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1. 52-week limit for illness to be extended soon

For employees suffering from a serious illness, exceeding 52 weeks of incapacity over a period of 2 years has serious repercussions: loss of entitlement to sick pay, and automatic end of their employment contract.

The social partners have long supported the need to extend this 52-week limit for illness. Last May, a bill was introduced to that end:

- **Extension of the entitlement to sick pay**

The bill provides that incapacity for work shall henceforth be covered up to a maximum threshold of 78 weeks, always over a period of 104 weeks. In the initial discussions, it was proposed to raise this threshold for certain illnesses only. In the end, for the sake of simplicity and in the absence of an agreement on specific illnesses to take into account, it was decided that this maximum would apply to all employees, irrespective of their ailment. The employment contract would cease to exist after these 78 weeks of sick pay.

- **New reference period for continued payment of salary by the employer**

The employer is currently required to continue to pay the salary of an employee who is incapacitated for work, for the first 77 days of incapacity over a reference period of 12 months. The employer is then reimbursed 80% of that wage burden. After these first 77 days, the National Health Fund takes over and compensates the employee directly in the event of incapacity for work.

The bill provides for extending this reference period to 18 months. This extension would have the double effect of reducing the employer's charges and transferring the costs to the National Health Fund more rapidly.

- **New measure for a gradual return to work on health grounds**

To support and make it easier for people who have been seriously ill to return to work, the bill provides for the employee who is still ill to resume his occupational activity by organizing his worktime and/or tasks. With a medical certificate from the attending physician and the employer's consent, the employee could file an application with the National Health Fund to resume work gradually on health grounds. The return to work and the work carried out should be recognized as being of such nature as to help improve the employee's state of health.

During this gradual recovery period, sick pay will continue to be paid. It is on this point that the new system differs from the current part-time work on health grounds where only presence at the workplace is taken into account by the employer. The measure proposed therefore entails a transfer of the employer's charge to the National Health Fund.

The measures provided for in this bill are to enter into force on 1 January 2019.

2. A bill about the Time Saving Account

After years of negotiations, a bill on the time saving account was introduced last June. The government's wish was to create more flexibility for employees in managing their working time and in so doing to help improve the work-life balance.

The Time Saving Account enables employees to accumulate leave or off days not taken and then use them according to their occupational situations, so that they can plan their work and free-time periods. The inherent principle of the Time Saving Account is therefore to save free time for future needs.

The employer has discretionary power for the implementation of a Time Saving Account, i.e. it is a voluntary approach, not an obligation.

The Time Saving Account should be set up through collective bargaining either by means of a collective agreement, or by an inter-professional agreement at the national or the sectorial level. In the latter case, an agreement will have to be reached by and between the employer and the staff delegation, and then endorsed by the Minister for Labour.

The bill provides that the employee may for instance, upon written request, book in his Time Saving Account, his overtime, additional days off granted beyond the 25 legal holidays, or compensatory rest in case of work on Sunday or when an official holiday falls on a Sunday.

The employee is free to book or not to book such time in his Time Saving Account as he sees fit. The time balance of said account cannot, however, exceed 1800 hours, or forty-five 40-hour weeks. In this respect, it is specified that the Time Saving Account is booked in terms of working hours, not of money.

To use the hours saved on his Time Saving Account, the employee must apply to his employer in writing. As in the case of normal holidays, the employee can use his hours as he wishes except if the needs of the department and the justified wishes of other employees of the company do not run counter thereto.

The bill provides very flexible options for using the Time Saving Account, as the employee cannot only use the accumulated hours in order not to work for a certain period, but can also decide to take only a few days or half-days per week.

If the contract is terminated, the remaining days off on the employee's Time Saving Account must be liquidated by a compensatory allowance paid by the employer based on the hourly wage in force at the time of payment.

The employer must put in place a system that ensures a precise, detailed record of the Time Saving Account. He must also make sure that the employee can consult said account at all times.

