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PROFESSIONAL



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Topics

Professional training agreements in Wallonia and Flanders

For several years, companies have been able to provide individual professional training to job seekers. These training programmes are governed by a professional training agreement. The term is well chosen: this agreement has been designed as a training measure and not as an employment incentive for job seekers. At the same time, companies often use professional training to fill positions for which there is a shortage of applicants.

What does this training in the workplace offer in return? The company does not have to pay the trainee a normal salary during the training period. Specifically, the trainee can continue to claim unemployment or bridging benefits, for example.

However, after the professional training period, the company has to enter into an employment contract for a duration at least equal to the duration of the training programme. This basic idea applies in both Wallonia and Flanders.

So if the professional training agreement has existed for years, why did we write this article? Since the sixth State reform, competence for this matter has been transferred to the Flemish Community, the Walloon Region, the Brussels-Capital Region and the German-speaking Community. Flanders has applied simplified rules since 1 September 2018. The Walloon Region also carried out an in-depth reform on 1 May 2019, as reflected in a (draft) implementing decree.

It is therefore certainly worth explaining the new professional training agreements in Wallonia and Flanders.

- In the Flemish Region, this is “individual professional training” (individuele beroepsopleiding or IBO), governed by the professional training contract (IBO-overeenkomst).
- In the Walloon Region, this is the “training-integration plan” (plan formation-insertion or PFI), governed by the “training-integration contract” (CFI-contrat formation-insertion).

Thanks to the reforms in Wallonia and Flanders, these training programmes are now based on the same idea. All payments to trainees are made by Le Forem or the VDAB. The reforms also aim to simplify the calculation of allowances for trainees. These are now flat-rate amounts. Someone in receipt of a relatively high benefit will receive a lower premium, while someone in receipt of a relatively low benefit will receive a higher premium.

Flemish Region - Individuele beroepsopleiding (IBO)

Which employers and which prospective trainees?

All companies, non-profit organisations or administrative authorities (hereinafter “the company”) established in the Flemish Region or the Brussels-Capital Region can use the IBO system - provided the language of the training programme is Dutch.

Prospective trainees, also called “learners”, must be registered as unemployed job seekers (whether they are benefit recipients or not).

The IBO is therefore aimed at fully unemployed people on benefits, job seekers not on benefits, beneficiaries of social integration income and people who are entitled to social assistance (registered as job seekers, of course).

Precondition

The trainee cannot have worked in the company in the same job already, unless he or she has completed a maximum of four weeks of temporary work before the start of the IBO.

Application to the VDAB

The VDAB (or the partner organisation with which the VDAB is working as part of a public procurement contract, a grant agreement or a cooperation agreement) is competent to decide whether a job seeker can take an IBO in a company. This decision is made based on the difference between the requirements of the job and the skills profile of the prospective trainee. A job seeker may also submit an IBO application at his or her own initiative.

An employer wanting to use a trainee must submit a written application to the VDAB using a form available on the VDAB’s website.

Specifically, the following data must be indicated on the application:

- the employer’s identification data;
- the description (characteristics) of the job to be filled;
- the name, date of birth and postcode of the place of residence of the trainee.

Content of the IBO contract

Once the application has been approved by the VDAB, an IBO contract can be entered into. This is in fact a tripartite agreement signed by the company, the VDAB and the trainee. The template and content of this contract are laid down by the Board of Directors of the VDAB. The template is not available online.

The contract notably includes a description of the job to be filled, the training programme, the amount of the productivity bonus to be awarded to the trainee, etc.

Duration of the IBO contract

The training period lasts for a minimum of four weeks and a maximum of 26 weeks (Order of the Flemish Government, Art. 92, § 1, paragraph 1).

Trainee's status and income

During the performance of the IBO contract, the trainee remains registered as a job seeker and continues, if applicable, to benefit from unemployment or bridging benefits, or from integration income.

If the individual professional training started before 1 September 2018, a trainee who is not entitled to unemployment or bridging benefits may, in certain situations, be entitled to a training benefit paid by the National Employment Office (ONEM/RVA) until the end of the training programme. In this case, the amount of the benefit will correspond to the amount of the bridging benefit. The training benefit scheme has been scrapped by the Flemish Region for all individual professional training which started after 31 August 2018.

During the training programme, the trainee will receive a monthly IBO premium from the VDAB. The amount of this premium is adjusted to the amount of the trainee's replacement income.

The IBO premium amounts to:

Amount of replacement income	Percentage to be applied to the guaranteed minimum monthly average income	Amount of the IBO premium (guaranteed minimum monthly average income since 01/09/2018 = €1,593.81)
minimum of €38.5 per day	20%	€318.76
minimum of €25.66 per day and maximum of €38.49 per day	40%	€637.52
maximum of €25.65 per day	60%	€956.29
trainee without income	80%	€1,275.05

In the case of a part-time IBO, the IBO premium is calculated based on the employment percentage.

