

In order to make sure that your business and your HR Department is ready for 2023, our Employment Law Team wants to provide you with an overview of the most recent legislative changes in Belgian employment law. As you most probably know, the Belgian federal government finally reached an agreement on the so-called 'Belgian Labour Deal' aiming to reform the Belgian labour market and to enhance the work-life balance. Moreover, several European Directives were (finally) transposed into Belgian legislation.

### Employment enhancing measures

The Belgian Labour Deal provides for several measures promoting the employability of dismissed employees.

As from January 1<sup>st</sup>, 2023 (i.e., for dismissals that take place as from January 1<sup>st</sup>, 2023), dismissed employees entitled to a notice period or to an indemnity in lieu of notice of at least 30 weeks, will have the right to take up so-called 'employment enhancing measures' (such as training, coaching or additional outplacement services) during the notice period or after payment of the indemnity in lieu of notice. These employment enhancing measures will be financed by the employer's social security contributions due on the salary for 1/3rd of the notice period or on 1/3rd of the indemnity in lieu of notice (minus 4 weeks' remuneration for outplacement). These measures do not replace the statutory outplacement obligations.



Include in the dismissal checklist

### Transition path for dismissed employees

Since November 2022, dismissed employees can make use of a so-called 'transition path'. A transition path allows dismissed employees to start working for another "new" employer (i.e., the employer-user) during (a part of) the statutory notice period. The use of this transition path is optional for both the employee and the initial employer. The modalities and the duration of the transition path will have to be included in an agreement concluded between the initial employer, the dismissed employee, the employer-user and the temporary employment agency or the regional employment service.



Pay attention when drafting an agreement in the framework of a transition path.



Include in dismissal checklist

Right to individual training days

Obligation to draft an annual training plan

As from 2023 companies (active in the profit and non-profit sector) with more than 20 employees have to grant four training days per year (this amount will increase to five days in 2024). Companies employing at least 10 but fewer than 20 employees have to grant one training day per year. Please note that, in companies with less than 10 employees, there is in principle no individual right to individual training days unless an industry-level collective bargaining agreement stipulates differently. For employees working part-time the training days are calculated *pro rata*.

The trainings are paid for by the employer and during these courses the employees are entitled to their normal salary. Trainings have to take place during the normal working hours otherwise overtime pay will be due.

Moreover, as from this year each (private) company with at least 20 employees must draw up an individual training plan before the 31<sup>st</sup> March of each year. This training plan should include an overview of all trainings offered by the employer and the target groups for these trainings. Please note that the social bodies will have to be consulted when drafting the individual training plan. The plan has a minimum duration of one year and should pay specific attention to so-called risk groups, older employees, employees with disabilities, etc.



Verify if your employees are entitled to training days (including the number of these training days).



Take into account the yearly deadline when drafting an annual training plan (including the time needed for consultation).

Discontinuation of the reimbursement of the 'reclassification allowance' in case of collective dismissal

An employer who proceeds with a collective dismissal has to pay a so-called 'reclassification allowance' (*inschakelingsvergoeding / indemnité de reclassement*) to each dismissed employee who is registered with the employment cell (*tewerkstellingscel / cellule pour l'emploi*) and who, at the time of the announcement of the collective dismissal, has at least one year of seniority with the employer. This allowance is equal to 3 or 6 months' salary (depending on the age of the employee). The reclassification allowance is assimilated to and replaces all or part of the statutory indemnity in lieu of notice. However, in certain cases, the employer needed to pay an additional cost since the amount of the statutory indemnity in lieu of notice due was less than the amount of the reclassification allowance. Until recently, the employer could claim a reimbursement of this additional cost (i.e. the difference between the reclassification allowance and the statutory indemnity in lieu of notice), from the RVA / l'ONEM.

For collective dismissals announced as from this year, the employer will no longer be entitled to obtain a reimbursement from the RVA / l'ONEM of the difference if the reclassification allowance exceeds the amount of the statutory indemnity in lieu of notice. The total cost of a collective dismissal could therefore potentially increase.

### Right to disconnect

All companies in the private sector with at least 20 employees will be required to adopt a company policy on the right to disconnect. This policy must be adopted through a company-specific collective bargaining agreement *or* the work rules. This policy aims to guarantee a better balance between the employees' professional and private lives. Such company policy must at least provide for the practical modalities, guidelines for using digital tools and training and awareness raising activities for employees and managers.



Draft a company policy or amend the work rules regarding the right for employees to be 'offline'.



Take into account that the company collective bargaining agreement or a copy of the amended work rules must be filed/notified at the registry of the General Direction for Collective Labour Relations of the FOD WASO by April 1<sup>st</sup>, 2023 at the latest.

### Employer's responsibility contribution for employees on long-term sickness

As from 2023, employers who, compared to other companies in Belgium, have many more long-term sick employees will have to pay an additional social security contribution, i.e., the so-called 'responsibility contribution'.

