



Labour and Employment Comparative Guide



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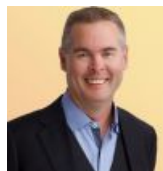
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1. Legal framework

1. 1. Are there statutory sources of labour and employment law?

Luxembourg
BSP

In Luxembourg, the statutory sources of labour and employment law are as follows:

- EU regulations and international conventions ratified by Luxembourg;
- the Constitution;
- the domestic Labour Code (*Code du travail*) – employment contracts are primarily governed by Articles 1779 and following of the Luxembourg Civil Code and by various laws, which have been gradually implemented to regulate every aspect of the relationship between employer and employee. A Labour Code, which compiled these various laws in a single statute, entered into force on 1 September 2006. As a result of the introduction of the code, most of the laws regulating employment and labour law were repealed;
- the Grand-Ducal regulations implementing the provisions of the Labour Code; and
- collective bargaining agreements declared generally binding for a specific sector.

1. 2. Is there a contractual system that operates in parallel, or in addition to, the statutory sources?

Luxembourg
BSP

In addition to the statutory sources, labour and employment law is governed by employment contracts and case law. Under certain circumstances, common practices may also act as a source of law – in particular as regards the entitlement of employees to bonuses.

Priority is given to mandatory provisions of European and domestic law, which take precedence over provisions in contracts of employment and collective bargaining agreements, unless the latter are more favourable to employees.

Thus, while the employee and the employer may contractually agree on the terms and conditions of employment, they may provide only for conditions that are more favourable than those laid down by the statutory sources.

1. 3. Are employment contracts commonly used at all levels? If so, what types of contracts are used and how are they created? Must they be in writing must they include specific information? Are implied clauses allowed?

Luxembourg
BSP

Under Luxembourg law, there are two different types of employment contracts:

- Indefinite employment contracts are concluded for an indefinite period of time, running until termination by the parties or by effect of the law; and
- Fixed-term employment contracts are concluded for a fixed-term period in respect of specific and temporary tasks, as defined in Article L122-1 of the Labour Code, which do not form part of the normal activities performed by the employer (eg, replacement of an employee who is temporarily absent; execution of an occasional and punctual task defined and not falling within the framework of the current activity of the company).

An employment contract – whether indefinite or fixed term – must be drawn up in writing in duplicate at the latest when the employment relationship begins.

The employment contract must contain the mandatory particulars provided for in Article L121-4 of the Labour Code (eg, the identity of the parties; the date on which the contract takes effect).

Fixed-term employment contracts must include the additional clauses provided for in Article L122-2 of the Labour Code (eg, the reason for which the contract is concluded; the duration of the term).

If the parties fail to draw up a written contract or the written contract does not contain the requisite particulars, the contract is nevertheless valid. However, the employer cannot prove the contract's existence and its contents, whereas the employee will be allowed to do so by any means of proof, irrespective of the value of the dispute.

2. Employment rights and representations

2. 1. What, if any, are the rights to parental leave, at either a national or local level?

Luxembourg BSP

Under Luxembourg law, any parent who is affiliated to the Grand Duchy of Luxembourg and who fulfils the conditions for the grant of parental leave is entitled to parental leave.

An applicant for parental leave must:

- raise the child concerned in his or her own household and devote himself or herself mainly to the child's education during the period of parental leave;
- be affiliated to Luxembourg social security on the basis of an employment contract at the time of the birth or adoption of the child, and without interruption, for at least 12 continuous months immediately preceding the beginning of parental leave;
- be employed under one or more employment contracts or an apprenticeship contract for the duration of the parental leave;
- have one or more employment contracts representing at least 10 hours of work per week; and
- not engage in any occupation during a period of full-time parental leave or engage, during a period of part-time parental leave, in a part-time occupation which is reduced by half of the working time worked before parental leave or reduced by 20% per week or over four periods of one month, for a maximum period of 20 months in the case of split parental leave.

2. 2. How long does it last and what benefits are given during this time?

Luxembourg
BSP

A parent who is working full time can choose between the following models of parental leave:

- four or six months' full-time leave;
- eight or 12 months' half-time leave;
- split leave: four months for a maximum period of 20 months; or
- split leave: one day per week for up to 20 months.

