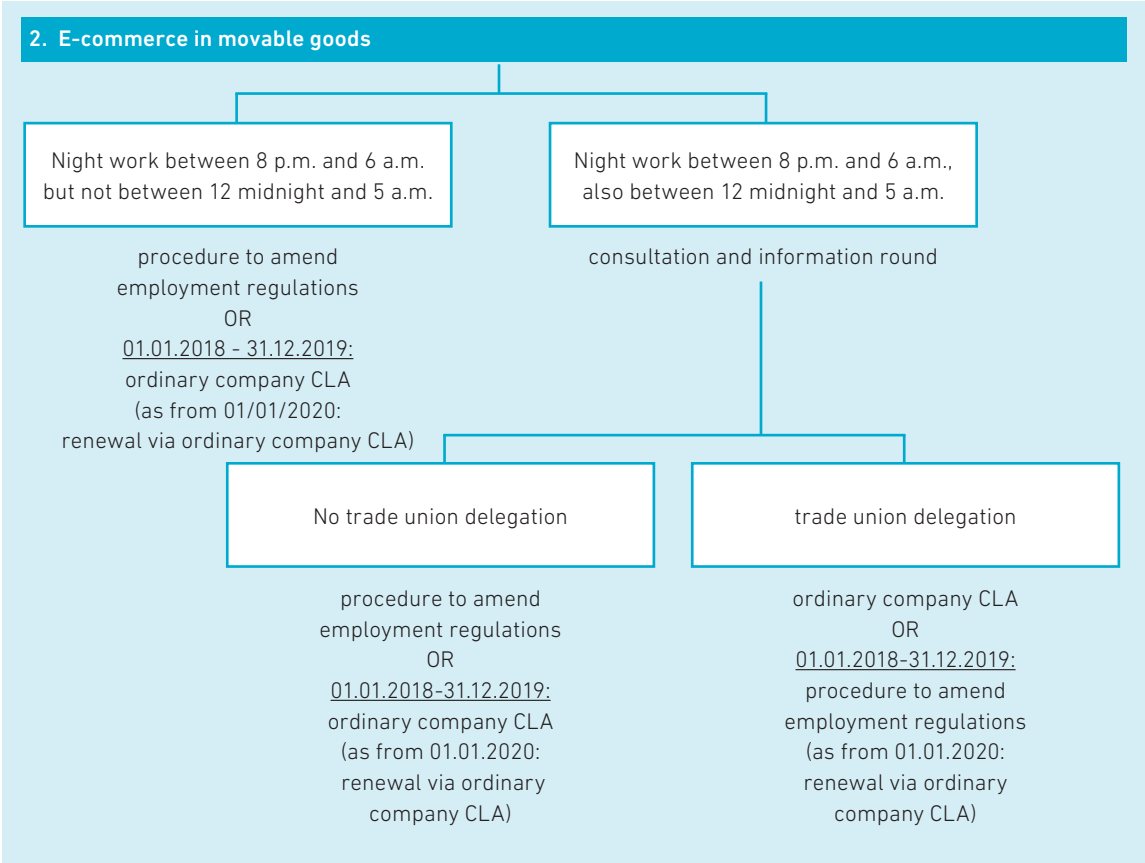
If the conditions are met, the percentage of the exemption from payment of withholding tax is equal to **22.80%** of taxable earnings, including night premiums. In order to benefit from this exemption from payment of withholding tax, the employer must prove that the employee meets the conditions above through its withholding tax statement. This is done by way of a specific tax return and keeping a nominative list with specific information accessible by FPS Finance.

4. A DAY CONSISTS OF 24 HOURS

Naturally, you will also want to employ your staff between 6 a.m. and 8 p.m. However, it is not permitted to allow an employee to work 24 hours a day or 7 days a week. To make the best possible use of your 24-hour period, and in compliance with the rules on working hours (daily and weekly limits, avoiding overtime, etc.), you must draw up all documents well. There are many instances (shift work, great flexibility, etc.) where specific rules and conditions still apply.

