

# MEMENTO

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# STARTING SALARIES: HIRING YOUNG EMPLOYEES WILL BE CHEAPER

From 1 July 2018, hiring young people will become cheaper. This was one of the measures of the 2017 Summer Agreement. Youth unemployment continues to be persistently high, and the government hopes this measure will help to reverse this trend. The OECD also indicated that the relatively high salaries of young employees may be a barrier for employing low-skilled young workers.<sup>1</sup>

In a nutshell, the new measure means you may reduce the employee's gross salary by 6% for a 20-year old, by 12% for a 19-year old and by 18% for an 18-year old. You must compensate the young employee for this reduced pay with a net remuneration however. The government must still determine the amount of this net remuneration. Employers, meanwhile, are exempted from paying withholding tax on this net remuneration. Implementing this new measure is easier said than done however, which is why we have set out the principles and conditions for you below.

The reduction of notice periods during the first six months of employment is another incentive of the Summer Agreement to encourage employers to hire new employees. We also explain the interaction between the two measures.

## CONTEXT: THE ENTRY-LEVEL EMPLOYMENT AGREEMENT

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The reduced starting salaries are a measure of the government's plan for first (entry-level) jobs. The plan took effect on 1 April 2000.<sup>2</sup> Under this plan, employers with more than 50 employees are required to recruit a specific percentage of employees under 26 years of age with a first entry-level employment agreement.<sup>3</sup> Employers may be exempted from this obligation to give priority to young employees.<sup>4</sup>

The entry-level employment agreement is not a separate agreement. There are three types of entry-level employment agreements: 1° the ordinary employment agreement (at least half-time), 2° the part-time employment agreement, combined with training and 3° the agreement for sandwich courses. Any employment under these three types of agreements is automatically considered an entry-level employment agreement. The reduced entry-level salary only applies to the first type of agreement however, i.e., the ordinary employment agreement. (Further information about the other conditions below.)

When the employee is 26 years old, the entry-level employment agreement ends on the last day of the quarter in which he/she turns 26.<sup>5</sup> This does not mean that the employment agreement is automatically terminated. It continues to apply, as agreed by both parties.

What is so specific about the entry-level employment agreement compared with an ordinary employment agreement? Besides the reduced starting salary, there are two other elements that stand out:

- The employer can reduce the gross monthly salary by maximum 10% during the first 12 months of employment to fund the employee's training;<sup>6</sup>
- The employee can terminate the entry-level employment agreement during the first 12 months of employment with a shorter notice period of 7 calendar days.<sup>7</sup>



### REDUCED SALARY AS COMPENSATION FOR TRAINING: MAXIMUM 10%

The entry-level employment agreement (in the form of an ordinary employment agreement) may stipulate that the employer spends part of the employee's gross salary on training for a period of no more than 12 months. The young employee is entitled to a reduced gross salary. The reduction of the gross salary may not amount to more than 10%, without the annual wages being lower than the guaranteed average minimum monthly income. The 10% reduced salary is taken into account as a factor for calculating social security contributions. The employee's full salary (100%) is however used to calculate the employee's social security earnings.<sup>8</sup> The law does not prohibit combining the reduced starting salary with the already existing reduction of maximum 10%..

## ENTRY INTO FORCE

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The reduced starting salary takes effect on 1 July 2018 and applies to all employment agreements concluded from this date forward.

## WHOM MAY YOU PAY A REDUCED STARTING SALARY?

### 1) A slew of conditions

You may only pay the reduced starting salary if the following cumulative conditions are met:<sup>9</sup>

- You hire the young employee under an ordinary employment agreement (without the training component);
- The employee is employed at least half-time;
- The employee is 18, 19 or 20 years old;
- The employee must have been registered as a jobseeker immediately prior to the employment with an authorised regional institution (VDAB, FOREM, Actiris or ADG);
- The employee's theoretical salary without the reduction is equal to the minimum wage that is paid in the sector (sectoral minimum wage or the guaranteed average minimum monthly income). You may not pay a higher salary;<sup>10</sup>
- Upon declaring the employment (DIMONA), you receive confirmation that the employee may be considered as an employee without professional experience (more on this below);
- The employment agreement stipulates that the employer reduces the normal applicable minimum salary, in application of the rules for starting salaries, and that he will pay the fixed net remuneration every month in which the salary is reduced.

