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PROFESSIONAL



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CONTENT



Topics

Starter salaries: hiring young people becomes cheaper >

Background: the starter job contract >

Entry into force >

For whom can you apply the reduced starter salary? >

The employer may reduce the salary >

Compensation for the employee - example >

Compensation for the employer:
a new exemption from payment of payroll withholding tax >

Conclusion >



Case law

Luncheon vouchers for everyone! Also for temporary workers >



Dossier

Starter salaries: hiring young people becomes cheaper

As of 1 March 2019, hiring young people should become cheaper. But shouldn't this already have been possible since 1 July 2018? It is still a component of the Summer Agreement of 2017 that was reiterated in the Jobs Deal of 2018. What was the intention? Belgian youth unemployment remains high, and the government wants to remedy that situation with this new measure. The OECD also points out that the relatively high pay for young people can be an impediment to the recruitment of low-skilled young people.¹

The implementation of the starter salaries was rather chaotic. The Act of 26 March 2018 on the strengthening of economic growth and social cohesion introduced a first version. The employer could reduce the gross salary and the employee received a fixed net bonus as compensation. The government still had to lay down the calculation rules for the bonus in a Royal Decree. This Royal Decree never came about. In theory, an employer could pay a reduced salary, but the employee was not compensated. In the end, the whole measure remained a dead letter.

Parliament recently approved an amendment to the "Act on Social Provisions of the Job Deal". The text has not yet been published in the Belgian Official Gazette, but provides - theoretically - for entry into force as from 1 March 2019.

In a nutshell, the starter salaries amount to this:

- As an employer, you can reduce the gross salary by 6% at the age of 20, by 12% at the age of 19 and by 18% at the age of 18.
- By way of compensation, you pay the young person a “compensatory allowance”. The amount of this allowance exactly covers the employee’s net loss resulting from the reduced gross salary.
- As an employer, you are exempted from payment of payroll withholding tax to the amount of the allowance.

The starter salaries are not as easy to implement as it may seem at first sight. Here we will already guide you through the principles and conditions. An example will clarify the calculation rules.

Background: the starter job contract

Do you remember the Rosetta plan? The Rosetta plan or youth employment plan aims to provide young people with a job or training. The reduced starter salaries are part of the youth employment plan. The youth employment plan began on 1 April 2000.² The youth employment plan obliges employers with a workforce upwards of 50 people to recruit a certain percentage of employees under the age of 26 on a starter job contract.³ Employers may be exempted from this recruitment obligation.⁴

The starter job contract is not really a distinct type of contract.

There are three types of starter job contract:

- 1 ordinary employment contract (minimum half-time);
- 2 part-time employment contract in combination with training; and
- 3 work-linked training contract.

Any employment under one of these three types of contract is automatically a starter job contract.

The new measure does not apply to each of these three categories. You can only apply the reduced starter salary for the first type of starter job contract: the ordinary employment contract. (You can read more about the other conditions below.)

When the employee turns 26, the starter job contract ends on the last day of the quarter in which the employee turns 26.⁵ This does not mean that the employment contract is automatically terminated. This remains in force as agreed by the parties.

What is so specific about the starter job contract compared to an ordinary employment contract? Besides the reduced starter salary, two other elements stand out:

- 1 The employer can reduce the gross monthly salary by up to 10% during the first 12 months in order to finance the employee’s training;⁶
- 2 The employee can terminate the starter job contract during the first 12 months with a shortened notice period of seven calendar days.⁷

Lower salary as compensation for the training: maximum 10%

The starter job contract (in the form of an ordinary employment contract) may stipulate that, for up to the first 12 months, the employer must spend part of the gross salary on training the employee. The young employee is entitled to a reduced gross salary. This reduction in the gross salary must not exceed 10%, without the annual salary being lower than the guaranteed average minimum monthly income.