A trainee who takes an IBO may be entitled to the following allowances:

- 1 a pass for a public transport company;
- 2 a flat-rate allowance for journeys to and from his or her place of residence and the place of training;
- 3 a flat-rate allowance for long journeys for each day's attendance;
- 4 reimbursement of expenses for the care of children not in school (actual expenses) and all schoolchildren through primary school (maximum amount) for days on which the professional training is actually taken.

No NOSS contribution needs to be paid out of the monthly premium, but withholding tax is deducted at the uniform rate of 11.11%. Each month, the VDAB provides the trainee with an overview of the premium and the allowances paid to him or her.

Financing by the company

The company where the trainee takes the IBO pays a monthly financial contribution to the VDAB.

This premium amounts to:

- €650, if the amount on the scale is less than €1,734;
- €800, if the amount on the scale is between €1,735 and €2,040;
- €1,000, if the amount on the scale is between €2,041 and €2,346;
- €1,200, if the amount on the scale is between €2,347 and €2,652;
- €1,400, if the amount on the scale exceeds €2,653.

In the case of a part-time IBO, the cost is calculated based on the employment percentage. The pay scale amounts are adapted to the threshold index.

Occupational accident insurance

The employer must insure the trainee against accidents during the training and on the way to and from the place of training (see box).

This insurance must offer the same cover as that set out in the law on occupational accidents. In the event of an accident, the trainee's allowance is calculated on the basis of the salary to which an adult salaried worker employed in the profession to be gained is entitled.

Trainee's liability

Any trainee who, in connection with the IBO, causes damage to the employer or a third party is only liable in the event of fraud, serious misconduct or repeated slight misconduct.

Exclusion and termination of the contract

The employer is not entitled to an IBO premium for days of incapacity for work due to illness, an ordinary-law accident or an occupational accident. In the event of an accident, the allowance is calculated on the basis of the remuneration to which an adult salaried worker employed in the profession covered by the training is entitled.

Any termination of the IBO contract entails that the VDAB's IBO advisor is notified in advance, but that is not all: termination also requires the agreement of the VDAB.

If this body (VDAB) decides to end the training programme early, no allowance is payable to the trainee. However, if the employer unilaterally decides to terminate the IBO contract without permission from the VDAB and without valid grounds, it may be required to pay the trainee an allowance corresponding to the amount of the premium for the remainder of the training programme and the salary that it should pay for the period of the employment contract following the training period and equal to the duration of this training period.

The VDAB could also decide to no longer engage in individual professional training schemes for three years with a company that does not comply with its legal or contractual obligations.

Entering into an employment contract after the IBO

The employer must undertake to employ the trainee at the end of the training programme, under an **open-ended employment contract** for a duration at least equal to that of the training. For this contract, which immediately follows the IBO contract, the conditions applicable to the profession concerned and, at least, the same working conditions as those in force during the IBO period apply.

The employer and the trainee may (immediately after the professional training) enter into a **fixed-term employment contract**, provided the employer can demonstrate to the VDAB that entering into such a contract complies with the (standard) recruitment policy. The duration of this employment contract must be at least equal to the duration of the training taken.

If, at the end of his or her training, the trainee is recruited under an open-ended contract, this contract may only be terminated by the employer after a period at least equal to the duration of the training, except in the event of dismissal on serious grounds.

If the contract is terminated, the relevant legal provisions must be complied with.

Irrespective of the application of the standard termination rules, if the employer ends the contract before the minimum duration of employment is reached, the worker may demand compensation for the loss suffered by means of an allowance corresponding, for example, to the remuneration that would have been payable for the minimum period of employment that was not complied with.

Walloon Region - Training-integration contract (CFI)

Which employers and which prospective trainees?

The CFI system may be used by all private-sector companies operating as a natural person or a legal entity, in the form of a commercial company (e.g. public limited company) or otherwise (e.g. non-profit associations or de facto associations), as well as independent professions.

As of 1 May 2019, public-sector employers may also enter into a CFI. However, the Walloon government may decide to postpone the date of entry into force of the CFI - until 2022 at the latest - for certain public-sector categories.

The employer must have its registered office or an operating unit in the French-speaking region of Belgium.

A CFI may be entered into with any person registered as an unemployed job seeker (full-time unemployed person) with Le Forem.

Precondition

The trainee cannot have performed any services under an employment contract with the co-contracting employer for the type of job to be filled before the CFI is signed, unless the cumulative duration of the services provided under an employment contract (or temporary work contract) does not exceed 20 working days over the three months preceding the CFI.

