

Pinboard - July 2019

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1. Increase of minimum social wage by “€100 net”

Under the coalition agreement, the new government had raised the idea of increasing the net minimum social wage (MSW) by €100 with retroactive effect as of 1 January 2019.

With the 1.1% increase last January and the introduction of the new “minimum social wage tax cred,” the last part of this reassessment was adopted by the Chamber of Deputies last June. The minimum social wage has thus been increased once again by 0.9% with retroactive effect as of 1 January 2019.

The new amounts to be taken into consideration are consequently the following (index: 814.40):

	Monthly minimum social wage for unskilled workers	Hourly minimum social wage for unskilled workers	Monthly minimum social wage for skilled workers	Hourly minimum social wage for skilled workers
Applicable as of 1 January 2019	€2,089.75	€12.0795	€2,507.70	€14.4954

It is important to note that this retroactive increase will **have an impact on all your employees!** More specifically, the minimum social wage is taken into account for the calculation of the dependency contribution as well as for the calculation of the contributory ceiling.

2. Summer jobs: Student remuneration

Many employers hire students during the summer holidays. The new 0.9% increase of the minimum social wage is extended to the minimum wage for students as well.

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

The student contract must be concluded mandatorily in writing at the latest when the student is taken on. The employer shall moreover be required to provide the *Inspection du Travail et des Mines* (ITM) [Labour Inspectorate] with a copy of this contract within 7 days from the time the student started working.

The period during which a student is employed may not exceed 2 months per calendar year, whether under one or more contracts.

The minimum remuneration for students, with retroactive effect as of 1 January 2019 (index: 814:4), amounts to:

	%	Gross monthly wage	Gross hourly wage
Students aged 18 and over	80% of 100% of MSW	€1,671.80	€9.66
Students aged 17 to 18	80% of 80% of MSW	€1,337.44	€7.73
Students aged 15 to 17	75% of 80% of MSW	€1,253.85	€7.25



This hiring of the student must be reported to the *Centre Commun de la Sécurité Sociale* [Social Security Office]. No social contribution is payable other than the employer's contribution for accident insurance.

Remuneration paid to students working during the school holidays is exempted from income tax provided that the gross hourly wage does not exceed €14. An application for exemption must nonetheless be filed by the employer with Inland Revenue.

3. Franco-Luxembourgish agreement ratified at long last!

In March 2018, France and Luxembourg managed to negotiate a new agreement against double taxation to replace the former treaty of 1958 by including the new international taxation standards. Ratified by France last February already, this new agreement has just been ratified by the Chamber of Deputies.

This new agreement puts an end to the exemption system that had existed until then and replaces it with an imputation system. In concrete terms, at present, cross-border workers residing in France are exempted from taxation in France because they are taxed in Luxembourg. Next year, they will be subject to tax in France if the tax rate in Luxembourg is lower than that in France. The Luxembourgish Minister for Finance, Pierre Gramegna, summarized the matter as follows: "When you pay €100 in Luxembourg but you would have paid €120 in France, you will have to pay €20 in France."

A priori, only the lowest wages would be impacted because the first Luxembourgish tax brackets are lower than the first French tax brackets.

Furthermore, we do not know what the position of the French tax authorities will be. In fact, many tax experts point out that this agreement will not necessarily be applied strictly by the French State, which may decide not to collect this tax difference.

The long awaited major breakthrough of this agreement concerns teleworking. In fact, whereas the 1958 treaty provided no tolerance threshold, the new treaty confers a right to 29 days of teleworking per year. Workers residing in France can telework 29 days per year while continuing to be taxed in Luxembourg. The agreement does not however specify how these telework days are to be counted. A certain number of details are therefore still expected...

4. Obligations of the employer in case of a heatwave

As Luxembourg has experienced heatwaves with increasing frequency in recent years, it is important for employers to take due note of their obligations in such a situation.

Even though no maximum temperature is fixed by law to limit the working time, the Labour Code clearly states that employers are required to **ensure the health and safety of their employees** in all

aspects relating to work. Thus, taking into account the specific characteristics of their company, it is up to each employer to take such measures as necessary to deal with this weather phenomenon.

In this respect, at the end of June the Labour Inspectorate published its recommendations, drawing a distinction as to whether work is performed indoors or outdoors. In exceptional circumstances, the employer could also resort to temporary layoff due to bad weather.