For the calculation of the social security contributions, the salary reduced by 10% is taken into account. However, 100% of the salary is taken into account for the calculation of the social security benefits.⁸

The legal text does not prohibit combining the reduced starter salary with the existing reduction by up to 10%. Whether the combination of the reduced starter salary with this 10% reduction is accepted by the administrative authority is not clear at this moment. It seems that this combination was not considered when the texts were produced.

Entry into force

The reduced starter salary takes effect (retroactively) on 1 March 2019 and applies to the employment contracts concluded from then on.

For whom can you apply the reduced starter salary?

A. A long list of conditions

You may apply the reduced starter salary only if the following conditions are cumulatively met:^{9,10}

- 1 You do not fall under a joint committee where the minimum wages for 18, 19 and 20-year-olds are lower than the minimum wages for 21-year-olds, except if those lower minimum wages are limited to young people employed under an employment contract for students. These include the supplementary joint committee for white-collar employees (PC 200), the joint committee for tourist attractions (PC 333) and the joint committee for orthopaedic technologies (PC 340). The level of the degressive sectoral wage scale is irrelevant; the exclusion is general.
- 2 You recruit the young employee under a type 1 starter job contract: an ordinary written employment contract without training section.
- 3 You employ the young employee at least half-time.
- 4 The employee is 18, 19 or 20 years old.
- 5 The employee must be registered as a job-seeker with the competent regional agency (VDAB, FOREM, Actiris or ADG) immediately prior to the recruitment.
- 6 The employee's theoretical salary without the reduction is equal to the minimum wage applicable in the sector (sectoral minimum wage or guaranteed average minimum monthly income). You must not pay

a higher salary.

- 7 You received confirmation with the declaration of employment (DIMONA) that the employee can be considered an employee without work experience (more on this below).
- 8 The employment contract stipulates that the employer shall reduce the normally applicable minimum wage in pursuance of the regulation governing starter salaries and that it shall pay the compensatory allowance each month in which the reduction is applied.

B. Not applicable to students

Do you wish to conclude an employment contract for students? In this case, the reduced starter salary must not be applied.¹²

C. The employee has (almost) no work experience

The lack of work experience is confirmed with the employment declaration (DIMONA). You have no other means of checking that this condition has been met.

When you report the employment to the NSSO (National Social Security Office), you will receive a message concerning the work experience. If the employee does not comply, you will be informed of this. In this way, you will know that you cannot reduce the young employee's salary.

The fact that the employee must not have any work experience is actually an oversimplification. The reduced starter salary is not just confined to school leavers. The employee may already have had a job in the past. The law has developed a new definition. That definition is so complex that you have no choice but to rely on the confirmation given by the government.¹³

Example

Suppose you hire a new employee as of 16 July 2019 (quarter 2019/3 = quarter T) and want to apply the reduced starter salary. This is not possible if between 1 January 2018 (quarter 2018/1 = quarter T-6) and 31 December 2018 (quarter 2018/4 = quarter T-3) the employee was employed for at least two quarters and at least on a 4/5 basis by one or more employers.

Whether the employee worked between 1 January 2019 (quarter T-2) and 15 July 2019 (quarter T) does not count.

In addition, certain types of employment do not count either: work-linked training, individual vocational training, student contract,¹⁴ employment in the year that the young person turns 18, casual worker in agriculture, horticulture or catering, flexi-jobs.

D. The conditions are not met. What now?

What happens if you enter into an employment contract with a reduced starter salary, but not all the conditions are met? As an employer, you can manage and control most of the criteria. For example, it is relatively simple to observe the sectoral minimum wage and not to pay the employee a higher salary.

