

Partena

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Topics

JC 200 - A wage increase for all non-manual workers?

On 13 June 2019, the social partners of the Auxiliary Joint Committee for non-manual workers (JC 200) concluded a draft sector agreement. This sector agreement regulates the concrete implementation of the agreements made by the social partners in the Group of Ten: purchasing power, mobility, time credit, training, etc. Employer and employee representatives did not agree on all elements. One of the most important components, increasing purchasing power, was the subject of a Royal Decree that lays down the wage standard for 2019-2020 at 1.1%.⁽¹⁾ In 2019-2020,

wage costs may therefore only increase by a maximum of 1.1%. Within Joint Committee 200, employer and employee representatives implemented the draft sector agreement by means of a number of CLAs. One of these sector CLAs is the purchasing power CLA of 1 July 2019.⁽²⁾

This purchasing power CLA has two components:

- 1 A **general regulation**: a wage increase of 1.1% or an equivalent benefit; and
- 2 A **special regulation**: a temporary annual premium that is as it were injected into the supplementary pension later on.

Summary – Temporary annual premium

With the special regulation, the sectoral social partners want to use the current increase in purchasing power to meet the obligations of the Law on supplementary pensions (hereinafter WAP). As from 1 January 2025, as a rule, there must no longer be a distinction in the field of supplementary pensions between manual and non-manual workers who belong to the same business activity or professional category. Bringing about a single status for supplementary pensions in other words.

The special regulation does not apply to every company.

On 1 September 2019, the company has to be employing manual and non-manual workers in **specific sectors** such as the construction sector, the garage sector, the cleaning sector and the electricity sector (installation and distribution). In these sectors, there is namely a sector pension that could be more advantageous than the supplementary pension for non-manual workers in your company.

At first glance, this may seem rather complicated, but we will try to clarify a few things for you below.

The temporary annual premium is undoubtedly worthwhile. In this way, you as a company can save costs as from 2025 at the latest. You grant an annual premium as from 2019, but you can stop it at the latest as from 2025 and use the budget that becomes available to finance an employer's contribution for the supplementary pension for non-manual workers in your company. The temporary annual premium then transforms into a pension contribution.

General regulation

A wage increase

The general regulation provides for an increase of 1.1% as from 1 September 2019 of:

- the sectoral minimum wages; and
- the actual gross monthly wages.

In any case, the general regulation applies to employers which only employ non-manual workers. If you employ both manual workers and non-manual workers, you may fall under the special regulation.

Equivalent benefit

Companies can choose to grant a **new, equivalent and recurrent** benefit instead of this 1.1% wage increase. Think, for example, of granting meal vouchers or offering a supplementary hospitalisation insurance policy. The **deadline** for the conversion is September 2019.

You may not see the choice of an equivalent benefit as a way of making savings. As an employer, you do not immediately derive a benefit from this decision. The budget of the equivalent benefit is equal to the wage costs for the period from 1 September 2019 to 31 December 2020 if you were to increase your employees' wages by 1.1%. When determining the budget, you will therefore have to take into account the gross monthly wage, the employer's social security contributions, the (double) holiday pay and the end-of-year bonus. Opting for an equivalent benefit is however permitted to yield a net benefit for the employees. And this is an indirect advantage for you as well.

An example

A non-manual worker in class D with 9 years of experience is entitled to a sectoral minimum wage of EUR 2,384.72. The gross monthly wage of the employee amounts to EUR 2,500. You therefore have the choice between increasing the gross monthly wage or granting an equivalent benefit.

The budget for the equivalent benefit for 2019-2020 amounts to EUR 653.96.⁽³⁾

For 2019, you take into account the gross monthly wage from September to December plus the end-of-year bonus.

$$\text{EUR } 2,500 \times 5 \text{ months} \times 1.27 \text{ social security contribution} \times 1.1\%$$

$$\text{Total for 2019} = \text{EUR } 174.63$$

For 2020, you once again take the gross monthly wage and end-of-year bonus into account, but be sure not to forget the (double) holiday pay.

$$\text{EUR } 2,500 \times 13 \text{ months} \times 1.27 \times 1.1\% = \text{EUR } 454.03$$

$$2500 \times 0.92 \times 1.1\% = \text{EUR } 25.3^{(4)}$$

$$\text{Total for 2020} = \text{EUR } 479.33$$

Remarks

- One-off premiums granted in the 2019-2020 period can also be charged on the gross wage increase of 1.1%, provided a recurring benefit is granted as from 1 January 2021. Think, for example, of an individual performance based bonus.
- The **procedure** for conversion differs depending on whether it is a company with or without a trade union representation. As a company with a trade union representation, you conclude a company agreement. As a company without a trade union representation, you inform the employees in writing and individually.
- The **deadline** for the conversion is September 2019. At the time of the September 2019 wage payment, you must have concluded the company agreement or informed the employees.
- In case of conversion, you must also always take into account the legislation applicable to the chosen benefit.