For work to be performed outdoors:

- Provide or arrange shaded and if possible well-ventilated areas.
- Provide sufficient cool drinking water.
- Reduce work assignments that entail sustained and extended physical effort or coming into contact with sheet metal, concrete or pitch surface in the bright sun.
- Provide a mechanical aid for arduous work such as lifting and handling.
- Make sure that personal protective equipment is suitable for heatwaves.
- Make sure that workers wear appropriate clothing:
 - For worksites which do not require particular personal protective clothing: headgear that protects the nape of the neck, loose, light, cool, light-coloured clothing, if necessary sunglasses, as well as sun cream...
 - Give preference to air conditioned cars or motor vehicles.
 - If possible, adapt the personal protective equipment to the heat: safety shoes rather than safety boots.

In the work premises:

- Monitor the ambient temperature, especially in closed facilities.
- Insulate existing premises and buildings thermally (blinds, shutters, wall insulation, sun protection screens on glazed surfaces, etc.).
- Work equipment: install heat emitting equipment in a reserved, well ventilated room, lag hot pipes or walls, capture heat emissions of hot steam, etc.
- Provide staff with useful means and resources to fight against the heat (booster fans)
- Create air conditioned areas in the work premises.
- Provide a sufficient quantity of cool drinking water (10 or 15°C).

Temporary layoff due to bad weather:

Luxembourgish labour law provides that companies can resort to temporary layoff due to bad weather under certain conditions:

- All companies in the construction and civil engineering sector as well as related crafts;
- Normal work activity must continue on the worksites.
- The workplace must be impracticable or the work impossible or dangerous because of bad weather, i.e. rain, cold, snow, frost, thaw or a heatwave.

The employer must submit a statement of involuntary layoff due to bad weather to the Employment Maintenance Service of the ADEM [Employment Development Agency].

5. Recording of daily working time: an obligation confirmed by the CJEU

In a judgement issued on 14 May 2019, the Court of Justice of the European Union (CJEU) stated all companies operating in EU Member States must set up a system to record the working time of their employees.

This judgement was handed down in a dispute in Spain between a trade union and a bank. The trade union had gone to court to force the defendant to introduce a system to record the daily working time. For the trade union, this would make it possible to verify compliance with the work schedules and to apply, as required by national legislation, the obligation of providing trade union representatives with information about overtime put in monthly.

The CJEU upheld that such a system was necessary to ensure compliance with the maximum working time per week as well as minimum periods of daily and weekly rest, as provided by Directive 2003/88/EC on working time of 4 November 2003.

According to the CJEU *“a system enabling the time worked by workers each day to be measured offers those workers a particularly effective means of easily accessing objective and reliable data as regards the duration of time actually worked, which facilitates both the proof by those workers of a breach of their rights and also the verification by the competent authorities and national courts of the actual observance of those rights.”*

The Court consequently considers that the Member States have to require employers to introduce an objective, reliable and accessible system for recording the daily working time of each worker. Nevertheless, *“it is for the Member States to define the specific arrangements for implementing such a system, in particular the form that it must take, having regard, as necessary, to the particular characteristics of each sector of activity concerned, or the specific characteristics of certain undertakings concerning, inter alia, their size.”*



What about Luxembourg?

The **Act of 14 March 2017** amended Article L. 211-29 of the Labour Code by requiring employers to enter **the start, end and duration of daily work of each worker** in a “special register” or in a “file.” This obligation applies to all companies, irrespective of how the working time is organized (fixed schedule, work organization plan or flexible schedule).

Whereas this legal obligation entails considerably more red tape for employers, it nonetheless enables Luxembourg to be compliant with the decision of the CJEU.

6. A tolerance threshold soon to be increased for Belgian residents?

At the end of May, an agreement in principle was purportedly reached by and between Belgium and Luxembourg to relaunch negotiations to revise the agreement by and between the two countries on tax which sets a tolerance threshold of 24 days at this time.

The Belgo-Luxembourgish agreement currently sets a tolerance threshold of 24 days per calendar year per worker in his or her State of residence. Beyond that threshold, cross-border workers residing in Belgium are taxed entirely in Luxembourg.

We have been hearing talk about a possible increase of the tolerance threshold for Belgian residents for some months now. The two countries are said to have agreed to revise officially the double taxation agreement and to bring the tolerance threshold to 48 days. This would enable Belgian residents to work up to 48 days in Belgium while remaining fully (100%) taxable in Luxembourg. Teleworking is clearly at the heart of these negotiations.

The improvement of mobility between Belgium and the Grand Duchy, the reduction of the loss of time in transport or the reduction of investments in road infrastructures are also key elements of this agreement in principle. This agreement would obviously enable employees to reconcile better their private and working life.

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