

Pinboard – October 2020

TABLE OF CONTENTS

1. Family leave in the event of quarantine or isolation of a child
2. Brexit: new formalities for the British nationals
3. New collective bargaining agreement on telework
4. Short-time working due to Covid-19: offset mechanism
5. New legislation on occupational redeployment
6. Government announcements for 2021
7. Leasing: Think of the change in benefits in kind in January 2021!
8. Telework for commuters: extension until 31st December 2020
9. Social contribution: end of Covid-19 measures
10. COVID-19: the STM replaces pre-recruitment examinations by an opinion on the file
11. New bill: bonus for supporting apprenticeship

I. Family leave in the event of quarantine or isolation of a child

As part of the measures implemented in schools and childcare facilities to combat the spread of the SARS-CoV-2 coronavirus (COVID-19), a child may have to be placed in quarantine or isolation **by order** of the Health Directorate. In these 2 specific cases, and when the **parents** of the children concerned

have to **look after their child**, one of the parents **is entitled** to use the **leave for family reasons scheme for the duration of the quarantine** or isolation period decreed by the Health Directorate.

A parent who needs to take leave for family reasons must inform his/her employer as quickly as possible, either verbally or in writing, and indicate the start and end date of said leave.

Subsequently, the parent must complete the **new application form**, sign it and send it to the National Health Fund (CNS) and his or her employer, attaching the prescription issued by the Health Directorate or the competent foreign authority.

Leave for family reasons may be split, i.e. it may also be taken in hours or half-days depending on the decision of the Health Directorate or the competent authority. Both parents cannot take leave for family reasons at the same time (same day/hour).

Days taken as leave for family reasons because a child is quarantined or isolated are not deducted from the legal days of leave available per age group, the length of which depends on the age of the child.

II. **Brexit: new formalities for the British nationals**

British nationals ceased to be considered EU citizens on 1 February 2020. So, UK nationals residing in Luxembourg will have to obtain a **new residence document** attesting that they are **beneficiaries of the Withdrawal Agreement**; this will replace the current residence permit.

The following are affected by this request:

- **British nationals residing in Luxembourg** at the end of the transition period (i.e. prior to 1 January 2021);
- Nationals of third countries who are **family members of a British national and residing in Luxembourg** at the end of the transition period (i.e. before 1 January 2021);
- British nationals and their family members who already benefit from the right of residence or the right of permanent residence in Luxembourg and who are temporarily away at the end of the transition period.

British nationals who also hold the nationality (**dual nationality**) of one of the European Union Member States or one of the other states of the Agreement on the European Economic Area (Norway, Iceland, Liechtenstein), or the Swiss Confederation. These persons **are not required to apply for a new residence document**, but they are free to do so if they so choose

To be entitled to a new residence document, applicants must be **entitled to reside in the Grand Duchy at the time of application**. In order to do this, applicants will have to fill in and sign a residence document application form and send it by post to the Immigration Directorate of the Ministry of Foreign and European Affairs (*Direction de l'Immigration du ministère des Affaires étrangères et européennes*). This application may be submitted now and before 1 July 2021 at the latest.



Please note that the current residence documents will remain valid until the end of the transition period (31th December 2020) or until their new residence document is issued, for those people who have not received their new residence document by the end of the 31th December 2020.

III. New collective bargaining agreement on telework

Under negotiation for several weeks, a new collective agreement on telework was signed by the social partners on Tuesday, 20 October. This agreement has been concluded for the long term and is not intended to regulate telework due to the health crisis.

The major advancement of this new agreement is to recognize **occasional telework**, which can henceforth be granted more easily to employees. Telework carried out to cope **with unforeseen** events or telework representing on average **less than 10% of the teleworker's normal annual working time** will be considered as such. In this context, **written confirmation** for telework from the employer, by SMS or email for example, will suffice. An amendment to the contract will therefore no longer be mandatory. In this sense, the new agreement is consequently much more flexible towards employers.

Last April, a petition was lodged to recognize the employee's "right to telework". The position of the social partners remains unchanged on this issue: telework will continue to be a **voluntary measure**. An agreement has to be reached by and between the employer and the employee.