An example

If you opt for the introduction or improvement of an existing supplementary pension plan, you may not, taking into account the provisions of the WAP, make the distinction between the supplementary pension plan for manual workers and the supplementary pension plan for non-manual workers who belong to the same business activity or professional category any larger.

An example

A conversion to meal vouchers (or increase in meal vouchers) must take place before September 2019. Indeed, one of the conditions attached to granting meal vouchers (and also eco vouchers) free of social security contributions is that they may not be given to replace or as a conversion of wages, premiums, benefits in kind or any other benefit on which social security contributions may or may not be payable. As wages rise by 1.1% on 1 September 2019, your employees have acquired the right to higher wages at that time. Any later conversion results in social security contributions being due on the meal vouchers.

What is not eligible?

Annual wage scale increases based on professional experience and/or seniority will of course continue to be guaranteed.

An example

An employee (class B) who has been employed since 1 October 2015 will receive the wage scale with 4 years of seniority on 1 October 2019. He sees his wage rise from EUR 1,911.66 (3 years of seniority) to EUR 1,926.19.

This increase may not be deducted from the gross pay rise of 1.1%.

On the other hand, pay increases based on performance assessment can indeed be deducted.

Do not take the wage bonus (non-recurrent performance-related benefits, CLA no. 90) into account. The wage bonus depends on the achievement of objectives which are obviously uncertain when the bonus plan is introduced. This is at odds with the granting of the equivalent benefit, which indeed has to be certain and recurrent.

Charge individually or collectively?

The purchasing power CLA initially provides for a wage increase of 1.1%. This implies that the equivalent benefit is generally charged individually. However, this is not always clear, e.g. in the case of a collective conversion to meal vouchers. In that case be sure to communicate transparently with employees and employee representatives.

Another time

The 1.1% wage increase may take effect at a time other than 1 September 2019. For example, the wage increase can be granted earlier or only later. Here too, you must only take care that for the 2019-2020 period, the budget, the wage costs, is equal to an increase in the actual gross monthly wage on 1 September 2019.

An example

A wage increase of 0.5% that was granted as from 1 January 2019 can of course still be deducted. You can then choose to grant the missing 0.6% only as from 1 January 2020. Do take into account, however, that in that case you will not have the same wage cost as provided for in the purchasing power CLA. You will have to compensate for the missing part by awarding a one-off premium for example.

Even if you opt for an equivalent benefit, this need not necessarily be granted on 1 September 2019. For example, you can choose to grant an additional premium in December, together with the end-of-year bonus.

But be careful when using meal vouchers as an equivalent benefit. The conversion to meal vouchers or increase in the employer's contribution must take effect before 1 September 2019.⁽⁵⁾

Special regulation - The temporary annual premium

Scope

The special regulation applies to non-manual workers of employers which satisfy all the following conditions on **1 September 2019**:

- The company employs both non-manual and manual workers in the same business activity;⁽⁶⁾
Note: The business activity generally corresponds with the scope of application of the joint committee or joint subcommittee of the manual workers.
- The manual workers enjoy a sectoral supplementary pension or a supplementary company pension based on an opt-out or a declaration of non-application; and
- The company has no, or a less favourable, supplementary pension scheme for the non-manual workers.

Overview of the sectors concerned

The special regulation applies to employers with non-manual workers in JC 200 and manual workers in one (or more) of the following mirror joint committees or joint subcommittees:

Joint (sub)committees

JSC 102.01 for the operation of bluestone quarries and quarries for limestone to be harvested in the province of Hainaut

JSC 102.03 for the porphyry quarries in the provinces of Walloon Brabant and Hainaut and the quartzite quarries in the province of Walloon Brabant

JSC 102.06 for the operation of gravel and sand quarries that are operated in the open air in the provinces of Antwerp, West Flanders, East Flanders, Limburg and Flemish Brabant

JSC 102.07 for the operation of limestone quarries, cement factories and limekilns of the administrative district of Tournai

