

# MEMENTO

## OF THE EMPLOYER 02



## TOPIC

### What changes as from 1 January 2018? >

PROFIT BONUS >

FLEXI-JOBS IN THE RETAIL TRADE >

E-COMMERCE: WORKING AT NIGHT AND ON SUNDAYS >

END OF THE DEROGATING REGIME FOR NOTICE PERIODS >

TAX SHIFT PART II AND THE STRUCTURAL REDUCTION >

ACTIVATION CONTRIBUTION UPON EXEMPTION FROM DUTIES >

ACCOUNTABILITY CONTRIBUTION FOR PART-TIME WORK >

WIJNINCKX CONTRIBUTION TO THE BUILD-UP OF SUPPLEMENTARY PENSIONS: FROM 1.5% TO 3% >

ALLOWANCE FOR END-OF-CAREER JOBS: SOCIAL SECURITY EXEMPTION >

VALUE OF IT EQUIPMENT FOR THE SOCIAL SECURITY OFFICE AND THE TAX AUTHORITIES >

NON-PERFORMANCE-RELATED BENEFITS (CLA NO. 90): NOT ON CLOSURE OF THE COMPANY - INDEXED LIMITS >

REVALUATION OF SUPPLEMENTARY ALLOWANCE FOR NIGHT WORK >

REVALUATION OF ADDITIONAL ALLOWANCE IN THE CASE OF SWT (SYSTEM OF UNEMPLOYMENT WITH EMPLOYER SUPPLEMENT) >



## CASE LAW

### An employee moves from one place of work to another >

## COLOPHON

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# WHAT CHANGES AS FROM 1 JANUARY 2018?

In this year's **January issue**, you were able to find an overview of the most important HR measures from the summer agreement.

That summer agreement appeared to comprise a set of measures that were more or less uniform. You will have already noticed that that idea has in the meantime been completely abandoned. In addition, there are a great many other new measures. Anyone wishing to know what has to be done must read four texts: 1) a programme law, 2) (to a lesser extent) a law reforming corporation tax, 3) a law on economic recovery and improvement of social cohesion, and 4) a law providing for various work regulations.

Increasingly, change seems to be the only constant, but Partena Professional nevertheless tries to make it a little easier.

What's changed in January 2018? We offer you an overview.

## PROFIT BONUS<sup>1</sup>

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As from 1 January 2018, you can allocate a profit bonus. The profit bonus is a new way of rewarding employees based on the company's profit. Below you will find a brief outline. Want to know more?

Consult the [December 2017 issue](#).

### 1) How to allocate the profit bonus?

Based on the profit from the past financial year, the employer allocates a sum of money to the employees. The profit bonus is a fixed amount or is expressed as a percentage of the employee's salary.

### 2) Taxation and social security

The employer deducts 7% tax. This is a discharging tax deduction. This means that the employee no longer has to include the profit bonus in his or her personal income tax return.

Regular social security contributions are not owed for social security. The employer must, however, deduct a solidarity contribution of 13.07% from the employee on the gross amount of the bonus.

The employer itself is not liable for any social security contributions.

### 3) The same amount for all employees?

The profit bonus is a collective bonus. However, the employer doesn't have to allocate the same amount to all employees. A profit bonus based on a percentage of the salary is one initial way to allocate a different amount. In addition, the employer can have the profit bonus vary based on seniority, grade, position, salary scale, remuneration

level and/or level of education. Be aware though that if, for example, an employee receives €1,000, the profit bonus of the CEO may not exceed €10,000.

### 4) Possible as from the 2017 financial year

You can already now allocate a profit bonus based on the profit for the financial year ended on 30 September 2017.

## FLEXI-JOBS IN THE RETAIL TRADE<sup>2</sup>

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It was already possible to take on an extra job in the hotel and catering industry, but as from 1 January 2018 the system of flexi-jobs is being expanded. Flexi-jobs are also permitted in the retail trade, and there are flexible entry conditions for pensioners. Want to know more? Consult the [January 2017 issue](#), our themed number on the summer agreement.