On the other hand, it is much more difficult to be certain that the employee has no work experience. If, upon declaration of employment, it turns out that the employee cannot be regarded as an employee without work experience, you are required to pay the non-reduced salary. In addition, the social security contributions due for this employment are calculated on this non-reduced salary, and you must deduct payroll withholding tax from the non-reduced salary.¹⁵

This can make a major dent in your finances. Are you counting on the application of the reduced starter salary to optimally control labour costs? Do you have to postpone the conclusion of the employment contract until you have received the green light that the employee has no work experience? Postponement often offers no solution. A solution may be to include a condition in the employment contract,¹⁶ without having to grant a notice period or compensation in lieu of notice.

The employer may reduce the salary

If all the conditions are met, you may reduce the gross salary for young employees with no work experience, but you are not obliged to do so.

A. Percentage: 18% - 12% - 6%

The percentage of the reduction is degressive and depends on the age of the employee on the last day of the month.¹⁷

Percentage of reduction	Period: the age of the young person at the end of the month is
6%	20 years
12%	19 years
18%	18 years

B. The GGMMI guarantee: Lower limit based on length of service and age of the employee

A double lower limit restricts the degressive reduction for young employees who have reached 6 or 12 months of service in your company.

- The full-time salary of an employee aged 19 or 20 years, with at least 6 months of service in the company, must not be lower than a guaranteed average monthly income of €1,636.10 per month.
- The full-time salary of an employee aged 20 years, with at least 12 months of service in the company, must not be lower than a guaranteed average monthly income of €1,654.90 per month.

Compensation for the employee - example

For every month in which you as employer reduce the salary, you must pay the young employee a compensatory allowance. By way of compensation, you are exempted from payment of payroll withholding tax. No social security contributions are due on the compensatory allowance. Likewise, you need not deduct payroll withholding tax since the compensatory allowance is not taxable for the employee.

Let's assume it is now May 2019. A 19-year-old worker is single and works full-time, 38 hours a week. His hourly wage is €19 gross, in accordance with the sectoral salary scale. In that month, he worked 168 hours, of which 10 were overtime (with an overtime allowance of 50%), taking into account two public holidays. He also works in shifts and receives a shift bonus of 10% for 38 hours.

We do not apply the social security and tax work bonuses in our calculation, but we do take into account the reduction of withholding tax for single persons.

Step 1 - How much is the gross salary without the reduction?

First we must determine the starting position. What salary may be reduced?

Step 1 - How much is the gross salary without the reduction?

168 hours worked x €11	€1,848
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2 public holidays or 16 hours x 11	€176
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overtime allowance = 10 hours x €11 x 50%	€55
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Shift bonus = 38 hours x €11.00 x 10%	€41.80
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Total	€2,120.80
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Step 2 - Which salary components are taken into account?

Not every salary component is taken into account. The Youth Employment Act introduces a new wage concept. It is primarily the "salary for actual work" that is involved.¹⁸ There is no clear definition. The idea is that, for example, meal vouchers, eco-vouchers, the CLA 90 salary bonus and the profit bonus do not count. These are calculated and paid as if no reduction is applied.

In addition, the salary components must be paid directly by the employer. Therefore, benefits allocated by a sector fund do not count towards the reduction.

In our example, we do include the overtime allowance. In our opinion, it is pay that the employee receives for actual work. According to the explanatory memorandum to the bill, "remuneration for overtime" does not count, but in our opinion this is not in keeping with the actual law text.

In addition to the "salary for actual work", the following salary components also count: the guaranteed salary, the single and double holiday pay, end-of-year bonuses and compensation upon termination of the employment contract.

Other salary components are calculated and expressed on the basis of the non-reduced gross salary.

Step 3 - How much is the reduced gross salary?

The employee is 19, so we apply the second reduction percentage: 12%. We apply this percentage to each of the four components that are eligible for the reduction.

Step 3 - How much is the reduced gross salary?

€2,120.80 - (€2,120.80 x 12%)

€1,866.30

Step 4 - How much is the compensatory allowance?

The compensatory allowance covers the employee's net loss resulting from the reduced gross salary. This means that two amounts must be compared:

- The net salary based on gross salary with reduction, and
- The net salary based on gross salary without reduction.