JSC 102.09 for the operation of the quarries of limestone not to be harvested and of the limekilns, of the magnesite quarries and kilns on the whole territory of the Kingdom

JSC 106.02 for the concrete industry

JC 112 for the operation of a garage

JC 113 for the operation of ceramics

JSC 113.04 for tile works

JC 114 for brickworks

JC 116 for the chemical industry

→ Only for the wholesale trade in medicines, otherwise it is mirror JC 226

JC 121 for cleaning

JC 124 for the operation of construction

JC 126 for upholstery and woodworking

JC 127 for the trade in fuels

JC 130 for printing, graphic art and newspaper operations

JC 132 for enterprises in technical agriculture and horticulture

JC 139 for inland navigation

JSC 140.01 for buses and coaches

JSC 140.05 for removals

JSC 142.01 for the recovery of metals

JC 143 for sea fishing

JC 144 for agriculture

JC 145 for horticulture

JSC 149.01 for electricians: installation and distribution

JSC 149.02 for bodywork

JSC 149.03 for precious metals

JSC 149.04 for the trade in metals

An example

On 1 September 2019, a construction company employs a number of manual workers in JC 124. At the company's head office, an administrative employee is responsible for accounting and invoicing. Since the latter is a non-manual worker, this employee does not fall under JC 124, but under JC 200.

Here it is clear that the employer falls within the scope of the special regulation. The company has no other activities, with the result that the non-manual worker can be clearly linked to the business activity of JC 124.

However, it becomes more complicated when a single company employs manual workers in different joint committees or joint subcommittees (each with their own sectoral supplementary pension) or when the non-manual workers cannot be directly linked to a single company activity.

Temporary annual premium

If you are covered by the special regulation and your employees are paid above the sectoral minimum wage, you do not grant a wage increase. This is replaced by a temporary annual premium as from 2020 and a one-off premium in 2019.

- **The temporary annual premium is due for the first time in December 2020.**

The temporary annual premium
= gross monthly wage of November 2020 x (1.1% x 13.92).

The temporary annual premium is granted to the non-manual workers in service on 1 September 2019 with a complete reference period (from 1 January to 31 December).

- **A one-off premium is due in December 2019.**

The one-off premium
= gross monthly wage of November 2019 x (1.1% x 5).

The one-off premium is granted to the non-manual workers in service on 1 September 2019, in proportion to the performance delivered during the reference period from 1 September 2019 to 31 December 2019. This one-off premium is awarded to cover the period from 1 September 2019 to 31 December 2019.

In the meantime, the social partners have until 31 December 2022 to conclude a collective labour agreement on the supplementary pension for non-manual workers per business activity.

Thanks to the one-off premium and the annual premium, you as an employer avoid having to make a budget available to provide a supplementary pension for your non-manual workers, in addition to the wage increase granted.

An example

A non-manual worker in class D with 9 years of experience on 1 September 2019 is entitled to a sectoral minimum wage of EUR 2,384.72. The gross wage of the employee amounts to EUR 2,500 in the month of November. You also employ manual workers. You will therefore award a one-off premium (in 2019) and a temporary annual premium (as from 2020).

The one-off premium for 2019 amounts to EUR 137.5 gross and the temporary annual premium for 2020 amounts to EUR 382.75 gross. Your budget for the 2019 one-off premium and the 2020 temporary annual premium for 2019-2020 amounts to EUR 660.72.⁽⁷⁾

This is a slight difference from the budget for the equivalent benefit. This difference can be explained by the fact that no employer's social security contributions are due on the double holiday pay. This nuance is not made for the annual premium.

Effective and equivalent days

The temporary annual premium is granted in proportion to the effective worked time and equivalent days during the reference period.

The equivalent days are

- Suspensions of the employment contract for which wages have been paid;
- The days of paternity leave and maternity leave.

An example

A non-manual worker in class D with 9 years of experience is entitled to a sectoral minimum wage of EUR 2,384.72. The gross wage of the employee is EUR 2,500. The special regulation can therefore be applied. The temporary annual premium amounts to EUR 382.75 (= EUR 2,500 x 15.31%).

If, during the reference period, the non-manual worker is absent for two months due to illness, he or she is only entitled to a temporary annual premium of EUR 350.85 (= EUR 2,500 x 15.31% x 11/12). The employer pays the usual wage during the first month of illness. That month is therefore equated. The second month of illness is not covered by the guaranteed wage and is therefore not equated for the calculation of the premium.