Finally, the bill provides for extending the remit of the staff delegation on information and consultation insofar as it is henceforth responsible for attending to the monitoring, implementation and operation of the Time Saving Account.

3. Towards a simplification of the posting procedure

A foreign company must declare a posting to Luxembourg to the Inspectorate of Labour in order to obtain a social-security badge for each posted employee. This leads to considerable extra red tape for the employer, particularly for a posting of a few days, or even a single day.

A bill was consequently introduced to do away with this procedure purely and simply in certain cases and under certain conditions.

If the posting period does not exceed 5 calendar days per month, the posting company would be dispensed of the declaration requirements in two cases, i.e. for

- Qualified or specialized employees who would come to carry out maintenance, repair and servicing works on machinery;

- Employees who would come to carry out activities as trainers, lecturers or speakers or in order to attend training courses, conferences or work meetings

4. Unemployment benefits for frontier workers soon to be paid by Luxembourg

The European Commission, supported by a qualified majority of Member States, has wished for a number of years to change the rule concerning unemployment benefits. On Thursday, June 21st, the Ministers for Employment of the 28 EU Member States, convened in Luxembourg for a summit on the social policy of the European Union, reached an agreement to change the rules concerning unemployment benefits for frontier workers.

Under the current legislation, a frontier worker who loses his job has to register with the competent institution of his country of residence, which not only pays him the unemployment benefit but also provides assistance so that he can rejoin the labour market. Today, Luxembourg reimburses the first three months of unemployment benefit to the frontier worker's country of origin.

From now on, the state in which the worker works will pay the unemployment benefit and no longer the country of residence. This consequently appears as a revolution for Luxembourg, in view of the fact that 45% of the workforce are frontier workers. This will represent a financial charge for the country (estimated at €86 million per year) and an administrative burden for the Employment Development Agency (known by the French acronym ADEM). More specifically, the number of unemployed workers would have virtually doubled from 16,000 to nearly 30,000, which entails a complete reorganization of the services and staff of the ADEM.

In this capacity, it would appear that the European Commission has listened to the demands of the Luxembourgish Minister for Labour, Mr Nicolas Schmit, by making a gesture concerning the application of this law.

Whereas all European countries have two years to fall in line and compensate unemployed workers who have worked on their territory, Luxembourg obtained an extension. This responsibility will be assumed at an increasing pace over five years so that the ADEM can get organized. Furthermore, to be compensated by Luxembourg, a worker must have also worked in Luxembourg for at least 1 year.

The new system constitutes also a small upheaval for the jobseekers themselves. On the one hand, they will see their unemployment benefit go up, as it corresponds to 80% of the gross salary - and even 85% when the employee has dependent children – paid by the late employer (with nonetheless a maximum ceiling equivalent to 2.5 times the minimum social wage). On the other hand, the period of payment will be limited to 12 months.

By comparison, in France the benefit represents 57% of the daily salary over a year and is paid during 24 months. In Belgium, the benefit is limited and corresponds to ca. 65% of the salary for the first three months, and then it is gradually reduced, but can be unlimited in time. Finally, in Germany, unemployment benefits represent 60% of the net salary and vary in accordance with the time that the jobseeker was employed and his age.

5. Company elections

It is official: The upcoming elections for staff delegations will be held between 1 February and 31 March 2019. A bill was adopted on 7 May 2018 to amend the dates fixed initially.

According to the Labour Code, the staff delegations are in theory renewed entirely between 15 October and 15 November every fifth calendar year. This year, the legislative elections will be held during this period, and that is why it was decided to change the date of the company elections to 2019.

The staff representatives who are initially elected for a 5-year term will thus remain in office until the new delegation takes up its duties.

The precise date of the elections will be communicated subsequently by the Minister for Employment.

The elections to renew the members of the Chamber of Employees will be held at the same time.

Securex can help you organize these company elections.

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