Pinboard - July 2017

CONTENTS

1. New working time register

A **law enacted on 14 March 2017** has amended the Labour Code to improve the administrative supervision of employee posting. To that end, the posting company will henceforth have to submit new documents to the Luxembourgish Labour Inspectorate without fail. These include records indicating the **start, end and daily duration of the work of salaried employees.**

To guarantee equal treatment between the employer who posts employees on Luxembourgish territory and the Luxembourgish employer himself, the Act of 14 March 2017 amended Article L211-29 of the Labour Code by imposing the same working time monitoring **on all employers** (irrespective of posting).

Every employer must therefore enter additional information in the “special register” mentioned in the afore-cited article, namely the start, end and duration of daily work of each employee. This new legal requirement increases the employer’s administrative load considerably, since initially, only overtime, working time on Sundays and official holidays had to be entered in the company’s internal register. And yet, the Organisation of Working Time Act of 23 December 2016, which entered into force on 1 January 2017, already provided the introduction of a system to keep a precise record of the hours worked.

This new law therefore requires a strict control of hours worked by each salaried employee, whether the company operates with or without a sliding timetable. It is vital to understand the importance of such a register and the information it has to contain, because it will have to be produced at the request of the Labour Inspectorate in the event of an inspection.

2. Reform of the supplementary pension scheme

The long awaited reform of supplementary pensions has now materialised thanks to a bill tabled in March 2017. The main measures are as follows:

- Extension of supplementary pension scheme to freelancers

The aim is actually to enable the professions and the self-employed to build up retirement provisions under a legal and fiscal framework similar to that in force for salaried employees.

To extend this scope of application, the project provides for the introduction of specific supplementary pension schemes subject to the prior approval of the competent authority.

As is the case for company supplementary pension schemes, the approved schemes can provide retirement, death, disability and survivorship coverage.

Like employer's contributions paid by a company for an employee, the contributions of freelancers will be subject to a 20% withholding at source.

On the fiscal front, freelancers will be able to deduct 20% from their annual income for their contributions, although the deduction will be limited to five times the minimum social wage. For the sake of fairness, this measure will be introduced under supplementary pension schemes put in place by companies for their employees.

- Protection of acquired rights

This other aspect of the bill arises out of the transposition of the "Mobility" European Directive which is intended to remove legal constraints to the acquisition and preservation of supplementary pension rights that could stand in the way of the free movement of workers in the European Union.

First, the bill reduces to 3 years the current 10-year period before being able to benefit from acquired rights.

Then, still in line with the European Directive, the bill provides further clarifications about the treatment of acquired rights in case of early retirement. At present, the law from 1999 is limited to providing that the preservation of acquired rights must be guaranteed. In practice, the employers are not currently required to maintain the nature of the benefits initially promised, but only to transfer the current value of the acquired rights. The bill now clarifies the rights of an affiliate in case of early retirement. Companies are required to maintain their promises until retirement and will be able to free themselves only if they finance the cost of their transfer to another scheme that guarantees the same retirement benefits.

It should be noted that the option of redemption in the event of early retirement by an employee is abrogated, including in the case of "minimal" amounts. The aim is to make sure that retirement savings are built up, as opposed to the concept of short-term savings.

In order to improve the protection of affiliates, the bill reviewed the provisions governing the change of the supplementary pension scheme. It is henceforth prohibited to reduce the retirement benefits acquired at the time of that change (even if the acquired reserves are maintained).

3. Bill to reform co-financing aid

Co-financing has since 1999 enabled companies that are legally established and carry out their business activity in Luxembourg to qualify for aid for their training plan. The national institute for the development of continuing vocational training (known by the French initials INFPC) is in charge of this matter.

The state has hitherto provided financial support for the training effort of companies to the tune of 20% of their training investment. This aid has now been increased to 35% regarding the salary costs of unskilled salaried employees and those older than 45, known as "salaried employees +."

On 27 June 2017, this bill to reform financing aid was adopted by the Chamber of Deputies.

The main measures are:

- Lowering of the co-financing rate: 15% instead of 20%
- Maintaining the co-financing rate for the salary costs of "salaried employees +" at 35%
- Capping of the investment according to the total payroll
- Greater distinction in the procedure depending on whether the annual investment in training is higher or lower than €75,000
- Deletion:
    - Contribution costs for training organisations
    - Costs for renting offices
    - Costs for educational material
    - Costs for the preparation of the training plan
    - Administrative and monitoring costs
- Only unskilled salaried employees may benefit from the adaptation of the workstation
- Reduction of the duration of training for adaptation to the workstation to 80 hours (instead of 173 hours)
- Introduction of a €500 limit per co-financing request
- End of eligibility of required training provided by the legislator.

These changes should enter into force for financial year 2018, i.e. for the co-financing requests that will be entered in 2019 for the training expenses incurred in 2018.

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