Possibility to convert

The purchasing power CLA does not expressly exclude the possibility of converting the temporary annual premium and the one-off premium. However, we strongly advise against this, as the WAP already obliges all employers to eliminate discrimination between manual and non-manual workers within the framework of the supplementary pension by 1 January 2025 at the latest.

An employer without a supplementary pension for non-manual workers or with an inferior supplementary pension for its non-manual workers that chooses to grant meal vouchers instead of the temporary annual premium and the one-off premium will still be obliged to eliminate the negative differences in 2025. This then implies an additional cost that the sectoral social partners were specifically trying to avoid.

The only exception to the rule concerns the employer that wishes to grant an immediate equivalent supplementary pension to its non-manual workers. And that is therefore not waiting for the new sectoral CLAs.

Non-manual workers paid at the minimum wage scale

The temporary annual premium and the one-off premium do not apply to non-manual workers who are paid at the minimum wage scale on 31 August 2019.

For non-manual workers who are paid less than 1.1% above the minimum wage scale on 31 August 2019, the gross wage will be increased to the new minimum wage scale on 1 September 2019 and a partial one-off premium will also be paid.

Sectoral supplementary pension

Sectoral negotiations 2021-2022

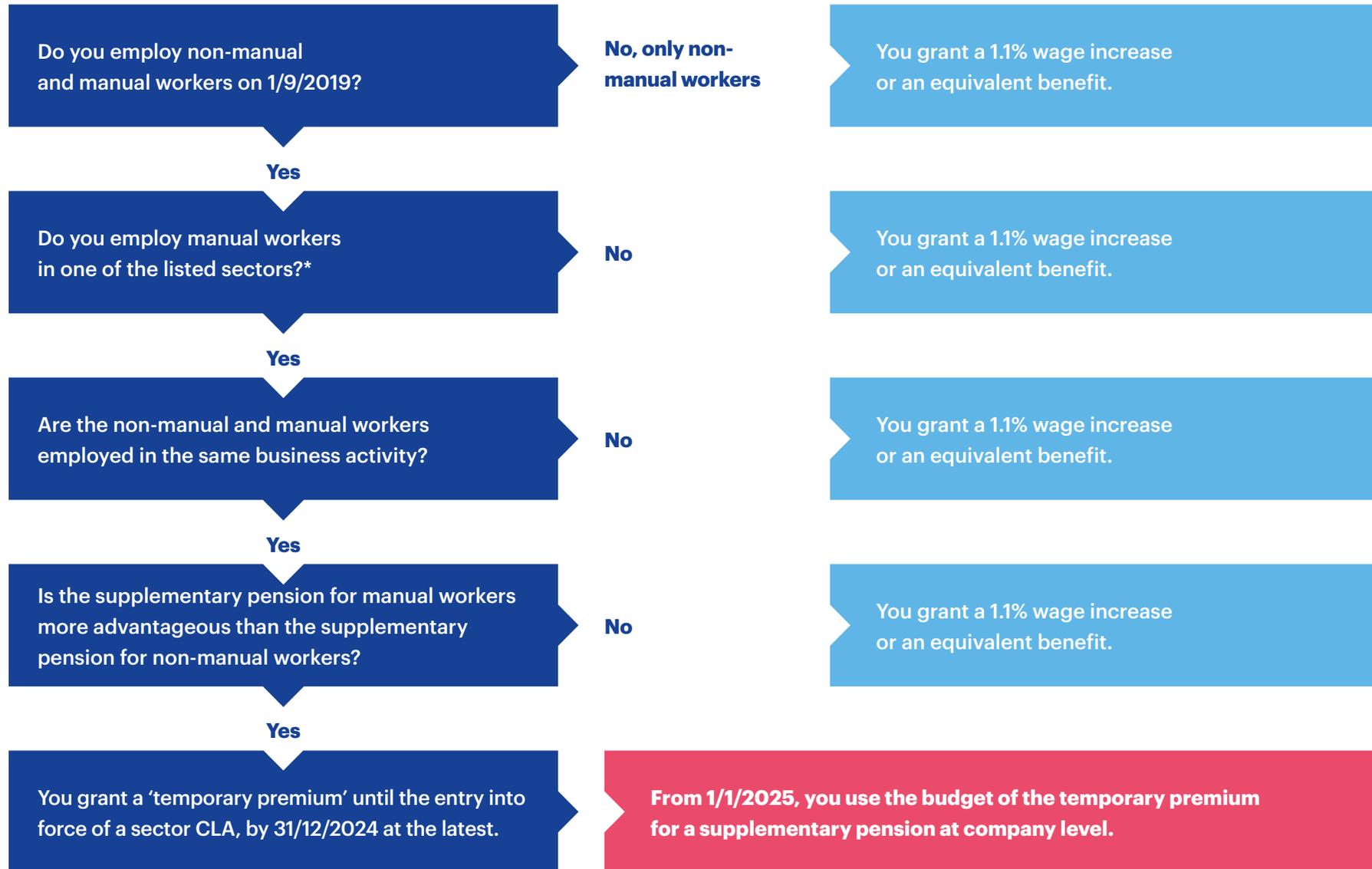
In the meantime, the social partners per business activity must conclude a CLA about the sectoral supplementary pension for non-manual workers as soon as possible. After this has been done, as from 1 January 2021 (and no later than 1 January 2025), the temporary annual premium can be used for the supplementary pension scheme. Consequently, payment of the temporary annual premium stops as soon as this CLA comes into effect.