This gives you the basic amount of the compensatory allowance.

That basic amount must be increased for blue-collar workers by a percentage calculated on the reduced gross salary (since the holiday pay is disbursed through a holiday pay fund or the National Office for Annual Holidays). The reduced starter salary becomes the actual gross salary of the young employee, also for the calculation of holiday pay.

The percentage of this "holiday allowance" depends on the applicable reduction percentage:

Percentage of reduction	Percentage of "holiday allowance"
6%	0.82%
12%	1.75%
18%	2.82%

In our example, a 19-year-old blue-collar worker, the reduction percentage was 12%. The "holiday allowance" therefore amounts to 1.75% of the reduced gross salary.

Step 4 - How much is the compensatory allowance?

Net salary based on gross salary with reduction	Gross	€1,866.30
	Employee contribution	- €263.44
	Payroll withholding tax	- €138.86
	Net	€1,463.90
Net salary based on gross salary without reduction	Gross	€2,120.80
	Employee contribution	- €299.36
	Payroll withholding tax	- €235.16
	Net	€1,586.28

Basic amount of compensatory allowance	€1,586.28 - €1,463.90	€122.38
"Holiday allowance"	€1,866.30 x 1.75%	€32.66
Total compensatory allowance		€155.04

Step 5 - How much is the total net salary that the employer will pay?

The employer has reduced the gross salary by 12%. This results in a lower net salary for the employee. By way of compensation, you pay the young person a "compensatory allowance". The amount of this allowance covers the employee's net loss resulting from the reduced gross salary. Below is a list of the figures.

	Gross	Net
Salary	€2,120.80	€1,586.28
Reduction	€254.50	/
Reduced salary	€1,866.30	€1,463.90
Basic amount of compensatory allowance	/	€122.38
Holiday allowance	/	€32.66
Total	/	€1,618.94

Step 6 - Check GMMI Guarantee

The application of the reduction must not result in the full-time salary of the 19-year-old employee with at least 6 months of service in the company being lower than a guaranteed average minimum monthly income of €1,636.10 per month.

The reduced monthly salary of €1,866.30 is higher than €1,636.10. This condition is observed in our calculation example.

Compensation for the employer: a new exemption from payment of payroll withholding tax

For every month in which you as employer reduce the salary, you must pay the young employee a compensatory allowance. As compensation for the compensatory allowance, you are exempted from payment of payroll withholding tax.

To avoid overcompensation, the compensatory allowance paid by the employer is, as a rule, not deductible as a business expense to the extent that it has been deducted from the payroll withholding tax due.

The exemption is applied to the payroll withholding tax due after all other exemptions from payment of payroll withholding tax have been applied. The new exemption is always applied last.

The amount of this exemption is offset against the overall payroll withholding tax. This means that the exempted amount of payroll withholding tax cannot only be deducted from the employees with a compensatory allowance.

What impact does this have on the social protection of employees?

The reduced starter salary becomes the young employee's actual gross salary. The compensatory net allowance does not count as salary for social security purposes. For the calculation of social security benefits, only the reduced starter salary is taken into account, not the compensatory allowance. Thus, for example, the young employee will not accrue old-age pension entitlements on the compensatory allowance.

Conclusion

The starter salaries are quite a complex issue. This is, in a way, the result of the Sixth State Reform. The federated entities became responsible for labour market policy and discontinued the "young employees" target group reduction. The federal government was no longer authorised to create a new target group reduction. A creative solution was needed...

At the same time, the federal government did not want to enter the social partners' playing field. They had agreed to phase out the reduced minimum wages for young workers aged 18 to under 21 years. This gradual abolition started on 1 April 2013, and as of 1 January 2015 there is no longer a degressivity rate for young workers aged 18, 19 and 20.