### 2) Not applicable to students

Do you wish to employ students? In that case you may not pay them a reduced starting salary.<sup>11</sup>

### 3) Side note: the employee has no professional experience

The employee's lack of experience is confirmed upon the declaration of employment (DIMONA). You have no other way of checking whether this condition is fulfilled.

When declaring the employee's employment to the NSSO, you will receive a message regarding his or her professional experience. You will be informed if the employee does not fulfil this condition. In that case, you will know that you may not reduce the young employee's salary.

The condition of no prior professional experience is rather simplistic. The reduced starting salary does not just apply to school-leavers. The employee may have already worked in the past. A new definition was developed for legislative purposes. But it is so complex that you have no choice but to trust the government's official confirmation.<sup>12</sup>

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#### EXAMPLE

You hire a new employee from 16 July 2018 (Q2018/3= quarter T) and want to start paying him the reduced starting salary. You may not do this if the employee was employed for at least 4/5th of this time by one or more employers during the period from 1 January 2017 (quarter 2017/1 = quarter T-6) until 31 December 2017 (quarter 2017/4 = quarter T-3) for at least two quarters. Whether or not the employee was employed between 1 January 2018 (quarter T-2) and 15 July 2018 (quarter T) does not matter. Moreover certain types of employment are not relevant either: i.e. pupil in a sandwich course, individual vocational training, student employment agreement<sup>13</sup>, employment during the year the employee turned 18 years of age, occasional work in agriculture and horticulture, flexi-jobs.

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**4) The conditions are not fulfilled. What now?**

What happens if you sign an employment agreement with a reduced starting salary, and not all the conditions are fulfilled? You can check and control the majority of the criteria yourself as an employer. Respecting the sectoral minimum wage and not paying a higher salary to the employee is relatively easy.

Checking whether the employee has no prior professional experience is more difficult however. If you realise that the employee is not an inexperienced employee upon declaration of his or her employment, then you must pay the employee the full salary, without reduction. The social security contributions for this employment will be calculated based on this full salary moreover, requiring you to withhold tax on the employee's full salary.<sup>14</sup>

This can be very expensive. You may be counting on the reduced starting salary to control your wage cost as much as possible... Should you then defer the signing of the employment agreement until you have received confirmation that the employee has no prior professional experience? Postponing this does not change anything. One solution may be the inclusion of a clause in the employment agreement<sup>15</sup>, without having to respect a term of notice or pay severance.

**THE EMPLOYER MAY PAY A REDUCED SALARY**

Employers in the private sector<sup>16</sup> may reduce the gross salary for new employees, under 21 years of age, without professional experience. You are not required to do this however.

**1) Percentage: 18% - 12% - 6%**

The percentage is degressive and depends on the employee's age on the last day of the month.<sup>17</sup>

Percentage of the reduction	Period: the employee's age at the end of the month
18%	18 years
12%	19 years
6%	20 years

**2) Lower threshold based on the employee's seniority and age**

A double lower threshold caps the degressive reduction for young employees, who have accrued 6 or 12 months of seniority in your company.

- The full-time salary of an employee aged 19 or 20 years of age, with at least 6 months of seniority in the company, may not be lower than a guaranteed average minimum monthly income of EUR 1,604.06 per month.<sup>18</sup>
- The full-time salary of an employee aged 20 years of age, with at least 12 months of seniority in the company, may not be lower than a guaranteed average minimum monthly income of EUR 1,622.48 per month.<sup>19</sup>

**3) An example: supplementary joint committee for white-collar employees (JC 200)**

An employee starts out as an administrative employee (Class A). The employee has no prior professional experience. The starting salary is EUR 1,719.48 per month (0 years of professional experience).