## E-COMMERCE: WORKING AT NIGHT AND ON SUNDAYS<sup>3</sup>

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As from 1 January, this measure from the summer agreement offers the possibility for e-commerce *in goods and services* to introduce night work through a simplified procedure. For e-commerce in all *movable property*, a specific framework is being created for night and Sunday work. Want to know more? Consult the [January 2017 issue](#), our themed number on the summer agreement.

## END OF THE DEROGATING REGIME FOR NOTICE PERIODS

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You will doubtless remember the reform of the notice terms by the Single Status Law. As from 1 January 2014, temporary or definitive exemption regimes had been introduced for a number of sectors, particularly the construction and diamond sectors.

As from 1 January 2018, these regimes have come to an end. From now on, the normal notice terms apply in all sectors.

## TAX SHIFT PART II AND THE STRUCTURAL REDUCTION

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Were you expecting a major drop in social security contributions as from January, but were disappointed by reality? We explain how that happened. As from 1 January 2018, the basic contributions for employers of the profit sector falls from 30% to 25%, but at the same time the structural reduction is significantly restricted.

The structural reduction is an automatic, fixed contribution reduction for all employers. It was created to compensate for the high employer contributions. In the profit sector the structural reduction is limited to the low and middle salaries as from 1 January 2018. The fall in the percentage of the employer's basic social security contributions is therefore greatly offset by the reform of the structural reduction.

On top of this there are the possible salary indexations in certain sectors as from 1 January 2018. The consequence of this is that the amount of the basic contributions will once again increase.

## ACTIVATION CONTRIBUTION UPON EXEMPTION FROM DUTIES<sup>4</sup>

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Are you exempting an employee from duties while continuing to pay his or her salary (or part of it)? If so, you will have to pay a special contribution as from 1 January 2018.

Not only is this new contribution due when employees are collectively exempted from work duties in the framework of a restructuring operation, the activation contribution is also due when you agree with an individual employee to suspend work duties in the context of "garden leave" while you are still paying the salary.

The government found that ever more employers were making use of the system of the so-called "garden leave clause". Basically, provided that a number of conditions are met, this system boils down to the employee remaining bound to the company by means of an employment contract, but no longer having to perform any duties. In return, he or she is required to relinquish part of his or her salary. This is mainly applied to older employees.

### 1) Who?

The activation contribution applies to employers to which the CLA law applies (and to autonomous public companies). The contribution is owed for every employee who makes use of an exemption from duties regardless of his or her status (blue-collar worker, white-collar worker, etc.), seniority or age (there is no minimum or maximum age limit).

**2) When?**

This new contribution is due when the employee does not perform any duties with the same employer during the entire quarter, except where the lack of performance of duties is the result of:

- a suspension of the execution of the employment contract in accordance with the employment contracts law;
- an exemption from performance of duties during the period of notice.

The contribution is **not** due in the following cases:

- the employee entered into a mechanism of *full* exemption before 28 September 2017;
- the employee enters into a mechanism of *full* exemption in application of a CLA that was submitted to FPS ELSD before 28 September 2017;
- the employees entered into a mechanism of *partial* exemption. The activation contribution is not owed if the employee continues to perform duties, which can for example also be the case in the context of teleworking.

**3) Amount**

The employer must pay the social security office a percentage of the salary paid to the employee during the inactivity, but with a minimum quarterly amount. The percentage depends on the age at which the inactivity starts and doesn't change after that.

Age at the start of the period of inactivity	Percentage of quarterly salary	Minimum quarterly contribution
< 55	20%	€300,00
≥ 55 and < 58	18%	€300,00
≥ 58 and < 60	16%	€300,00
≥ 60 and < 62	15%	€225,60
≥ 62	10%	€225,60

**4) Exemption or reduction**

If the employee follows a mandatory training course during the period of exemption from duties, a reduction or exemption from the contribution applies.