A service cannot under any circumstances begin before the training-integration contract is signed.

Furthermore, the employer may not enter into a CFI with a trainee who has secured a training-integration contract, a work placement contract or a work-study training contract for the same profession.

Application to Le Forem

An employer wishing to enter into a training-integration contract must submit its application to Le Forem.

This request is made using a form that will be available on the Le Forem website or via an electronic platform provided for this purpose.

The application must contain the following information:

- 1 the employer's identification data;
- 2 the name, professional experience and qualifications of the tutor(s);
- 3 the characteristics of the job to be filled;
- 4 the recruitment conditions offered at the end of the training-integration contract, notably the type of contract, remuneration and work plan.

Content of the training-integration contract

If the application is accepted, a training-integration contract (CFI) can be entered into. This is in fact a tripartite agreement signed by the employer, Le Forem and the trainee.

A CFI template has yet to be set out by the minister. The training-integration contract must contain the following information:

- 1 the description of the job to be filled;
- 2 the description of the job seeker's skills;
- 3 the training plan;
- 4 the name of the tutor or tutors;
- 5 the duration of the training-integration contract;
- 6 the weekly training schedule;
- 7 the training assessment procedures;
- 8 the amount of the monthly premium;
- 9 the procedures for granting the allowance for travel expenses and childcare costs;
- 10 the certificate of professional skills;
- 11 the gross monthly salary at the time of the trainee's recruitment;
- 12 the employer's solemn undertaking to meet its obligations regarding the well-being of workers during the performance of their work as well as the obligations set out below:

- to train the worker according to a specific programme and not entrust him or her with a task that is not provided for in the training plan;
- to appoint one or more members of staff to monitor and support the trainee during his or her training;
- to assess, against the training plan, the professional skills acquired by the trainee at the end of the CFI with a view to the certificate of professional skills acquired during the CFI being issued (the template of which is laid down by Le Forem);
- to insure the trainee against occupational accidents and accidents on the way to and from work;
- to offer the trainee, after the training-integration contract, an employment contract in the profession learned for a duration at least equal to that of the CFI and in compliance with the collective labour agreements applicable to the business sector concerned;
- not to dismiss staff to hire a trainee under a CFI;
- to send, within a maximum period of one month, the administrative documents verifying that the employer is compliant with its obligations, as well as a copy of the employment contract entered into at the end of the CFI.

Any employer that does not comply with its obligations cannot enter into a CFI for a period of one year (two years in the event of repeated non-compliance).

Mandatory trial period

The contract must also provide for a trial period equal to 1/3 of the planned duration of the training contract. This period must last a minimum of two weeks and a maximum of eight weeks.

During the trial period, either party may terminate the CFI by giving seven calendar days' notice in accordance with the procedures laid down by the law on employment contracts (Article 37).

Duration of the training-integration contract

The contract lasts a minimum of four weeks and a maximum of 26 weeks. The duration of the CFI may be extended if it includes periods of incapacity for work (illness, occupational accident), annual holidays, days of economic unemployment, days of bad weather or days of stoppage due to force majeure, at the request of the employer, no later than 10 working days before the initial expiry date of the CFI, provided the total of the periods mentioned is equal to at least five working days.

Exception

The general administrator of Le Forem may, after carrying out an assessment, extend the term of the training contract to a maximum of 52 weeks for an unqualified trainee with difficulties in obtaining employment.

“Trainee with difficulties in obtaining employment” means a trainee who, at the time of entering into the contract, fulfils one of the following conditions:

- does not hold a secondary school leaving diploma or an equivalent certificate or diploma;
- is under the age of 25 and has been unemployed for at least one year;
- is 25 years old or older and has been unemployed for at least two years;
- is recognised as disabled;
- is dependent on the INAMI/RIZIV (National Institute for Health and Disability Insurance) and is supported as part of a reintegration route (professional reorientation or rehabilitation).

Trainee's status and income

During the performance of the professional training contract, the trainee remains registered as a job seeker and continues, where applicable, to claim unemployment or bridging benefits or integration

income. In addition to the benefits or income mentioned above, the trainee receives other amounts payable by the ONEM/RVA.

Le Forem pays a monthly premium to the trainee. This premium is equal to a percentage of the guaranteed minimum monthly income. A block is equal to 20% of the guaranteed minimum monthly income, i.e. €313. The amount of the premium is therefore index-adjusted at the same time as the guaranteed minimum monthly income.

The premium is calculated in proportion to the services provided during the month (public holidays are treated as days worked).

To enable this calculation, the employer communicates the trainee's services to Le Forem each month for the month in question. This must be done by no later than the fifth day of the following month.