NIGHT WORK – SCHEMATIC OVERVIEW





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1 Company CLA: must be filed with the registrar of the General Directorate for Collective Labour Relations of FPS ELSD. Subsequent adjustment of employment regulations without application of procedure to amend employment regulations.

2 Procedure to amend employment regulations = based on either a decision of the works council or following direct consultation with the employees (posting of a proposal, 15-day consultation, collection of remarks to social law inspectorate).

3 Company CLA: must be filed with the registrar of the General Directorate for Collective Labour Relations of FPS ELSD. Subsequent adjustment of employment regulations without application of procedure to amend employment regulations. Communication to social law inspectorate that this is in application of the above-mentioned temporary option.

4 Procedure to amend employment regulations = based on either a decision of the works council or following direct consultation with the employees (posting of a proposal, 15-day consultation, collection of remarks to social law inspectorate).

5 Company CLA: must be filed with the registrar of the General Directorate for Collective Labour Relations of FPS ELSD. Subsequent adjustment of employment regulations without application of procedure to amend employment regulations.

6 Procedure to amend employment regulations = based on either a decision of the works council or following direct consultation with the employees (posting of a proposal, 15-day consultation, collection of remarks to social law inspectorate).

7 Company CLA: must be filed with the registrar of the General Directorate for Collective Labour Relations of FPS ELSD. Subsequent adjustment of employment regulations without application of procedure to amend employment regulations.

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PART-TIME EMPLOYEES: CALCULATION OF WAGE LIMITS IN LABOUR LAW

Belgian labour law has quite a few wage limits. For example, a non-competition clause is allowed for annual gross salaries of EUR 34,180 and above. You can include an arbitration clause for grossannual salaries starting at EUR 68,361, and a training clause is allowed starting at EUR 34,180 a year. The application of wage limits is not limited to the Employment Contracts Law. Employees that are absent due to paid educational leave keep their normal wages for those hours of absence. The wage is limited: during the school year of 2017-2018, the wage limit is set at EUR 2,871 a month. Collective labour agreements also often contain wage limits, for example CLA 41bis, regar-ding the security guarantee.

How to apply those wage limits to part-time employees? The Constitutional Court indicates the direction in a recent ruling (Constitutional Court, 23 November 2017, no. 134/2017, can be consulted at www.const-court.be).

TRIAL PERIOD: PROPORTIONAL WAGES INSTEAD OF EFFECTIVE PART-TIME WAGES

The Constitutional Court gives an interpretation about the trial period that has since been abolished (previously article 67, § 2 employment contracts law). Before the Single Status Law took force on 1 January 2014, the trial period could not exceed six or twelve months respectively, depending on whether or not the gross annual salary exceeded EUR 38,665.

Is this annual wage limit to be applied uniformly to all employees, no matter if full time or part-time, or must the wage be applied proportionately to the normal weekly working hours of the employee?

The Constitutional Court researches the purpose of the trial period and the wage limits. The legis-lator wanted to allow a longer assessment for employees who earn higher wages and thus in principle have more important or more technical functions. That purpose is not achieved if the fact that an employee is employed part-time is not taken into account and only the actual wage of the part-time employee is considered. That would violate the principle of equality (art. 10 and 11 of the Constitution).

Therefore, the Constitutional Court suggests proportionally adjusting the actual annual salary for calculating the wage limit, as if the employee is employed full-time, rather than using the actual part-time salary in the calculation.

APPLICABLE TO OTHER WAGE LIMITS?

The Constitutional Court ruling only concerns the wage limit for the trial period clause for employees. Is the proportional salary rather than the effective part-time salary also to be taken into account when applying other wage limits under the employment contracts law, and, by extension, labour law?

Earlier, the Constitutional Court has judged that the practice in which the duration of the term of notice is based on the effective part-time salary, due to which the employee qualified as a lower level employee, also violated the principle of equality (Court of Arbitration 20 April 1999, no. 45/99, can be consulted at www.const-court.be).

Also applying a proportional salary to the non-competition clause, the arbitration clause and the training clause is in line with both rulings of the Constitutional Court.