If only part of the temporary annual premium is required to correct the difference with the sectoral supplementary pension scheme for the manual workers, a balance of the temporary annual premium is still granted. If desired, this balance can still be converted to an equivalent benefit.

No sectoral supplementary pension

If it appears that on 31 December 2022 no CLA on sectoral supplementary pension has been concluded for the business activity concerned, the obligation for the employer to pay the temporary annual premium ceases as from 1 January 2025. The employer can then use the budget of the temporary annual premium to finance a supplementary pension at company level and thus eliminate discrimination against non-manual workers.

Temporary annual premium or not: take the test



* Overview of the sectors concerned — Joint committees or joint subcommittees with a sectoral pension scheme for manual workers :102.01, 102.03, 102.06, 102.07, 102.09, 106.02, 112, 113, 113.04, 114, 116 (wholesale trade in medicines), 121, 124, 126, 127, 130, 132, 139, 140.01, 140.05, 142.01, 143, 144, 145, 149.01, 149.02, 149.03, 149.04.

Timeline

Date	To do
1 September 2019	Evaluation of supplementary pension for non-manual workers in comparison with sector pension for manual workers
September 2019	Employees are informed
December 2019	Payment of one-off annual premium
December 2020	Payment of temporary annual premium
December 2021	Payment of temporary annual premium
December 2022	Payment of temporary annual premium
2021-2022	Negotiations for sector CLAs
No later than 1 January 2025	Annual premium ceases and transforms into premium for supplementary pensions

Conclusion

As an employer, you therefore do not have to increase the gross wage by 1.1% under all circumstances. This is only necessary if you pay the sectoral minimum wage. If you pay more, you can choose. You can increase the actual gross wage by 1.1% or grant an equivalent benefit. Thanks to the equivalent benefit, you can realise a higher net benefit for the employee.

But be careful, if on 1 September 2019 you also employ manual workers and are active in, for example, the construction sector, the garage sector, the cleaning sector or the electricity sector (installation and distribution), then check the supplementary pension plan for your non-manual workers. If your supplementary pension plan for non-manual workers does not exist or if it is less advantageous than the sector pension for manual workers, grant a one-off premium (in 2019) and a temporary annual premium (as from 2020).

Do you have any doubts about whether you are subject to this special regulation? Then we advise you still to grant the temporary annual premium and not to opt for a wage increase or alternative benefit.

Leen Lafourt
Legal Expert

Yves Stox
Senior Legal Counsel

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- 1 Royal Decree implementing Article 7 § 1 of the Law of 26 July 1996 on the promotion of employment and on the preventative safeguarding of competitiveness.
 - 2 Collective labour agreement of 1 July 2019 concluded in the Auxiliary Joint Committee for non-manual workers concerning purchasing power within the framework of the Royal Decree of 19 April 2019 implementing Article 7 § 1 of the Law of 26 July 1996 on the promotion of employment and on the preventative safeguarding of competitiveness (reg. no. 152.849).
 - 3 We take into account an average employer's social security contribution of 27%.
 - 4 No employer's social security contributions are due for double holiday pay.
 - 5 However, meal vouchers granted in replacement of or as a conversion of wages, premiums, benefits in kind or any other benefit on which social security contributions may or may not be payable, always meet the social security wage concept.
 - 6 Art. 14/4 of the Law on supplementary pensions.
 - 7 We take into account an average employer's social security contribution of 27%.

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