The courses that are eligible are:

- Vocational training;
- The new interprofessional training objective of 5 days per year (part of the Law of 5 March 2017 on feasible and manageable work).

Training		Impact on the contribution	
When?	Training conditions	Impact	Period
During the <b>first 4 quarters</b> of the period of exemption from duties	Compulsory training: <ul style="list-style-type: none"> <li>• organised by the employer;</li> <li>• with a cost of at least 20% of the gross salary earned annually by the employee before the interruption.</li> </ul>	<b>Exemption</b> of the contribution	During the full period of exemption of duties
During a <b>random period of 4 consecutive quarters</b> , situated during the period of exemption from duties	Compulsory training: <ul style="list-style-type: none"> <li>• organised by the employer;</li> <li>• which provides for at least 15 days of training during this period of 4 consecutive quarters.</li> </ul>	<b>Reduction</b> of the contribution by 40%	Only during the period concerned of 4 consecutive quarters

**5) Exemption upon resumption**

If, during the period of inactivity with the current employer, the employee takes up an activity with a different employer or as a self-employed person, the current employer is exempted from the contribution.

Only a full quarter of resumption gives entitlement to the exemption. The resumption must be “new”: an activity that was already performed prior to the period of exemption from work is in principle not eligible. If the new employment stops, the activation contribution is once again due.

Resumption		Impact on the contribution	
In which capacity?	Conditions	Impact	Period
As an employee with one or more other employers	At least 1/3 of the full-time working hours	Exemption from the contribution	Exemption during the period of resumption. The contribution is once again due upon discontinuation of the resumption.
As a self-employed person			

## ACCOUNTABILITY CONTRIBUTION FOR PART-TIME WORK<sup>5</sup>

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Did you know that a part-time employee can submit a request to you for a full-time employment position or for a part-time employment position with a higher number of working hours a week? He or she then has precedence in increasing his or her weekly working hours. That means that you inform him or her in writing of any vacant full-time or part-time employment position relating to the same job and for which the employee possesses the required qualifications. You then fill in a suitable vacancy with a part-time employee.

This obligation is therefore not new. The accountability contribution is, however. This social security contribution is intended to encourage employers to have part-time employees with an income guarantee payment work more if there is additional work for them. The National Employment Office grants an income guarantee payment to an unemployed person who resumes work on a part-time basis in order to guarantee an overall income level that is not less than the previous unemployment benefit.

This new accountability contribution applies to employment contracts concluded as from 1 January 2018.

### 1) Who?

The accountability contribution is due for employment contracts:

- concluded at the earliest on 1 January 2018;
- for part-time employment;
- and where the employee is entitled to an income guarantee payment for the inactive hours.

### 2) When?

Employers who do not have vacancies filled as a priority by part-time employees with an income guarantee benefit are sanctioned with the accountability contribution.

### 3) Amount

The accountability contribution is a fixed amount of €25.00:

- per part-time employee with income guarantee payment; and
- per month during which this employee was not offered the vacant hours.

### 4) Exemption

The accountability contribution is not due in two situations:

- no additional hours have been available in the position of the part-time employee during one year, to be counted as from the first application for the income guarantee payment with the National Employment Office;
- the employer gives the additional hours to a different employee because they fall within the current work schedule of the part-time employee.

## WIJNINCKX CONTRIBUTION TO THE BUILD-UP OF SUPPLEMENTARY PENSIONS: FROM 1.5% TO 3%<sup>7</sup>

The percentage of the special social security contribution for supplementary pensions is being increased from 1.5% to 3%. This measure will take effect on 1 January 2018.

In 2012, a special social security contribution of 1.5% was introduced on contributions and premiums paid to build up supplementary pensions for employees and self-employed managers.

The employer owes this special contribution if the contributions and premiums for a death cover exceed an annual limit of €30,000 (€32,472.00 for contribution year 2018). The contribution is calculated per employee and per calendar year. This Wijninckx contribution is owed on top of the ordinary employer's contribution of 8.86% (without a minimum premium limit).