Category	Amount of the daily benefit	Number of blocks	Amount of the monthly CFI premium
1	No benefit	4	€1,252
2	Social benefit between €13 and €25.65	3	€939
3	Social benefit between €25.66 and €38.50	2	€626
4	Social benefit higher than €38.50	1	€313

These different categories prevent a trainee receiving a higher net salary than the workers who perform the same job within the company.

No NOSS contribution needs to be paid out of the monthly premium, but withholding tax is deducted at the uniform rate of 11.11%.

The trainee may be entitled to the following allowances:

- 1 an allowance for journeys to and from his or her place of residence and the place of training;
- 2 an allowance for childcare;
- 3 reimbursement of expenses for the care of children not in school (actual expenses) and all schoolchildren through primary school (maximum amount) for days on which the professional training is actually taken.

Financing by the employer

During the training-integration contract, the employer must pay an allowance to Le Forem. It no longer needs to pay any allowance directly to the trainee.

This allowance is a fixed flat-rate amount based on the joint committee scale that the employer has communicated to Le Forem.

This flat-rate amount is prorated if the CFI has been entered into for a part-time job.

Le Forem sends an invoice to the employer each month. First-time employers are entitled to a €200 reduction on their first invoice. A first-time employer is an employer which, on the day the training-integration contract was entered into, had not made any commitment under an employment contract within the meaning of the Law of 3 July 1978 on employment contracts.

Flat-rate amount	Gross monthly amount of the future remuneration	Amount of the monthly flat-rate amount paid by the employer to Le Forem
1	Less than €1,700	€650
2	From €1,700 to €2,000 inclusive	€850
3	From €2,000 to €2,300 inclusive	€1,050
4	From €2,300 to €2,600 inclusive	€1,250
5	More than €2,600	€1,450

Reimbursement of training costs by Le Forem

Le Forem reimburses the employer for actual training costs incurred based on an invoice sent by the employer. This reimbursement is limited to the rate in force in the skills centres for similar training in the same employment sector.

This reimbursement of training expenses is exclusively intended for cases where training is not available within a reasonable period of time or where no training is available (specific training). In this case, the employer may use an organisation other than the organisation provided for in the decree (e.g. Le Forem or IFAPME) to provide the training.

Occupational accident insurance

The employer must insure the trainee against accidents during the training and on the way to and from the place of training (see box). This insurance must offer the same benefits as those borne by the insurer under the law on occupational accidents.

Exclusion and termination of the contract

In the event of illness or private-life accident, the trainee is directly covered by his or her mutual health insurance company and continues, if entitled to do so, to benefit from unemployment (or bridging) benefits or social integration income.

However, the monthly premium, travel and child care expenses payable by Le Forem, as well as the allowance payable by the employer, will be prorated based on the duration of the absence.

During the trial period, either party may terminate the CFI by giving seven calendar days' notice in accordance with the procedures laid down by the law on employment contracts (Article 37).

Outside the trial period, the training-integration contract may be terminated early, notably:

- in the event of the bankruptcy or cessation of business of the employer;
- following a reasoned decision by the trainee, notably if the employer is not complying with its obligations;
- following a reasoned decision by the employer, notably if the trainee is not suitable;
- if the certificate provided for in the training plan, which is mandatory to practise the profession to be gained, is not obtained. In this case, the contract may end on the date scheduled for the certificate;
- if the employer and the trainee fail to reach an agreement within the framework of occupational accident insurance;
- in the event of early recruitment by the employer, if the trainee has acquired all the skills required for the position before the end of the training period.

Information about the termination of the CFI and the reason for termination must be provided to Le Forem within five working days of the termination. Le Forem reserves the right to determine whether the decision is arbitrary.

Entering into an employment contract after the IBO

At the end of the training programme, the employer is obliged to recruit the trainee for the position learned, by means of a standard employment contract and for a duration at least equal to that of the CFI. The employment contract may be entered into for an open-ended term or for a fixed term but, in the latter case, the duration must be at least equal to the duration of the training programme. However, the Walloon decree does not specify whether the weekly work plan within the framework of this contract must be a full-time or part-time plan.

This obligation may also be taken up by another employer by entering into a transfer contract between the two employers recognised by Le Forem. This obligation shall not apply where the CFI has been terminated unilaterally or by mutual agreement prior to its end date.

Furthermore, where the employer ends the new employment contract without complying with the minimum duration of employment (or during a trial period), the worker may claim damages to repair the damage actually suffered as a result of the fact that his or her contract was not executed for a duration at least equal to that of the training.

Explicit stipulation of a sanction

If the employer fails to comply with its obligation to recruit the former trainee under an employment contract immediately after the training programme, there is a risk that it will have to reimburse the full unwarranted amount corresponding to the difference between the monthly flat-rate financial contributions paid by the employer to Le Forem and the sums paid by Le Forem to the trainee.