One parent must take parental leave directly at the end of the maternity leave period ('first parental leave'); while the other parent may take it at any time until the child reaches the age of six ('second parental leave').

The parental leave allowance is replacement income calculated on the basis of:

- the income declared by the employer to the Joint Social Security Centre in the 12 months preceding the start of the leave; and
- the average number of hours worked in the 12 months preceding the start of the leave.

For a full-time employee (ie, working 40 hours per week), the parental leave allowance is capped at 5/3 of the minimum social wage (ie, €4,180.39 gross) and cannot be less than the minimum social wage (ie, €2,508.25 gross).

The employer may not refuse a first full-time parental leave, but may request that a second parental leave be postponed for a maximum of two months under certain circumstances, as defined by the Labour Code.

2. 3. Are trade unions recognised and what rights do they have?

Luxembourg
BSP

There are three types of trade unions in Luxembourg:

- those with national representative status;
- those that are representative in an important sector of the economy; and
- those that are backed by at least 50% of those employees who are covered by a specific collective agreement.

To be nationally representative, a trade union must be active in a majority of the country's economic sectors and have at least 20% support in the elections for the bodies representing employees.

To be representative in an important sector of the economy – defined as one in which at least 10% of private sector employees work – a union must have the support of 50% of the employee body covering that sector.

There are two main trade union confederations: OGB-L and LCGB. There are over 150,000 members of trade unions in Luxembourg, according to the unions' statistics.

The role of trade unions is:

- to defend the professional interests and collective representation of their members; and
- to improve members' living and working conditions.

Trade unions also have additional roles, such as:

- participating in the negotiation of collective bargaining agreements and other types of professional agreements;
- participating in discussions related to the company (eg, working time, parental leave);
- requesting a declaration of general obligation of the collective bargaining agreement; and
- in the case of collective dismissals, intervening in labour disputes before the National Conciliation Office. Although trade unions have no legal personality and therefore cannot take legal action, they can intervene in specific cases provided for by law.

2. 4. How are data protection rules applied in the workforce and how does this affect employees' privacy rights?

Luxembourg
BSP

The EU General Data Protection Regulation (679/2016) (GDPR) has been fully and directly applicable in Luxembourg since 25 May 2018. The Law of 1 August 2018 on the Organisation of the National Data Protection Commission and the General Data Protection Framework completes the GDPR at the national level and repeals the relevant pre-GDPR legislation (the Law of 2 August 2002 on the Protection of Persons with Regard to the Processing of Personal Data).

Any processing of personal data in the employment context must comply with the GDPR. As a general rule, employers have a legitimate interest in processing personal data of their employees for lawful and legitimate purposes that are necessary for the monitoring of the employment relationship and business operations.

Employees have the following specific rights:

- information right;
- access right;
- opposition right;
- right to lodge a complaint with the National Commission for Data Protection;
- right to erasure; and
- right to data portability.

The supervision of employees in the workplace by an employer is subject to specific legal requirements that must be complied with, set out under Article L261-1 of the Labour Code.

2. 5. Are contingent worker arrangements specifically regulated?

Luxembourg
BSP

The Labour Code recognises the following contingent worker arrangements.

Temporary agency work: The operation of a temporary employment agency consists of hiring and remunerating employees with a view to making them temporarily available to certain users for the performance of a specific and unsustainable task, known as a ‘mission’.

This activity is carried out within the framework of a triangular relationship involving a temporary work agency, a temporary worker and a user company.

A temporary work agency can operate only if it has obtained:

- a business licence from the Ministry in Charge of the Middle Classes at the Ministry of the Economy; and
- a specific authorisation from the Ministry of Labour.

A labour supply contract must be entered into in writing between the temporary work agency and the user company for each temporary worker individually, at the latest within three working days of the moment the temporary worker is made available. Such labour supply contract may be concluded only for temporary and specific tasks.

Temporary loan of workforces: The temporary loan of workforces is an arrangement whereby an employer enters into a contract to temporarily place one or more of its employees at the disposal of another employer.