Social security contributions are not only due when building up supplementary pensions. When paying the pension (or pension capital), the retired RIZIV-INAMI contribution (of 3.55%) and a solidarity contribution (between 0% and 2% depending on the pension amount) is owed.

## ALLOWANCE FOR END-OF-CAREER JOBS: SOCIAL SECURITY EXEMPTION<sup>8</sup>

You are not liable for social security contributions on the bonus that you grant to employees of at least 58 years of age to ease their workload. This social security exemption takes effect (retroactively) on 1 January 2018.

### 1) Easing of the workload

The easing of the workload must be done in the framework of:

- a measure for the conversion of shift and night work into day work;
- a measure to ease the workload;
- the transition from full-time to a minimum of 4/5 employment if the employee is at least 60 years old.

In particular, the metal processing industry (joint committees nos. 111 and 209) allocates an additional allowance to employees aged 58 and older under CLA no. 104 on the implementation of an employment plan for older employees in the company. However, the new social security exemption applies to all economic sectors.

CLA no. 104 requires every company with more than 20 employees (full-time equivalents) to draw up an employment plan. The objective of the employment plan is to maintain or increase the number of employees aged 45 and older.

**2) Conditions**

- The allowance compensates (in part) the loss of salary as a result of the measure taken to ease the workload of the employee concerned. There must therefore be a reduction in income. However, the amount of the allowance may not exceed the amount of the loss of salary. It may not result in the employee's net salary being higher than before the easing of the workload.
- The employee retains effective employment of at least 4/5 after the easing of the workload.
- The allowance is determined by a sector CLA or an enterprise CLA, or an amendment to the employment regulations.
- This CLA or amendment of the labour regulations is implemented in the framework of the employment plan (at least if that employer falls within the scope of this CLA no. 104).
- The CLA or amendment of the labour regulations expressly states the person for whom the allowance is granted.
- The employer or the welfare fund pays the bonus.
- The employee is at least 60 years old if the measure relates exclusively to a transition from full-time to 4/5 employment.
- This allowance is indexed according to the indexation mechanism applicable within the company.

**VALUE OF IT EQUIPMENT FOR THE SOCIAL SECURITY OFFICE AND THE TAX AUTHORITIES<sup>9</sup>**

Do you make a PC, laptop, tablet, mobile phone or smartphone available to your employees, whether or not together with an internet or telephone

subscription? If employees are also permitted to use these devices for private purposes, social security contributions and taxes are owed.

As from 1 January 2018, the social and tax valuation of these benefits is being adjusted and simplified. An important difference from the earlier regulation is that from now on, the device, the telephone subscription and the internet connection will be valued separately. The social security office and the tax authorities also apply the same valuation rules.

This table provides an overview of the IT benefits in question and the new fixed valuations:

Nature of the benefit	Social and tax valuation as from 1 January 2018
PC (desktop or laptop) made available	€72/year (per device)
Tablet made available	€36/year (per device)
Mobile phone made available	€36/year (per device)
Internet connection made available (fixed or mobile)	€60/year (regardless of the number of devices)
Telephone subscription made available (fixed or mobile)	€48/year

## NON-PERFORMANCE-RELATED BENEFITS (CLA NO. 90): NOT ON CLOSURE OF THE COMPANY<sup>10</sup> – INDEXED LIMITS

As from 1 January 2018, the salary bonus will no longer be possible upon closure of the company. This is intended to prevent abuse. An employer who starts the procedure of information and consultation with regard to collective dismissal upon closure of the company is excluded from the salary bonus scheme. This measure applies to the company CLA or a salary bonus accession document that is filed with FPS Labour after announcement of the collective dismissal with closure.

The indexed social limit is €3,313 in 2018 (limit for 2017 was €3,255).  
The indexed tax limit amount is €2,880 in 2018 (limit for 2017 was €2,830).