Meanwhile, not all sectors are as enthusiastic about starter salaries. In some sectors, the social partners had agreed not to apply starter salaries. This is the case for the Joint Committee for textile care (PC 110)¹⁹ and the Joint Committee for the manufacture of and trade in jute bags or replacement materials (PC 120.03).²⁰

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With the cooperation of Els Poelman and Peggy Criel

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- 1 OECD, Jobs for Young People in Belgium – Summary and main recommendations, 2017, p. 7, <https://www.oecd.org/belgium/38037805.pdf>.
 - 2 Chapter VIII of the Act of 14 December 1999 to promote employment (Youth Employment Act).
 - 3 Art. 39 Youth Employment Act.
 - 4 This is the case, for example, for taxi companies until 31 December 2019 (ministerial order of 12 June 2017 exempting the subsector of taxi companies and services for renting vehicles with drivers from the obligation to employ young people).
 - 5 Article 27c of the Youth Employment Act.
 - 6 Art. 33 Youth Employment Act.
 - 7 Art. 35 Youth Employment Act.
 - 8 Article 5 of the Royal Decree of 30 March 2000 implementing Articles 32, § 2, first paragraph, 33, § 2, third paragraph, 34, 39, § 4, second paragraph, and § 5, second paragraph, 42, § 2, 46, first paragraph, 47, § 4, first and fourth paragraph of the Act of 24 December 1999 to promote employment
 - 9 Article 33b of the Youth Employment Act.
 - 10 The reduced starter salary only applies to employers who fall under the CLA law.
 - 11 Article 33b, §1, paragraph 2 of the Youth Employment Act.
 - 12 Article 33b, §2 of the Youth Employment Act.
 - 13 Article 33b, §3 of the Youth Employment Act.
 - 14 For the 475 hours subject to the specific social security contribution for students.
 - 15 Article 33b, §6 of the Youth Employment Act.
 - 16 However, the condition must not be purely potestative because a purely potestative condition renders the obligation null and void (Article 1174 of the Civil Code).
 - 17 Article 33b, §1 of the Youth Employment Act.
 - 18 Article 33b, §1 of the Youth Employment Act.
 - 19 Article 18 of the CLA of 4 July 2017 on the social peace agreement for 2017-2018 (applicable from 1 January 2017 to 31 December 2018).
 - 20 Article 5 of the General National CLA of 12 December 2017 (this CLA is effective as of 1 January 2017 and ceases to apply on 31 December 2018, with the exception of, among others, Article 5, which is open-ended).



Case law

Luncheon vouchers for everyone! Also for temporary workers

The Labour Court in Ghent, 8 October 2018, AR 2017/AG/73,
www.juridat.be

All employees with an open-ended employment contract are entitled to luncheon vouchers. Can a company collective labour agreement stipulate that temporary workers are not entitled?

No, it cannot. That is the conclusion of the [Labour Court in Ghent](#). If all employees with an open-ended employment contract are entitled to luncheon vouchers, then so are temporary workers working in the company.

An employer cannot simply grant an advantage only to employees with an open-ended employment contract. Employees with fixed-term contracts should not be treated less favourably than employees with open-ended contracts. Total exclusion is prohibited by the Act of 5 June 2002 on the principle of non-discrimination in favour of workers

with a fixed-term employment contract. Employees with a fixed-term employment contract must therefore be entitled to luncheon vouchers.

But what about temporary workers? The Act of 5 June 2002 does not apply to them at all. The Labour Court is quite inventive. The Temporary Employment Act stipulates that the pay of a temporary worker must not be lower than what he or she would have been entitled to if he or she were employed by the company under the same conditions as a permanent worker. The Labour Court must therefore look for a comparator, and finds this person in the employee with a fixed-term employment contract.

So the Labour Court compares temporary workers with employees with a fixed-term employment contract. Since the latter must be entitled to luncheon vouchers and temporary workers are equated with them, temporary workers are therefore also entitled to luncheon vouchers.

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