For its part, the role of the staff delegation will be strengthened.

Before coming into force and being applicable to all companies, the new agreement will first have to be declared a general obligation by means of a Grand-Ducal regulation. The social partners have actually sent a request to this end to the Minister for Labour.

IV. Short-time working due to covid-19: offset mechanism

In a press release of 30 September 2020, the Minister for Labour, Employment and the Social and Solidarity Economy announced the implementation of an **offset mechanism to offset the negative balances resulting from the tallies of short-time work of the months of March to June 2020, with short-time work subsidies payable for the months of July to December 2020.**

By way of reminder, when companies filed for short-time working for cases of force majeure due to the coronavirus crisis for the months from March to June, the companies concerned received an **advance payment** as soon as their application was approved by the Economic Committee. The companies then had to declare the hours actually worked on short time, and the ADEM drew up a **detailed statement** for each month concerned based on those declarations.

In most cases, this statement showed an overpayment which the companies were asked to reimburse. In point of fact, the advances based on the projected number of employees unable to work normally were often higher than the amounts actually due.

On 30 September, the ADEM finished sending the short-time work statements for cases of force majeure due to the coronavirus crisis to the companies concerned for the months of April to June.

The following three cases may arise in this situation:

- If the short-time work statements for March, April, May and June 2020 have shown a **positive balance**, the ADEM has **transferred the remaining balance due** to the company concerned.
- If the short-time work statements for March, April, May and June 2020 have shown a **negative balance and the company concerned has not yet proceeded to reimbursement**, then this overpayment will be **offset**, up to the respective portion, with the short-time work benefits payable for July 2020 (and, where applicable, subsequent months), provided that the short-time work benefit was granted by the Economic Committee for July 2020 (and, where applicable, subsequent months). This offset mechanism will be put in place as of mid-October 2020.
- If the short-time work statements for March, April, May and June 2020 have shown a **negative balance and the companies concerned have not applied for short-time benefit for July and/or subsequent months**, then these companies will have to reimburse the overpayment of the advances for March to June 2020 to the bank account of the *Trésorerie de l'Etat* within 30 days, indicating the reference number of the file.

V. New legislation on occupational redeployment

An act of 24 July 2020 has modified the internal and external redeployment system as had been reformed in January 2016. Adjustments were actually needed because of excessively strict rules and problems with applying them in practice. The purpose of this act is to improve the occupational redeployment procedures, as well as the financial situation of persons who are being thus redeployed.

Here are the main changes:

A. Occupational physicians can now refer directly to the Joint Commission for external redeployment

The employer's consent is no longer required for referral to the Joint Committee.

If the employer employs at least 25 employees, the occupational physician refers the matter directly to the latter for internal or external redeployment.

If the employer employs fewer than 25 employees, the occupational physician may refer the matter to the Joint Committee only with the employee's prior consent. The employer's consent is still required for the internal redeployment of the employee.

B. Scrapping of the obligation for an employee to work in a risky position and to have 10 years' seniority in order to be eligible for occupational redeployment at the request of the occupational physician.

An employee declared unfit for his or her last position following a medical examination by an occupational physician may now be redeployed if he or she has **three years' seniority** (compared to 10 years before the Act), or if he or she has a certificate of fitness for the position issued at the time of hiring. It is no longer required that the employee occupy a risky position.

C. Lump-sum compensation for employees who are redeployed externally

When the Joint Commission decides to **redeploy** an employee **externally**, the employer must now pay the employee a **lump-sum compensation**, the amount of which varies depending on seniority:

- one month's salary after at least five years of seniority;
- two months' salary after at least ten years of seniority;
- three months' salary after at least fifteen years of seniority;
- four months' salary after twenty or more years of seniority.

If the employer employs at least 25 employees, the compensation shall be due in the event of an exemption from internal redeployment granted by the Joint Committee based on a substantiated file with proof that internal redeployment would cause serious harm to the company.

If the employer employs fewer than 25 employees, the compensation may be reimbursed by the Employment Fund, provided that the request is made within 6 months of the notification of the external redeployment decision.

