

## Pinboard - May 2017

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### **1. Employment of students during the school holidays**

The summer is approaching, and many employers hire students during the school holidays. This year, the legal minimum wages have gone up following the indexing in January.

Students are young people aged 15 to 27 (on the day of the 27<sup>th</sup> birthday), enrolled in an educational institution in Luxembourg or abroad for a full-time programme.

The student contract must be concluded in writing at the latest when the student takes up his or her duties.

The employer is required to provide the ITM (Inspection du Travail et des Mines) [Inspectorate of Labour and Mines] with a copy of the contract within 7 days of the commencement of work. This communication can be made electronically on the MyGuichet platform:  
<http://www.guichet.public.lu/myguichet/fr/index.html>.

The period of employment for a student may not exceed 2 months per calendar year, whether under one or several contracts.

As of 1 January 2017 (index 794.54), the minimum remuneration per student amounts to:

<b>Age</b>	<b>Gross hourly pay</b>	<b>Gross monthly pay</b>
<i>18 and older</i>	€9.2420	€1,598.87
<i>17 to 18</i>	€7.3936	€1,279.10
<i>15 to 17</i>	€6.9315	€1,199.15

The hiring of the student must be declared to the Social Security Office. No social security contributions are payable, with the exception of the employer's contribution for accident insurance which amounts to 1%.

The remuneration paid to students employed during school holidays are exempted from income withholding tax. An application for exemption must nonetheless be filed by the employer with Inland Revenue.

## **2. Transposition of the “posting of workers” directive**

The European “posting of workers” directive was recently transposed into Luxembourgish law by an act of 14 March 2017 which lays down new rules against social dumping.

The object of the 2014 directive is twofold, namely to:

- Guarantee posted workers an appropriate level of protection
- Facilitate the freedom to provide services and to promote fair competition between service providers

More specifically, the abuses observed under posting constitute not only social dumping, but also unfair competition practices that distort the proper functioning of the market and penalise companies which comply with social legislation in particular. It is important for the European Union and the Luxembourgish legislator to fight such abuses more effectively.

To that end, the new act of 14 March 2017 puts in place a joint and several liability mechanisms for all companies involved, whether they be companies that post workers or companies established on Grand Ducal territory.

The administrative practice for the “posting of workers” already put in practice is already officialised. It enables companies that post workers to Luxembourg to apply for the social badge electronically.

The list of documents to be produced by the posting company has moreover been expanded for the sake of efficient control so that posted workers can be assured of actual payment of wages due for the number of hours actually worked.

The posted workers are in parallel endowed with efficient recourse mechanisms to lodge a complaint or initiate proceedings before the Luxembourg courts.

The new act moreover establishes a system of administrative fines and penalties that can be enforced beyond borders.

Finally the ITM (Inspection du Travail et des Mines) [Inspectorate of Labour and Mines] can now proceed to close down a work site in the event of labour law shortcomings.

To avoid all risk for the posting company, Securex proposes to guide its customers through the different formalities required in order to comply with the regulations in force.

### **3. Point of attention on the posting of workers to France**

The French authorities have been increasingly more “active” recently in terms of administrative checks of workers posted to its territory. The formalities to be seen to by the Luxembourgish employer are consequently unavoidable.

By way of reminder, posting entails that an employer sends one or more employees abroad temporarily to perform work on that territory under a provision of service between the employer and a company or a customer.

Under certain conditions, the benefit of Luxembourgish social security is maintained during the posting if the foreseeable period of this work does not exceed 24 months. In concrete terms, the Luxembourgish employer will have to request an A1 form for each posted worker from the Social Security Office (known by the French initials CCSS). This form will attest to compliance with the applicable legislation on social security.

As of 1 April 2017, workers carrying out an occupational activity in France whilst remaining under Luxembourgish social security must keep the A1 form at the disposal of the inspection services at the place where the work is performed.

This document can be produced:

- by the worker;
- if the worker is a salaried employee, by his employer or by the latter’s representative in France,
- by the principal established in France for whose benefit the service is provided.

If the A1 form cannot be produced during a check, the principal established in France is liable for a flat-rate penalty of €3,269, doubled in case of repeat offence within 2 years.

In the event where the A1 form has not been obtained by the employer or the person concerned before the check, the law provides that the filing of an application for the form with the competent

institution will be taken into account, provided that the form issued is then produced within two months. In such a case, the penalty is not applicable to principals.

Conversely, the Luxembourgish employer who dispatches workers on French territory must fulfil certain formalities subject to being sanctioned.

Thus, he must provide, prior to the start of his intervention in France, a declaration of posting to the labour inspectorate in France. Since October 2016, this declaration must be completed without fail and sent electronically via the ad hoc “tele-service SIPSI” platform.

Other obligations are incumbent upon the Luxembourgish employer, such as the obligation to appoint a representative in France and to place certain documents at the disposal of the French authorities.

Non-compliance with these obligations by the Luxembourgish employer may be punished by an administrative fine of €2,000 maximum per dispatched worker.

#### 4. Reform of re-employment assistance ?

At the end of 2016, a bill to adapt certain measures for employment, particularly re-employment assistance, was passed by the Chamber of Deputies.

This assistance now enables an employee who finds a less well-paying job than the previous one, to get 90% of the difference from his other job for the first 48 months as of the date of assuming his or her duties at the new position.

The aim of this bill is in fact to put an end to various abuses on the matter noted in recent years. It was in fact noted that in quite a number of cases, the re-employment assistance paid monthly exceeds the social minimum wage level, and even the level of the new salary paid by the employer. With regard to qualified and well-paid jobseekers in particular, the practice showed that the re-employment assistance was diverted from its initial purpose and assumed the form of a salary subsidy.

According to the current bill, the re-employment assistance cannot exceed half of the salary paid by the new employer. The period of re-employment assistance remains fixed at 4 years maximum.

As regards the assumption of the social security contributions when hiring an unemployed person in receipt of benefit, it is also planned to limit this hiring assistance to unemployed persons aged over 45 and to the reimbursement of the employer's part, whereas the reimbursement of a salary part to the employer would no longer be justified.

As the bill still has to be debated, no decision has been taken and no measure is final. Watch this space.

## 5. New immigration act

The purpose of the immigration act of 8 March 2017 is to transpose two European directives, in a context of a new immigration policy in the EU.

The act introduces five new residence permits for the following persons:

- Non-EU seasonal workers
- Non-EU students who have attended a programme in Luxembourg
- “Investors”
- Persons involved in a business continuity plan
- Persons involved in intra-company transfer (ITC)

It also introduces important changes concerning the EU blue card and family reunification.

The April issue of our “legal news” for our subscribers provided a detailed analysis on the subject.

## 6. Impact of the criminal record reform on HR policy

An act of 23 July 2016, which entered into force on 1 February 2017, defines more strictly the possibilities for an employer to request criminal record extracts while imposing new conditions.

One of the main new features is that the employer’s request must be made in writing, in the job offer, and be justified for the needs of the position. If the candidate is not suitable, the extract must be destroyed immediately. If the candidate is hired, the criminal record extract must be destroyed within one month after the contract is concluded.

During the employment relationship, the employer may request a criminal record extract only on condition of a specific legal provision or, in the event of a new assignment for the employee that requires a new verification of his or her reputation for the specific needs of the post. In this context, the period during which the criminal code extract is to be kept will be two months as of the time it was issued, unless specific legal provisions stipulate otherwise.

It should be noted that non-compliance with these provisions is henceforth criminally sanctioned for the employer.

The March issue of our “legal news” for our subscribers provided a detailed analysis of this subject.

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