The trainee may also claim damages.

Extension of the scope of the occupational accident insurance

The Law of 21 December 2018 regarding various provisions in social matters (Belgian Official Gazette of 17 January 2019) extends the scope of the law on occupational accidents to individuals working for pay as part of training for paid work. (This extension does not apply to training programmes organised outside of any legal framework.)

The Federal Agency for Occupational Risks (Fedris) has published a list (see [link](#)) of individuals who perform work as part of training for paid work and of their employers who will fall within the scope of the law on occupational accidents.

As a general rule, an IBO trainee will be insured against occupational accidents (both for theoretical training and for practical training in the company and for journeys to and from work), regardless of the obligations imposed by Walloon and Flemish legislators.

The amendment will come into force by no later than 1 January 2020, although the federal government may speed up its entry into force. The practical implementation shall be determined by royal decree.

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News

Flemish training leave: what are the rules as from 1 September 2019?

The system of paid educational leave has been regionalised since 1 July 2014. As a result, certain aspects of this system may differ from one region to another.

In the Flemish Region, paid educational leave is to be replaced by Flemish training leave (Vlaams opleidingsverlof or VOV) as from 1 September 2019.¹

The purpose of Flemish training leave is to encourage workers to take job market-oriented and career-oriented training.

The employer will be able to obtain a partial reimbursement of the remuneration relating to the hours of leave taken.

Note

Transitional provisions exist for workers who, before 1 September 2019, take training providing entitlement to paid educational leave, up to the third year of training taken with a cut-off date of 31 December 2021. It is notably laid down that the number of hours of paid educational leave reimbursed will be deducted from the number of hours of entitlement to Flemish training leave.²

1. Employers and workers covered

The system of Flemish training leave applies to private-sector employers and workers who meet the following conditions:³

- the employers have an establishment unit in the Flemish Region;
- the workers are employed, on the basis of one or more employment contracts, in an establishment unit located in the Flemish Region:
 - either full time;
 - or at least 4/5th of a full-time job;
 - or at least half-time with variable working hours;
 - or at least half-time with fixed working hours and undergoing training during working hours.

People who perform work in return for remuneration under the authority of one (or more) other person (people) but without being bound by an employment contract are treated as workers.⁴

Note

Workers (and similar) employed in an establishment unit located outside the Flemish Region (e.g. in the Brussels-Capital Region) cannot benefit from Flemish training leave. However, they can qualify for the system of paid educational leave (if the conditions required within this system are met).

2. Training providing entitlement to Flemish training leave

Under certain conditions (e.g. minimum duration), the following training provides entitlement to Flemish training leave:⁵

- job market-oriented training;
- career-oriented training.

Job market-oriented training

Job market-oriented training is training that aims to sustainably strengthen workers' careers or to facilitate job market-oriented transitions to address the challenges and bottlenecks characterising the (present or future) job market.⁶

The following are covered:

- training courses and programmes organised, subsidised or recognised by the Flemish Community;⁷
- training organised by organisations representing workers as well as training organised by organisations for young people and adults, and organisations which train entrepreneurs;⁸
- training approved by the competent joint committee;⁹
- training approved by the Flemish training committee.¹⁰

Job market-oriented training is recorded in the training database ([opleidingsdatabank](#)). This allows the employer and the worker to check whether the training provides entitlement to Flemish training leave.¹¹

Career-oriented training

Career-oriented training is training that is taken as part of career support and that is set out in a personal development plan.¹²

3. Duration of Flemish training leave

The duration of Flemish training leave, i.e. the duration for which the worker is allowed to be absent from work (with his or her normal remuneration still being paid on the usual due date) to take training, study or take exams may not exceed an upper limit of 125 hours/year (academic year).

The number of hours of leave to which the worker is entitled is in proportion to the contractual fraction of employment mentioned in the DmfA.¹³

- for the month of September of the training year if this fraction represents at least 50% of a full-time job;

- or, otherwise, for the month during which the first training programme begins, provided this fraction represents at least 50% of a full-time job.

In practical terms, the worker must comply with the upper limit (prorated, if applicable) of 125 hours/year and may only be absent for a number of hours varying according to the type of training.¹⁴ See the table below.

The employer and the worker can view the number of hours of Flemish training leave available per worker on the Flemish training incentives digital platform ([het digitale platform Vlaamse opleidingsincentives](#)).¹⁷

Types of training

Training involving regular attendance

Taking secondary education board and primary education board exams⁽¹⁾

Taking exams organised by the Flemish Community as part of a system of recognition and certification of skills acquired⁽¹⁾

Training for which study units are used⁽¹⁾

Higher vocational educational training (up to and including the 2021-2022 training year)⁽¹⁾

Training in connection with adult education⁽¹⁾

Number of hours of absence

Number of hours of actual attendance during contact hours⁽²⁾

8 hours per exam

16 hours

4 hours per study unit⁽³⁾

6 hours per study unit⁽³⁾

Number of training periods planned

(1) This is training that does not require regular attendance.