This obligation was already in place since 1 January 2022, but the National Social Security Office will only start to collect this responsibility contribution as from 1 January 2023 (given the applicable reference period of four quarters).



Closely monitor the number of employees on long-term sickness.

### Absence of a medical certificate for the first day of incapacity

An employee is no longer required to provide his/her employer with a medical certificate for the first day of incapacity to work. However, an employee can only use this possibility three times per year. The employee must, however, still immediately inform the employer of the address at which he is staying during the first day of work incapacity, unless this address is the usual residence known to the employer.



Adapt the work rules if necessary.



Companies with less than 50 employees can derogate from this new regulation provided that the work rules of these companies explicitly include a derogation.

Prolongation of the regime of economic unemployment due to the energy crisis

As highlighted in our previous Newsflash, the Belgian federal government approved a measure to combat the soaring energy prices in Belgium by introducing a regime of economic unemployment 'energy' as from 1 October 2022. Under this new regime, employers active in energy-intensive industries are entitled to suspend the employment contracts up to a maximum of 4 weeks during which the employees concerned receive an unemployment allowance from the Public Employment Service and the employer has to pay on top a supplement per unemployment day (this supplement can be paid by the Industry Fund in certain industries).

The simplified procedure in order to apply the regime of economic unemployment 'energy' is now extended until March 31<sup>st</sup>, 2023.

Saturday to remain a working day for employment and social security matters

Upon advice of the Belgian National Labour Council and following a draft bill that has been introduced in parliament, Saturday will remain a working day for employment and social security matters in order to avoid a considerable impact in for example dismissal files (serving notice, dismissal for serious cause, etc.). There is no further action required from HR.

Implementation of the EU Whistleblowing Directive 2019/1937 into Belgian law

The European Directive of 23 October 2019 on the protection of persons who report breaches of Union Law has finally been implemented in Belgian law. On 16 December 2022, the Belgian act on whistleblowing was published in the Belgian Official Gazette. For most companies this will result in new obligations and several actions will be required to implement this within their organization. In short, Belgian companies with over 50 employees must implement an internal reporting channel for employees and others who are in contact with the company in the context of work-related activities (e.g. directors, suppliers, self-employed consultants, contractors, etc.) to report potential breaches of Union law.

Companies with 50 to 249 employees have until December 17<sup>th</sup>, 2023 to comply. However, companies with over 250 employees will need to be compliant by February 15<sup>th</sup>, 2023



Check which policies and procedures (e.g. consultation of social bodies) are required to provide employees and other possible reporters of breaches with clear and complete information with respect to the use and operation of the reporting channel.



Be aware that employees who have reported a breach of Union Law benefit from a protection against any form of retaliation (e.g., refusal of a promotion, salary cut, change of function, etc.).



Consult timely the social bodies with regard to the implementation of a whistleblowing system.

### Four-day-work-week

The Belgian Labour Deal has introduced the four-day-work-week, enabling full-time employees to perform their work over 4 days instead of 5. With the introduction of this regime, the normal working hours of up to 8 hours per day will be exceeded, requiring an amendment of the work rules specifying a 38-hour maximum, or the adoption of a specific collective bargaining agreement for a working week of 40 hours maximum. The employee will have to submit a written request to the employer. However, the decision to introduce a four-day-work-week rests with the employer, who must be able to justify a refusal.



Amend the work rules in case of the introduction of a 4-day work week within your company.



If the effective working time on a weekly basis exceeds 38 hours, a new company collective bargaining agreement must be negotiated and concluded.



A written agreement regarding the four-day-work-week has to be in place between the employee and the employer.

### Varying / alternating weekly working schedules

The Belgian Labour Deal has introduced the alternating weekly schedule, allowing full-time working employees to work over a 2-week cycle, working more hours in one week and less hours the next week, in order to adapt to the employee's personal circumstances. The employee is entitled to request implementation of the alternating weekly schedule. When the employer refuses this request, this decision must be justified.



Amend the work rules in case of the introduction of an alternating working regime within your company.



A written agreement regarding the alternating working regime has to be in place between the employee and the employer.

### More stringent stipulations with regard to variable working schedules for part-time employees

Variable working time schedules (for part-time employees) will now have to be notified to the employees concerned at least seven working days in advance (instead of five working days). A collective bargaining agreement can foresee that the minimum notification period can be increased from one working day to three working days. The purpose of this new provision is to improve the possibility of employees to combine a part-time job with another job or study or at least improve the work-life balance of the employees concerned. For certain industries transitional provisions have been established.

Please note that for specific industries a sector-level collective



Verify if the work rules need to be amended. Amending the work rules has to be done by August 20<sup>th</sup>, 2023.

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Please feel free to contact us should you wish to discuss the impact of the new legislation to have a better view on the actions which you ought to take regarding your employees in Belgium.



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