

Pinboard - January 2018

CONTENTS

1. The law on exceptional leave finally passed!
2. Tax cards 2018
3. New Stock Options circular
4. Salary calculation – new social parameters
5. Transition year for co-financing aid
6. New forms for compensatory allowance in case of occupational reclassification

1. The law on exceptional leave finally passed!

More than a year after it was introduced, the bill on leave for personal or family reasons and for the postnatal period was finally adopted after several amendments. The new provisions are to enter into force on 1 January 2018.

Leave for personal reasons

Known more generally as “exceptional leave,” this leave is granted to an employee in addition to his ordinary leave, when he has to be absent from the workplace because of a family event.

The exceptional leave must be taken subsequent to the event to which it pertains. It may not be postponed to the ordinary leave without the consent of the employer. An exception is nonetheless provided for paternity leave (see below).

<u>Event</u>	<u>Before</u>	<u>New law</u>
Enlistment for military service	1 day	abolished
Death of employee's relative to the second degree or spouse or partner	1 day	1 day
Welcoming of a child under 16 for adoption	2 days	10 days
Birth of a child (for the father)	2 days	10 days
Marriage or declaration of partnership of a child	2 days	1 day, but only for marriage; Cancellation for PACS
Moving	2 days	2 days per 3-year period
Death of spouse or partner	3 days	3 days
Death of a relative to the 1 st degree of the employee or his spouse or partner	3 days	3 days
Wedding of the employee	6 days	3 days
Declaration of partnership of the employee	6 days	1 day
Death of underage child	3 days	5 days

Paternity leave

The major change of this new law concerns paternity leave, which is raised to 10 days from 2 days previously. These 10 days granted for the birth of a child or for welcoming a child under 16 for adoption are divisible. They must, however, be taken within 2 months as of the birth or welcoming of the child.

This leave is in theory fixed according to the employee's wishes, unless the needs of the company require otherwise. If an agreement cannot be reached between the employer and the employee, the leave must be taken at one go immediately after the birth or welcoming of the child.

The employee must inform his employer, by means of 2 months' notice, of the dates on which he plans to take said leave. He must do so in writing, accompanied by a copy of the medical certificate attesting to the estimated time of birth, or where appropriate, a document attesting to the estimated time of arrival of the child to be adopted. If the employee does not comply with this notification period, the employer may reduce the leave to 2 days.

As regards the financing of this leave, the first 2 days shall be at the employer's expense, whereas the other 8 days shall be covered by the State budget. The employer must then apply to have salaries

thus advanced reimbursed within 5 months as of the birth or welcoming of the child. He must attach documents in support of his application, which must be addressed to the Minister for Labour. The salary taken into account for reimbursement shall nonetheless be limited to an amount of five times the minimum social wage, i.e. €9,992.95.

Postnatal leave

The new law henceforth generalizes the extension of postnatal leave to 12 weeks. The length of this leave was previously 8 weeks and was extended to 12 weeks in the event of breastfeeding or premature or multiple birth.

The leave for welcoming a child of at least 12, is likewise extended from 8 to 12 weeks.

Leave for family reasons

The leave for family reasons is intended to enable parents with a dependent child to be present when that child has a serious illness, an accident or any other health problems.

The newly introduced system offers parents greater flexibility. It provides in fact for a number of days of leave that can be used according to the child's age bracket.

- Up to the age of 4: 12 days of leave
- From the age of 4 to the day before the child's 13th birthday: 18 days of leave
- Between the age of 13 and 18: 5 days of leave but only if the child is hospitalized.

The number of days of leave is indicated per child and attributed per age bracket (not per year). This means that the 12 days of leave for a child under 4 can be used at any time during the child's first four years of age (and no longer two days a year).

The leave for family reasons can be divided. Conversely, the parents are not authorized to take this leave at the same time.

Transitional provision: The days of leave for family reasons already taken at the time that the new law entered into force on the basis of the former legal provisions in the age bracket concerned are deducted from the maximum number of days of leave for family reasons that can be granted in the age bracket in question.

2. Tax cards 2018

In the beginning of the year, more than 600,000 tax cards (tax retention forms) are prepared and issued by the Direct Tax Administration. It is up to the employee to check the accuracy of the data contained on his card and to submit it to his employer.

Following the tax reform, married non-resident taxpayers must be particularly attentive when checking their tax cards. They will be attributed a tax category 1, unless they express their readiness to be fiscally assimilated with resident taxpayers. Conversely, if they opt to be assimilated, a fixed taxation rate will be entered in their tax cards.

In order to help taxpayers, the Direct Tax Administration summarized the different options in a newsletter available online:

http://www.impotsdirects.public.lu/fr/archive/newsletter/2018/nl_19012018.html

By way of reminder, the conditions for tax assimilation are as follows:

- At least 90% of the worldwide revenues of one of the two spouses are taxable in Luxembourg. It is worth noting that the first 50 days not taxable in Luxembourg by virtue of an agreement against double taxation are assimilated with the revenues taxable in Luxembourg for the calculation of this 90% threshold; or
- For non-resident taxpayers residing in Belgium, 50% of the household's employment income is taxed in Luxembourg; or
- The net revenues received abroad do not exceed €13,000 per year.