JC 200 applies a degressive pay scale for young employees. Young employees under the age of 21 are entitled to a specific percentage of the salary for 0 years of professional experience: 85% at 18 years,

90% at 19 years and 95% at 20 years. The law does not prohibit employers from applying the reduction percentage of the starting salary to the sectoral salary for young employees.<sup>20</sup>

The guaranteed average monthly income (GAMMI) in JC 200 is higher than set out in CLA no. 43. Nonetheless the indexed contributions of CLA no. 43 are applied to the reduced starting salary.<sup>21</sup>

Age at the end of the month / discount percentage	18 years / 18%	19 years / 12%	20 years / 6%	21 years / 0%
Seniority < 6 months	EUR 1.198,48 <sup>(a)</sup>	EUR 1.361,83 <sup>(b)</sup>	EUR 1.535,49 <sup>(c)</sup>	EUR 1.719,48 <sup>(d)</sup>
Seniority > 6 months, but < 12 months	EUR 1.198,48 <sup>(a)</sup>	EUR 1.604,06 <sup>(e)</sup>	EUR 1.604,06 <sup>(e)</sup>	EUR 1.719,48 <sup>(d)</sup>
Seniority ≥ 12 months	EUR 1.198,48 <sup>(a)</sup>	EUR 1.604,06 <sup>(e)</sup>	EUR 1.622,48 <sup>(f)</sup>	EUR 1.771,22 <sup>(g)</sup>

<sup>(a)</sup> Minimum wage before reduced starting salary: 85% of EUR 1,719.48.

<sup>(b)</sup> Minimum wage before reduced starting salary: 90% of EUR 1,719.48.

<sup>(c)</sup> Minimum wage before reduced starting salary: 95% of EUR 1,719.48.

<sup>(d)</sup> Wage scale I if less than 1 year of seniority in the company.

<sup>(e)</sup> Application GAMMI CLA no. 43 at 19 years and 6 months of seniority in the company.

<sup>(f)</sup> Application GAMMI CLA no. 43 at 20 years and 12 months of seniority in the company.

<sup>(g)</sup> Wage scale II in case of 1 year of seniority in the company and after 1 year of professional experience (the first increase in pay grade after employment will be applied on the first day of the month after the end of the employee's next year of professional experience).

**4) Which salary?**

The salary of the employee, without the reduction, may not be higher or lower than the minimum wage that is applicable in the sector. Usually this minimum is the sectoral minimum wage. The GAMMI applies for sectors without an agreed sectoral minimum wage (e.g., joint committee 339, authorised social housing companies and joint committee 335, social organisations). The GAMMI will then apply as the monthly minimum and maximum salary for the reduced starting salary.

This creates several practical problems. Whereas the sector must pay a minimum monthly wage, the GAMMI in principle is an annual reference salary. A year-end bonus or thirteenth month will not be taken into account for the sectoral minimum wage. It does however count towards the annual GAMMI. If your sector does not apply a minimum wage, you may pay more gross salary if the reduced annual starting salary is applied, compared with the situation without the reduced starting salary. Currently it is unclear to which extent other wage elements must be taken into account in the evaluation to determine whether you should pay the normal applicable minimum wage.

**COMPENSATION FOR THE EMPLOYEE: FIXED NET REMUNERATION**

You must pay the young employee fixed remuneration for every month in which you reduce the salary as an employer. In lieu of compensation for this fixed remuneration, you will be exempted from paying withholding tax.

**1) Which amount?**

The government has yet to determine this fixed remuneration. The fixed remuneration will depend on the employee's age at the end of the month and of the applicable full (non-reduced) minimum wage.

**2) Which social and tax consequences**

Employers owe no social security contributions on the fixed remuneration. Nor must they withhold tax as the employee will not be taxed on this fixed remuneration.

**THE IMPACT ON THE EMPLOYEE'S SOCIAL PROTECTION**

The reduced starting salary is the young employee's actual gross salary. The fixed net remuneration is not equated to a salary in social security terms. The calculation of earnings for social security purposes only takes account of the reduced starting salary, not of the fixed remuneration. Consequently the young employee will not accrue a retirement pension for the fixed net remuneration.

**THE TERMINATION OF THE ENTRY-LEVEL EMPLOYMENT AGREEMENT**

The reduction of notice periods during the first six months of employment and the introduction of the reduced starting salary are complementary measures. While the new notice periods do not just apply to the employers of young employees, the entry-level job plan does enforce a special, reduced notice period for young employees.

The employee can terminate the entry-level employment agreement within the first 12 months, subject to a notice of 7 calendar days commencing on the day after the notice is given. The employee can only do this on condition that he has found another job.<sup>22</sup>

Below is a comparison between the current notice periods and those applying in the future. The new notice periods only apply when the employer terminates the contract.