(2) Contact hours are hours of training in direct contact between the instructor or coach for a training activity and the learner (provided at a specific time and place); this can also be workplace training.¹⁵

(3) A unit of study is an international unit accepted within the Flemish Community corresponding to a minimum of 25 and a maximum of 30 hours of teaching, learning and assessment activities and by which the volume of studies of each training programme or sub-section of a training programme is expressed.¹⁶

4. Flemish training leave application, planning and course period

Submitting the application for leave

The worker must inform the employer of his or her desire to take Flemish training leave.

The application for a normal academic year must be submitted by no later than 31 October of each academic year. In the event of late registration after 31 October or in the event of a change of employer during the same academic year, the application must be made within no later than 15 days of the registration or the change of employer. The application is made, in all cases, by means of a certificate of regular registration.¹⁸

The two parties then enter into an agreement regarding taking leave hours, taking into account the collective schedule.¹⁹

Planning leave

The taking of Flemish training leave must be planned. The planning rules are identical to the ones applicable within the system of paid educational leave.²⁰

Leave period

Flemish training leave is taken at the earliest from the day before the start of the training programme and no later than two days after the last lesson or exam.²¹

In any event, the worker may only take Flemish training leave from the date of approval of the training registration.²²

5. Worker's obligation

To benefit from Flemish training leave, the worker must attend the training diligently.²³

Standards regarding attendance vary, notably depending on the type of training (training involving regular attendance or not) and the type of absence (justified or unjustified absence).²⁴

Attendance is certified by the training provider (via the Flemish training incentives digital platform - het digitale platform Vlaamse opleidingsincentives).

6. Remuneration for Flemish training leave

For the hours of absence taken in connection with Flemish training leave, the worker is entitled to the payment of his or her normal remuneration (on the usual due dates), this being subject, however, to an upper limit.²⁵

The upper limit and calculation methods are identical to the ones applicable within the system of paid educational leave.

7. Loss of or reduced entitlement to Flemish training leave

Loss of entitlement to leave

The worker loses his or her entitlement to Flemish training leave:²⁶

- if he or she abandons or interrupts the training: the loss takes effect from the notification of the abandonment or interruption to the employer (this must be done within five days); or
- if he or she engages in a self-employed or salaried gainful activity during the leave: the entitlement is lost for a period of 12 months starting on the day the facts are ascertained; or
- if he or she takes the same (year of) training twice (unless the certificate attesting to the successful completion of the training programme has not been obtained in each case due to force majeure).

Reduced entitlement to leave

If the worker does not follow the training diligently and has taken more hours of Flemish training leave than those to which he or she was entitled, the Department of Employment and the Social Economy (Flemish Ministry of Employment and the Social Economy) will reduce by 25% the worker's next entitlement to the maximum number of hours of leave; it will inform him or her of this in writing.²⁷

8. Protection against dismissal

A worker who benefits from Flemish training leave is protected against dismissal. The protection regime is identical to the one applicable within the system of paid educational leave.²⁸

9. Reimbursement of remuneration

Conditions

The employer receives reimbursement of the wages and social security contributions in connection with the Flemish training leave if the following conditions are met:²⁹

- registration for the training was approved;
- the employer correctly recorded the hours of Flemish training leave in the DmfA;
- the worker did not exceed his or her maximum number of hours and followed the training programme diligently;
- in the case of a worker working part-time with fixed working hours, the hours of leave coincided with the worker's working hours;
- in the case of training with workplace learning with another employer, neither the worker nor his or her own employer is compensated for the work carried out;
- in the case of training for which the worker's own employer is also the training provider, the training enables the worker to perform a job other than his or her current job (or a job that is changing significantly due to a changing environment).

Application procedure

The employer submits an application for reimbursement by registering the worker's training on the Flemish training incentives digital platform ([het digitale platform Vlaamse opleidingsincentives](#)) within three months of the start of the training.

The Department of Employment and the Social Economy confirms receipt of the application to the employer and the worker. If the worker is taking career-oriented training, the department also confirms receipt of the certificate from the careers advisor sent by the worker with the registration certificate.³⁰

The employer will also ensure that it follows up on the request for information made by the department in order to be able to review its application.

If it does not provide the information within one month of a repeat request from the department (by registered letter), its reimbursement application is cancelled.³¹

Decision

The department assesses the application for reimbursement on the basis of:³²

- the registration certificate received from the training provider;
- the employer's registration of the Flemish training leave in the DmfA;
- the maximum number of hours of Flemish training leave to which the worker is entitled.