D. Protection from dismissal as soon as the matter is referred to the Joint Committee.

The possibility for employees who are eligible for redeployment to request the voidance of their dismissal under the conditions stipulated in Article L. 551-2 of the Labour Code is extended **to employees during the redeployment procedure**.

These changes shall enter into force as of 1 November 2020.

VI. Government announcements for 2021





During his address on the State of the Nation in 2020 of 12 October, Prime Minister Xavier Bettel, announced a number of changes to come in 2021.

- There will be **no general tax reform** in 2021.
- The **special regime for stock options and warrants** introduced in 2002 by a circular will be abolished as of 1 January, as provided for in the coalition agreement for that matter.

- **The regime for impatriates will be adapted.** Regulated by a circular up to now, this regime will be given a legal basis. In this context, a fiscally advantageous impatriation bonus will be created. The impatriate employee will be able to obtain this bonus from his employer for a maximum of 8 years.
- A **participatory bonus** will be introduced under the budget for 2021 so as to enable an employee to participate in the profits of the company that employs him or her, with tax relief. This bonus, which is 50% tax-exempt, will be limited nonetheless:
 - the company may not pay more than 5% of its profits to that end; so it must be profitable and pay taxes; and
 - the exemption may not exceed 25% of the employee's annual salary.
- In parallel to the carbon tax, a **tax credit** of €96 per year will be granted for salaried employees, self-employed workers and retired persons.

VII. Leasing: Think of the change in benefits in kind in January 2021!

As you know, as of 1 January 2021, the New World Wide Harmonized Light Vehicle Test Procedure (WLTP) standard will replace the NEDC standard currently in force concerning the taxation of company cars, and more specifically, the amount of the benefit in kind. The benefit in kind of all employees who received a new company car in 2020 will be thus reassessed accordingly as of next January.

2019	2020	2021	2022
			
BIK calculated according to NEDC values for contracts signed in 2019 and a vehicle registration in 2020. The NEDC values will continue to be applied for the calculation of the BIK until the end of the leasing contract .			
			
	BIK calculated for 2020 according to NEDC values	BIK calculated as from 2021 according to WLTP values	
			
		BIK calculated according to WLTP values for vehicles leasing registered as from 2021	


signature of
the leasing contract


date of the
first registration

The benefit in kind for company cars will continue to be determined by reference to the vehicle engine and the rate of CO₂ emissions. However, a same vehicle will be subject to a different tax treatment **depending on its registration date!** It is therefore vital to distinguish between the following different cases:

- Contracts that already exist or were signed **up to 31 December 2019** with placement of the vehicle in circulation in 2020 will continue to be taxed on the basis of NEDC values for the entire term of the lease agreement.
- For vehicles ordered and registered in 2020, **the benefit in kind will be calculated with NEDC values in 2020 and with WLTP values as of 2021.** This will therefore have an impact on the payslips of your employees as the benefit in kind will change in 2021 for one and the same vehicle.
- The benefit in kind will be calculated on the basis of WLTP values for all vehicles registered as 1 January 2021.

VIII. Telework for commuters: extension until 31st December 2020

Based on the employer's legal obligation to ensure the safety and health of employees in all aspects related to work (Article L. 312-1 of the Labour Code), many companies currently continue to use telework. As you know, for cross-border commuters, telework is likely to have certain effects in terms of their social security affiliation as well as their taxation. However, due to the current pandemic, derogation agreements currently apply.

A. In terms of social security

Because of the **Covid-19 pandemic**, the Belgian, German and French authorities decided in mid-March that periods of teleworking performed on their territories by their frontier residents due to the coronavirus **will not be taken into account for determining the applicable social security legislation.** This measure is to remain **applicable until 31 December 2020.**

B. In terms of taxation

In view of the COVID-19 health crisis, agreements have been signed with neighbouring countries.

For Belgian and French tax residents: it was decided that **as of Saturday, 14 March 2020, the presence of a worker at home**, in particular for teleworking purposes, **will not be taken into account.** This measure shall apply until 31 December 2020.

Concerning the German cross-border residents : It has been decided that, **as from Wednesday 11 March 2020, the working days during which these cross-border workers are teleworking** during the



Covid-19 pandemic will not be taken into account in calculating the threshold of 19 days. This agreement is applicable until 31st December 2020. Beyond that date it will be automatically extended from month to month until it is rescinded by one of both countries.