Seniority	Notice period		
	Termination by the employer		Termination by the employee
	Until May 1	From May 1	
< 1 month	2 weeks	1 week	1 week
< 2 months	2 weeks	1 week	1 week
< 3 months	2 weeks	1 week	1 week
< 4 months	4 weeks	3 weeks	1 week
< 5 months	4 weeks	4 weeks	1 week
< 6 months	4 weeks	5 weeks	1 week
< 7 months	6 weeks	6 weeks	1 week
< 8 months	6 weeks	6 weeks	1 week
< 9 months	6 weeks	6 weeks	1 week

Seniority	Notice period		
	Termination by the employer		Termination by the employee
	Until May 1	From May 1	
< 10 months	7 weeks	7 weeks	1 week
< 11 months	7 weeks	7 weeks	1 week
< 12 months	7 weeks	7 weeks	1 week
< 13 months	8 weeks	8 weeks	4 weeks
< 14 months	8 weeks	8 weeks	4 weeks
< 15 months	...	...	...

The new reduced notice periods also apply to the termination of 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.

## CONCLUSION

You can only apply the reduced starting salaries from 1 July 2018, but to date, the financial impact on your wage cost still remains unclear. This largely depends on the amount of the fixed net remuneration you owe the young employee as compensation. The government must still determine the amount of this net remuneration.

**Yves Stox**, Senior Legal Counsel

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- 1 OECD Jobs for Youth Belgium – Summary and Recommendations, 2017, pg. 7, <https://www.oecd.org/belgium/38037805.pdf>.
  - 2 Chapter VIII of the Act of 14 December 1999 to promote employment (Entry-level jobs Law).
  - 3 Art. 39, Entry-level jobs Law.
  - 4 This is the case for example for taxi companies until 31 December 2019 (Ministerial Decree of 12 June 2017 exempting these companies from the obligation to hire young employees for the subsector of taxi companies and for vehicle rental services with drivers).
  - 5 Art. 27b, Entry-level jobs Law.
  - 6 Art. 33, Entry-level jobs Law.
  - 7 Art. 35, Entry-level jobs Law.
  - 8 Art. 5 Royal Decree of 30 March 2000 implementing articles 32, § 2, 1, 33, § 2, 3, 342, 39, § 4, 2, and § 5, 2, 42, § 2, 46, 1, 47, § 4, 1 and 4 of the Act of 24 December 1999 to promote employment.
  - 9 Art. 33a, Entry-level jobs Law.
  - 10 Art. 33a; §1, 2 Entry-level jobs Law.
  - 11 Art. 33Bis, § 2 Entry-level jobs Law.
  - 12 Art. 33a, §3 Entry-level jobs Law.
  - 13 For the 475 hours subjected to the special social security contribution for students.
  - 14 Art. 33a, §6 Entry-level jobs Law.
  - 15 The condition may not merely be an arbitrary or potestative clause as a merely potestative clause will mean the employment agreement becomes null and void (Art. 1174 Civil Code).
  - 16 The reduced starting salary is only applicable to employers who fall under the collective agreement law.
  - 17 Art. 33a, § 1 Entry-level jobs Law.
  - 18 In application of Art. 3, 2 CLA no. 43. Indexation 1 June 2017.
  - 19 In application of Art. 3, 3 CLA no. 43. Indexation 1 June 2017.
  - 20 This interpretation has yet to be confirmed by the FPS ELSD.
  - 21 Art. 33a, § 1 of the Entry-level jobs Law explicitly refers to the application of CLA no. 43, without referring to any sectoral derogations. This interpretation has yet to be confirmed by the FPS ELSD.
  - 22 Art. 35, Entry-level jobs Law.



## | CASE LAW

# ADMINISTRATIVE COMMISSION TO REGULATE THE EMPLOYMENT RELATIONSHIP: A COURIER IS AN EMPLOYEE

Are you uncertain about an employee's social status? Is he self-employed or your employee? You can request a ruling from the administrative commission that regulates the employment relationship.<sup>1</sup> The commission decides in a written proceeding whether the employee is self-employed or an employee with a contract. This will reduce the risk of false self-employment.