Whether a proportional calculation should also be applied outside the employment contracts law is less straightforward. This approach does not always benefit the employee. Within the framework of the paid educational leave, for example, the proportional lowering of the monthly wage limit results in lower continued wage payment.

Yves Stox, Senior Legal Counsel

CASE LAW

BASIS SOCIAL SECURITY CONTRIBUTIONS – THE GENEROUS EMPLOYER. WHEN DOES A GIFT COUNT AS SALARY?

An employer grants employees' children a birthday premium when they reach the age of twelve. The employer pays the premium directly to the children. Therefore, it is not an extra-legal child allowance that is exempt from social security contributions. But doesn't the premium qualify as a gift? Or is it wages for which social security contributions are due? That depends on the exact circumstances. Social security contributions will often be due. That is shown by a recent ruling of the Court of Cassation (Court of Cassation 19 June 2017, S.16.0006.F, can be consulted at www.juridat.be).

A BRIEF OVERVIEW OF THE FACTS

The employer (with over three hundred staff members) grants the children of all his employees a birthday premium. At the age of twelve years, the employer pays an amount of EUR 499 into the bank account of the child. A policy within the company stipulates the grant modalities. (It is unclear what those modalities are.)

SO WHY WOULD SOCIAL SECURITY CONTRIBUTIONS NOT BE DUE?

The Labour Tribunal in Brussels accepts that the birthday premium is not subject to social security contributions (Labour Tribunal, Brussels 20 May 2015, AR. 2013/AB/936, can be consulted at www.juridat.be).

Social security contributions are due for the gross salary of the employee. The definition of "wages" applied is taken from that in the wage protection law. It concerns (I) the wage in money, or the benefits with a monetary value, (II) to which the employee is entitled (III) as a result of his or her em-ployment and (IV) at the expense of the employer, even if the benefits are not granted in return for work performed.

The Labour Tribunal provides two reasons why the birthday premium would not be subject to social security contributions.

1) Firstly, the Labour Tribunal rules that the birthday premium is not a benefit to which the employee is entitled. Not the employee, but his or her child is the beneficiary of the birthday premium.
2) In addition, according to the Labour Tribunal, the birthday premium qualifies as a gift based on a special event in the personal life of the employee (Court of Cassation 5 January 2009, S.08.0064.N, can be consulted at www.juridat.be).

The Court of Cassation therefore does not agree. Social security contributions are indeed due.

WHY SOCIAL SECURITY CONTRIBUTIONS ARE DUE

The Court of Cassation rejects the twofold reasoning of the Labour Tribunal.

1) Even if the employer performs a payment to a third party, social security contributions are still due if the employee is entitled to the benefit based on the labour agreement or a promise by the employer.

   This reasoning does not only apply to gifts, but to all benefits that an employer was to grant a third party. Examples are incentive journeys that an employer grants to the partners of employees. The Court of Cassation thus rejects the statement that no social security contributions are due because the benefit is directly added to the assets of the partner (for example Labour Tribunal Antwerp, 14 September 2012, AR 2011/AA/309, unpublished).

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2) According to the Court of Cassation, the birthday premium is not a gift. Two elements are central to the reasoning of the Court of Cassation. The employer determines the (I) grant modalities that apply to (II) all employees. If an employee fulfils the grant modalities, he or she has a right to receive the premium (even if paid to a third party, i.e. the child). Thus, the benefit is granted to all employees, and only to employees. Thus, the employee is entitled to the birth premium due to his employment. Employee rights cannot be unlinked from the employment relationship.

WHAT YOU NEED TO REMEMBER

- All benefits that you grant to a third party, but to which the employee is entitled because he or she is employed by you, are as a rule subject to social security contributions.
- Granting a gift without having to pay social security contributions is possible, but there is little room to do so. It cannot be a benefit to which all employees are anyway entitled if certain grant modalities are fulfilled. Ensure that the discretionary nature of the gift is retained.

See also the November 2016 issue about the basis for social security contributions. There, we discuss the interpretation of the concept of wage if employees of a group of companies receive benefits from subsidiaries other than their own employer (Court of Cassation, 10 October 2016, S.15.0118.N, can be consulted at www.juridat.be

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