## REVALUATION OF SUPPLEMENTARY ALLOWANCE FOR NIGHT WORK<sup>11</sup>

As from 1 January 2018, the amount of the supplementary allowance for night work is being indexed to €144.01 per month.

## REVALUATION OF ADDITIONAL ALLOWANCE IN THE CASE OF SWT (SYSTEM OF UNEMPLOYMENT WITH EMPLOYER SUPPLEMENT)<sup>12</sup>

### 1) Raising the ceiling of the reference salary

As from 1 January 2018, the ceiling of the gross monthly salary that is taken into account to calculate the net reference salary is €3,953.88.

### 2) Increase of the company supplement

On 1 January 2018, the company supplements with a revaluation coefficient of 1.0036 or 0.36% are being increased.

However, this increase does not fully apply to employees who have recently entered a system of unemployment with company supplement. The company supplement is adjusted gradually.

- If the supplement is calculated based on the salary of the month of January, February or March 2017, coefficient 1.0027 is applied.
- If the supplement is calculated based on the salary of the month of April, May or June 2017, coefficient 1.0018 is applied.
- If the supplement is calculated based on the salary of the month of July, August or September 2017, coefficient 1.0009 is applied.
- The company supplement calculated on the basis of the salary for October, November or December 2017 is not being adjusted.

**Yves Stox**, Senior Legal Counsel

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- 1 Article 45-54 of the Programme Law of 25 December 2017.
  - 2 Articles 32-41 and 81-82 of the Programme Law of 25 December 2017.
  - 3 Article 55-65 of the Programme Law of 25 December 2017.
  - 4 Article 66-67 of the Programme Law of 25 December 2017.
  - 5 Article 68 of the Programme Law of 25 December 2017.
  - 6 Art. 152-156/1 of the Programme Law of 22 December 1989.
  - 7 Art. 27-31 of the Programme Law of 25 December 2017
  - 8 Royal Decree of 9 January 2018 amending Article 19 NSSO RD
  - 9 Art. 20, §2, 2° NSSO RD and Art. 18, §3, 10° of the Royal Decree/Income Tax Code 1992
  - 10 Article 79-80 of the Programme Law of 25 December 2017.
  - 11 CLA no. 46/23 applies a revaluation coefficient of 1.0036.
  - 12 CLA no. 17/38 applies a revaluation coefficient of 1.0036



## | CASE LAW

# AN EMPLOYEE MOVES FROM ONE PLACE OF WORK TO ANOTHER

An employee moves from one place of work to another pursuant to a change in the organisation. Do you as the employer need the agreement of the employee, or can you unilaterally choose the new place of work? The labour tribunal in Liège recently adopted a position in the matter (Liège Labour Tribunal, 25 October 2017, no. 16/1.348/A, unpublished). Moving the place of work, after 25 years, from Verviers to Brussels would mean that the extra commuting time would be at least an hour and a half and involve a distance of more than 100 kilometres.

As an entrepreneur, you can unilaterally change the working conditions within certain well-defined limits. If you go beyond these limits, you are unilaterally changing an essential component of the employment contract. Note: the change must be significant. The result: an irregular termination of the employment contract.

The judge ruled that, as a result of this extra commuting time, the employer had indeed changed an essential component of the employment contract. All the more so because the employee filled an administrative position which required little or no work-related travel. The employer

did not have the right to unilaterally impose the place of work located far away. The employee did not agree to the change. As such, the employer owed compensation for dismissal.

It is generally accepted that the place of work (city or municipality) is in principle an essential component of the employment contract. Case law shows that an additional 30 km of travel is acceptable. While this is certainly extra travel, it is not enough to be significant.

So how can you as an employer nevertheless allow for flexibility? Please note that it is not authorised to include a general change of place of work clause in the employment contract (Article 25 of the employment contracts law). So what can you do? You can agree with the employee in the employment contract that the place of work is not an essential condition of employment. This could also be apparent from the position itself or from the behaviour of the parties.

**Yves Stox**, Senior Legal Counsel