After having reviewed the application, the department informs the employer of its decision:³³

- if the reimbursement is accepted, the time of the reimbursement is indicated;
- if the reimbursement is refused, the reason is specified.

Reimbursement amount

The reimbursement is limited to a flat-rate amount per hour of Flemish training leave, i.e. €21.30 (from the 2014-2015 academic year).³⁴

No combination

The Flemish training leave cannot be combined with an incentive premium in connection with the training credit .

Catherine Mairy

Legal Counsel

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- 1 Flemish training leave is governed by several legal texts:
 - the Decree of 12 October 2018 determining Flemish training leave and various provisions relating to the policy area of Employment and the Social Economy (Belgian Official Gazette of 13 November 2018);
 - the Order of the Flemish Government of 21 December 2018 implementing section 6 – granting paid educational leave as part of the continuous training of workers – of Chapter IV of the Recovery Law of 22 January 1985 containing social provisions and amending Article 4 of the Order of the Flemish Government of 17 May 2013 relating to career support (Belgian Official Gazette of 4 March 2019);
 - the Ministerial Order of 13 February 2019 specifying competences and establishing an assessment system, pursuant to Article 2, § 1, of the Order of the Flemish Government of 21 December 2018 implementing section 6 – granting paid educational leave as part of the continuous training of workers – of Chapter IV of the Recovery Law of 22 January 1985 containing social provisions and amending Article 4 of the Order of the Flemish Government of 17 May 2013 relating to career support (Belgian official gazette of 4 March 2019);
 - the Recovery Law of 22 January 1985 containing social provisions;
 - the Royal Decree of 23 July 1985 implementing section 6 – granting paid educational leave as part of the continuous training of workers – of Chapter IV of the Recovery Law of 22 January 1985 containing social provisions.
 - 2 Flemish Gvt Ord. of 21 Dec. 2018, Art. 45, para. 2.
 - 3 Law of 22 Jan 1985, Art. 108, § 1 – Flemish Region.
 - 4 Law of 22 Jan 1985, Art. 108, § 1, para. 3 – Flemish Region.
 - 5 Law of 22 Jan 1985, Art. 111, § 1 – Flemish Region and, for the conditions, Flemish Gvt Ord. of 21 Dec. 2018, Art. 2.
 - 6 Law of 22 Jan 1985, Art. 107ter, para. 1(2) – Flemish Region.
 - 7 See the list mentioned in Article 109, § 1(1) of the Law of 22 January 1985 – Flemish Region.
 - 8 Law of 22 Jan 1985, Art. 109, § 1(2) – Flemish Region.
 - 9 Law of 22 Jan 1985, Art. 109, § 1(3) – Flemish Region.
 - 10 Law of 22 Jan 1985, Art. 109, § 1(4) – Flemish Region.
 - 11 Flemish Gvt Ord. of 21 Dec. 2018, Art. 2, §§ 1 and 2 and Art. 24.
 - 12 Law of 22 Jan 1985, Art. 107ter, para. 1(3) – Flemish Region.
 - 13 Flemish Gvt Ord. of 21 Dec. 2018, Art. 22.
 - 14 Flemish Gvt Ord. of 21 Dec. 2018, Art. 23.
 - 15 Flemish Gvt Ord. of 21 Dec. 2018, Art. 1, para. 1(1).
 - 16 Flemish Gvt Ord. of 21 Dec. 2018, Art. 1, para. 1(6).
 - 17 Flemish Gvt Ord. of 21 Dec. 2018, Art. 24.
 - 18 Law of 22 Jan 1985, Art. 112 and Royal Decree of 23 July 1985, Art. 14, § 1.
 - 19 Flemish Gvt Ord. of 21 Dec. 2018, Art. 24, para. 2.
 - 20 Law of 22 Jan 1985, Art. 113.
 - 21 Flemish Gvt Ord. of 21 Dec. 2018, Art. 25.
 - 22 Flemish Gov. Ord. of 21 Dec. 2018, Art. 26.
 - 23 Law of 22 Jan 1985, Art. 116, § 1 – Flemish Region.
 - 24 Flemish Gvt Ord. of 21 Dec. 2018, Art. 27.
 - 25 Law of 22 Jan 1985, Art. 111, § 1 – Flemish Region.
 - 26 Law of 22 Jan 1985, Art. 117 – Flemish Region and Royal Decree of 23 July 1985, Art. 15.
 - 27 Flemish Gvt Ord. of 21 Dec. 2018, Art. 28.
 - 28 Law of 22 Jan. 1985, Art. 118.
 - 29 Flemish Gvt Ord. of 21 Dec. 2018, Art. 32.
 - 30 Flemish Gvt Ord. of 21 Dec. 2018, Art. 33.
 - 31 Flemish Gvt Ord. of 21 Dec. 2018, Art. 34.
 - 32 Flemish Gvt Ord. of 21 Dec. 2018, Art. 35.
 - 33 Flemish Gvt Ord. of 21 Dec. 2018, Art. 36.
 - 34 Flemish Gvt Ord. of 21 Dec. 2018, Art. 37 and Art. 38.
 - 35 Flemish Gvt Ord. of 21 Dec. 2018, Art. 39.