	Germany	Belgium	France
Tolerance threshold	19 days per year	24 days per year	29 days per year
Start of derogative agreements	As of 11 March, 2020	As of 14 March, 2020	As of 14 March, 2020
End of derogative agreements	Until 31st December 2020 and beyond that date automatic extension from month to month until terminated by one of the countries	31 December 2020	31 December 2020

IX. Social Contributions: end of COVID-19 measures

The following temporary measures that have been taken by the Social Security Center (CCSS) in April 2020, will end in autumn :

- Suspension of the calculation of default interest for late payments;
- Suspension of the procedure for the forced collection of contributions;
- Suspension of the enforcement of constraints by bailiffs;
- Suspension of the fines to be pronounced against employers who are late with regard to the declarations to be made to the CCSS.

CCSS has been checking the payment of social contribution invoices since September. The situation of each company will be analyzed individually and the CCSS will send the first payment arrangements to the late payers in November 2020. Each arrangement will propose a payment deadline so as to allow the late payers to reduce their outstanding balance of social contributions as easily as possible.

X. Covid-19: the STM replaces pre-recruitment examinations with an opinion on the file

In view of the current health crisis and in order to reduce employee travel as much as possible, certain pre-recruitment examinations can henceforth be replaced by an opinion on the file.



The positions concerned are for those hired for:

- Office work
- Administrative position – Computer specialist
- Waiter in the lounge
- Sales (apart from filler, food sales and car equipment sales)

The procedure is as follows:

1. The employer sends an “**Employer Application**” to STM for **hiring review**.
2. The employee sends the complete “**Case History Questionnaire**” to STM. You will find it on the STM website.
3. The occupational physician decides whether the employee is fit to work or whether he should be called in for a medical examination on the basis of the **questionnaire and the employer application**.
4. If the employee is fit for the job, the medical examination form will be sent to the employer and to the employee. If a consultation should prove necessary, an appointment will be offered to the employer who shall inform the employee of the scheduled date.

An appointment can always be requested by the employer or the employee as and when necessary.

XI. New bill: bonus for supporting apprenticeship

In order to mitigate the impact of the health crisis on the economic fabric and in particular on young people in training, the government has decided to support the integration of young people in vocational training. A bill to that end was introduced last month to provide a one-off bonus for the promotion of apprenticeship.

The purpose of the bill is to:

- Support training organizations in **maintaining apprenticeship contracts**;
- Encourage training organizations **to offer more apprenticeships**;
- **Encourage the resumption of apprenticeship contracts** terminated because of the health crisis.

By "training organization", the bill refers to any natural person or legal entity who offers an apprenticeship position and who is entitled to train in accordance with the provisions of Article L. 111-1 of the Labour Code.



A. Amount of the bonus:

The bonus granted to training organizations active in vocational training would assume the form of a **one-off lump-sum subsidy** per apprenticeship contract, **exempt from tax**, which would amount to:

- €1,500 for any apprenticeship contract in progress on 15 July 2020;
- €3,000 for any new apprenticeship contract concluded as of 16 July 2020;
- €5,000 for any resumption of an apprenticeship contract terminated since 24 June 2020 pursuant to Article L. 111-3 (4) of the Labour Code.

In the first 2 cases, the bonus could be increased by €1,500 per contract if, at the time of the request, the training organization has a number of apprenticeships greater than or equal to the average annual number of apprentices taken in the last three years.

B. Conditions for obtaining the bonus:

The one-off bonus could be granted to training organizations that meet the following eligibility criteria:

- Have the right to train on the day the application for the one-off bonus is filed;
- Provide proof that the apprenticeship contract has been concluded and that the trial period has been completed;
- Produce a certificate attesting that the apprentice is affiliated with the Joint Social Security Centre;
- If a previous apprenticeship contract is resumed, the apprentice must not have availed him/herself of more than two such resumptions since 24 June 2020.

Training organizations that are subject to bankruptcy proceedings at the time of application would not be eligible.

To qualify for the bonus, the training organization would have to file a written application with the minister by **15 July 2021 at the latest**.

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