Recently the commission to regulate the employment relationship ruled that a Deliveroo courier is not self-employed but is an employee. As a result, the company owes social security contributions and must also adhere to labour law.

## WHAT IS FALSE SELF-EMPLOYMENT? THREE CRITERIA IN THE LAW REGULATING THE EMPLOYMENT RELATIONSHIP

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Parties freely choose the nature of the cooperation: an employment contract as an employee or a cooperation agreement as a self-employed person. A requalification is only possible if there are sufficient elements in practice that are incompatible with the qualification chosen in the agreement. When is there a question of false self-employment? This must be checked based on three criteria, in addition to the intent of the parties as it appears in the agreement. Each criterion is briefly discussed below.

### Criterion 1

#### Freedom of organisation of working time

This criterion concerns the free organisation of time, meaning a self-employed person can decide when the work is carried out. He or she does not therefore have to be present according to a work schedule or timetable imposed by the client.

The boundary between what is permissible and what is not is narrow. Specifically, the obligation to work during certain hours for commercial or organisational reasons is not in and of itself an indication of the existence of an employment contract. On the other hand, the self-employed person must maintain a certain amount of freedom regarding the organisation and practical execution of the work.

### Criterion 2

#### Freedom of organisation of the work

A precise description of the tasks and precise instructions from a hierarchical superior indicate the existence of an employment contract.

However, general guidelines and obligations can be compatible with independent cooperation. In that case, you will have to demonstrate that these are the result of the nature of the activity carried out or that they are necessary to achieve a set result. The quality of the work delivered can also be checked in the absence of precise instructions.

### Criterion 3

#### Possibility of applying hierarchical control

The possibility of being subject to control or monitoring indicates the existence of an employment contract. An employee may thus be considered as a false self-employed person if this control is not actually carried out.

## SPECIFIC APPLICATION TO COURIERS

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A courier requested a ruling from the commission to regulate the employment relationship on his relationship with Deliveroo. Initially he was employed by a cooperative called SMart. But soon Deliveroo changed tack. The company decided to only work with self-employed couriers for its services.

The commission's ruling is based on a two-step procedure. The commission had to not only take into account the general criteria of the legislation on the employment relationship. Deliveroo engages in a logistical activity with its couriers, therefore sector-specific criteria also apply.<sup>2</sup>

**Step 1****Check against sector-specific criteria**

According to the commission, only two of the eight criteria may potentially point to a self-employed service:

Criteria	Employee	Self-employed
No financial or economic risk	x	
No financial responsibility or decision-making power	x	
No decision-making power regarding procurement policy	x	
No decision-making power regarding pricing	x	
No obligation of result	x	
Possibility to recruit employees oneself		x
Not acting as a company vis-à-vis third parties	x	
Owner / financing of company premises / motor vehicle		x

Consequently, there is a rebuttable presumption that the relationship between the courier and Deliveroo is based on an employment contract.

## Step 2

### Check against general criteria

In a second step, the commission checks the employment relationship against the general criteria of the legislation on the employment relationship. The sector-specific assumption (step 1) can be checked against the general criteria of the legislation on the employment relationship.

The commission to regulate the employment relationship ruled that the specific organisation of the courier's work and the control of this work rules out a collaboration with a self-employed courier. Deliveroo controls the courier's working hours. The courier must book time slots one week in advance. Deliveroo assigns time slots based on statistical data (the "ranking") and the courier must be available during these time slots.

Moreover the courier's right to have himself replaced is limited and the commission also established that Deliveroo has several options for giving the courier instructions and controlling their activities. The commission to regulate the employment relationship thus describes Deliveroo's right to give instructions as the option of supervising and controlling the courier using GPS tracking. Deliveroo thus oversteps the mark in its control of the courier. Even more so as Deliveroo can intervene by terminating the collaboration with the courier on very short notice.

**Yves Stox**, Senior Legal Counsel

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- 1 This request can be submitted by all the parties jointly or by one of the parties of the employment relationship within a period of one year after the collaboration commenced.
  - 2 Listed in the Royal Decree of 29 October 2013 regarding the nature of the employment relationships that are established when carrying out work activities that are within the scope of the Joint Sub-Committee for road transport and logistics on behalf of third parties.