News

When are social security contributions due on a bonus? New jurisdiction

A bonus is subject to social security contributions when it is granted by the employer. This could lead to the conclusion that there are no social security contributions to be paid for bonuses paid by a third party - for example by another company - to an employee within your company. In response to this practice, the NSSO tightened the administrative interpretation on this matter from the third quarter of 2018 onwards. The Court of Cassation partly confirms the NSSO's interpretation: a benefit in return for work is always borne by the employer, whether it is paid by your own company or a third party.

1. Social security contributions: four conditions

Social security contributions are due for the **gross wages** of the employee. This concerns both the fixed monthly wages and the variable remuneration. The term 'wages' must be understood as defined by the Wage Protection Act. These are:

- I. wages in cash, or benefits valuable in cash terms;
- II. to which the employee is entitled;
- III. as a result of his employment; and
- IV. borne by the employer, even if the benefits are not granted in return for work performed.

I. A bonus is often a sum of money. In that case the first condition is fulfilled. A bonus can also consist of, for example, stock options or a profit premium. In that case, specific rules apply.

II. The second condition - the employee's right - is rather broad.

The right to the cash bonus is sufficient. It is irrelevant whether or not the cash bonus is laid down in the employment contract or a bonus plan. It is also irrelevant whether it regards a one-off bonus or a multi-year bonus plan.

III. Social security contributions are not only due on the wages paid **in return for the work performed**. A premium that is **unrelated** to the **work performed** is also subject to social security contributions.

IV. The fourth condition is the most relevant in the discussion about social security contributions, but also the most complex. As from the third quarter of 2018, the NSSO has adapted the interpretation of this condition. The NSSO adopted a **broader wage concept** after a ruling of the Labour Court in Brussels. However, there was a lot of discussion as to whether the changed interpretation of the NSSO was justified. The Court of Cassation confirmed the ruling of the Labour Court in a judgement of 20 May 2019. The NSSO will therefore feel encouraged in its position.

2. Almost always borne by the employer

What does this mean in practice for you as an employer? You finance the benefits you offer to your employees yourself. So both when you pay out the cash bonus yourself, and when another company passes on the financial cost of the benefit to the actual employer.

But suppose it is not you, but another company within the group, that grants the cash bonus to your employees without presenting the invoice to you. You do not bear the financial cost of the benefit.

Then also social security contributions are due if - says the social security office - 'the grant is the result of the work performed under the employment contract concluded with that employer or related to the position of the employee with that employer.' The NSSO took up this position after a ruling of the Labour Court in Brussels. The legal text itself has not been amended.

It is in this regard that the Supreme Court of Appeal already clarified matters earlier on. Although the accounting records show that the financial burden of the benefit is borne by a third party and not by the employer, **social security contributions are due if the employee can turn to the employer to claim the benefit**. This legal claim that the employee has in respect of the employer therefore suffices to ensure that social security contributions are due (Supreme Court of Appeal, 10 October 2016, S.15.0118.N, see www.juridat.be).

The Court of Cassation is going one step further now and confirms the ruling of the Labour Court (Court of Cassation, 20 May 2019, S.18.0063, available on www.juridat.be). If the bonus is granted in return for work performed by the employee under the employment contract, the employee is by definition entitled to it at the expense of the employer. So in that case the employee is then legally entitled to the bonus and social security contributions are due. This is not affected by the fact that a third party bears the financial burden or is responsible for the actual payment.

The NSSO also claims contributions if the granting of the benefit is related to the employee's position with the employer. The Court of Cassation has not ruled on this criterion.

Wage cost: also think of the holiday pay

When determining the budgets, you must not only take into account the employer's contributions (25% base contribution). As a rule, you will also be due holiday pay on the bonus (of the employee). The single and double holiday pay on variable wages amounts to 15.668%. In very specific situations no holiday pay is due.

Alternatives for the cash bonus

Are you looking for alternatives to a cash bonus? Be sure to check out our webinar "Motivating and rewarding employees" via this [link](#).

Contact us

Questions about social security contributions, and when they are due or not? And what about the holiday pay? Send us your questions on legal.partners@partena.be.

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