It is worth noting that the non-resident taxpayer may opt for – and even change his choice of – assimilation at any time during 2018 and even until 31 March 2019.

In the future, the employee might be dispensed from having to submit his tax card to the employer. Following the introduction of a new provision in the income tax code, the Direct Tax Administration is authorized to submit an electronic version of the tax card directly to the employer.

3. New Stock Options circular

The Direct Tax Administration published a new circular on 29 November 2017 concerning the “tax system for stock options and warrants.”

The important points here are:

An increase of the taxable base from 17.5% to 30%

Stock options or warrants granted by the employer to the employees constitute a taxable benefit in kind for the latter. As of 2018, the value of a freely transferable option is presumed to be 30% of the underlying value. The tax previously retained amounted to 17.5%.

Furthermore, for the warrant plans to be assessed on the basis of this new rate for tax purposes, three so-called “reasonable” conditions must be met:

- The share of the warrants must not exceed 50% of the employee's total annual gross remuneration (including warrants);

- The warrant plan must be geared to senior executives, as defined in Article 211-37 of the Labour Code;
- the price of the warrant must not exceed 60% of the underlying value of the security.

Electronic reporting of stock options and warrants

As of 2018, employers must report to the Tax Communication Administration in detail from the moment that stock options or warrants are made available to the employees (i.e. from the moment said benefits are taxed). This reporting must be carried out electronically in accordance with the procedures laid down by the Administration. Furthermore, for the warrant plans, the employers will have to indicate the presumed amount of the gross annual salary of each beneficiary.

Securex can assist you with these formalities.

4. Salary calculation – new social parameters

Employer contribution rates 2018

As of 1 January 2018, the accident insurance rate will be reduced from 1% to 0.90%.

Type	Periodic remuneration	Non-periodic remuneration
Health insurance (healthcare contribution)	2.8%	2.8%
Health insurance (cash contribution)	0.25%	0%
Pension insurance	8%	8%
Occupational Health Service (STM)	0.11% *	0.11% *
Accident insurance	0.9%	0.9%
Employers' mutual benefit insurance	Depending on the risk category	Depending on the risk category

*Unless affiliated with another health service (STI, ASTF)

New “mutual benefit insurance” contribution rates

The “Employers’ Mutual Benefit Insurance” contribution rates were changed on 1 January. Companies are placed into 4 contribution categories every year according to the financial absenteeism rate of their employees.

Categories	1	2	3	4
Contribution rates 2018	0.46%	1.16%	1.77%	2.95%
Contribution rates 2017	0.51%	1.23%	1.83%	2.92%

Indexing

No ministerial announcement or official publication at this time suggests an indexing in the months to come.

5. Transition year for co-financing aid

As announced in the Pinboard July 2017 issue, the co-financing aid system was reformed by the Act of 29 August 2017. Co-financing enables companies established in Luxembourg to benefit from financing aid for their training plan.

Whereas the applications for financing for training expenses incurred in 2017 will have to be submitted presently to the INFPC (national institute for the development of ongoing vocational training) according to the old system, expenses to come for 2018 will have to comply with the new provisions. The system is consequently in a transition period at this time.

Financial year 2017

For training expenses incurred last year, companies have until 31 May 2018 to submit to the INFPC:

- An annual statement if their training investment amounted to less than or equal to €75,000;
- A final report if this investment exceeds €75,000.

Financial year 2018

The preliminary application for approval of the training plan no longer exists. Moreover, the annual statement and the final report have been replaced by a single “co-financing application” form. This application must be filed within 5 months following the closing of the financial year. The form will be put on line in the coming months.

Securex can assist with the formalities at the INFPC to obtain co-financing.

6. New forms for compensatory allowance in case of occupational reclassification

This allowance is due when internal or external reclassification entails a drop in the previous remuneration received by the employee. It is paid by the ADEM (agency for the development of employment) from the Employment Fund.

Since the occupational reclassification reform in January 2016, the calculation of the compensatory allowance has been simplified. The compensatory allowance represents the difference between the average monthly income for the last 12 months and the new monthly income.

At the end of 2017, the ADEM moreover reformed the forms to be used for this procedure.

- As regards reclassifications for which the procedure was initiated before 1 January 2016, the monthly declaration must be completed for the internal and the external reclassification. This declaration was however simplified in the sense that it is henceforth the same document, irrespective of the type of reclassification. A copy of the payslip must be appended to this document.
- As regards reclassifications for which the procedure was initiated after 1 January 2016, a real simplification was introduced, as only the initial application or the compensatory allowance will suffice henceforth. More specifically, the monthly declaration is no longer relevant because the salary will be declared automatically by the social security office.
- Furthermore, the beneficiaries of the compensatory allowance can henceforth send their monthly declaration and their application for the allowance accompanied by the necessary documents directly by e-mail to the following address: paiement-ic@adem.etat.lu

Securex can assist you with the occupational reclassification procedures.

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