An employer may be authorised by the Ministry of Labour, for a period to be determined by the latter, to place its employees at the temporary disposal of other employers in specific cases provided for by the Labour Code.

3. Employment benefits

3. 1. Is there a national minimum wage that must be adhered to?

Luxembourg BSP

Luxembourg law provides for a minimum monthly gross salary, depending on the employee’s age and professional qualifications.

As at 1 April 2023, the minimum monthly gross salary is fixed as follows (Index 921,40 on 1 April 2023):

- Non-skilled employees: €2,508.24
- Skilled employees: €3,009.88
- Employees between the ages of 17 and 18: €2,006.59
- Employees between the ages of 15 and 17: €1,881.18

To be considered a skilled employee, the employee must:

- have, for the profession concerned, either a recognised official certificate at least equivalent to a vocational skills certificate or a vocational diploma from a Luxembourg technical secondary school;
- have a manual skills certificate or a certificate of vocational ability and proof of at least two years’ experience in the trade in question;

- have a preliminary technical and vocational certificate and proof of at least five years' practical experience in the trade or profession;
- in the absence of a certificate, provide proof of at least 10 years' practical professional experience (if a certificate exists for the required qualification); or
- provide proof of at least six years' practical experience in a trade or profession which requires certain technical skills and where no official certificate is issued after vocational training.

Failing this, the employee is considered as non-skilled.

3. 2. Is there an entitlement to payment for overtime?

Luxembourg
BSP

Overtime will be paid only when requested by or agreed with the employer.

Overtime is either:

- compensated by remunerated rest time at a rate of 1.5 per hour of overtime; or
- recorded on a time-saving account with the same rate of increase.

In addition, employees who are subject to a reference period are granted supplementary leave, as follows:

- 1.5 days of supplementary leave for a reference period of between one and two months;
- 3 days of supplementary leave for a reference period of between two and three months; and
- 3.5 days of supplementary leave for a reference period of between three and four months.

There is no supplementary paid leave for a reference period of less than four weeks.

If it is not possible to compensate overtime with time off because of inherent reasons relating to the organisation of the company, the employer must pay every hour of overtime at a minimum of 140% of hourly pay. The 140% is free of tax and social security charges, except contributions for allowances in kind in respect of non-increased overtime payments as well as the contribution of 1.4% for long-term care contribution.

3. 3. Is there an entitlement to annual leave? If so, what is the minimum that employees are entitled to receive?

Luxembourg
BSP

Besides 11 public holidays (per calendar year), each employee working on a full-time basis is entitled to at least 26 days of annual paid leave per year, irrespective of the employee's age. During this leave, the employee is entitled to full compensation.

For each day of leave, the employee's compensation will be equal to the average daily wage for the three months immediately preceding commencement of the leave.

During the first year of occupation, annual leave accrues by one-twelfth per month of occupation. Fractions of worked months exceeding 15 calendar days shall count as full worked months. Fractions of days off in excess of one-half shall be considered as full days. Except if approved by the employer, the newly engaged worker must, in principle, work for an uninterrupted period of three months before being eligible to take the holiday accumulated since the start of his or her employment contract.

From Year 2 onwards, full annual leave entitlement accrues at the start of each calendar year.

3. 4. Is there a requirement to provide sick leave? If so, what is the minimum that employees are entitled to receive?

Luxembourg
BSP

Article L121-6 of the Labour Code provides that an employee who is unable to work because of illness or accident is obliged, on the day that he or she is unable to work, to inform the employer or its representative orally or in writing, personally or through an intermediary. On the third day of his or her absence at the latest, the employee must provide the employer with a medical certificate attesting to his or her incapacity for work and the foreseeable duration.

The right to receive sick pay applies for 78 weeks within a period of 104 weeks.

Until the end of the month that includes the 77th day of incapacity for work (approximately 13 weeks), the employee is 100% paid by the employer.

After this period, the employee receives sickness allowance from the Health Insurance Fund. The sickness allowance paid by the Health Insurance Fund amounts to the highest basic pay included in the calculation basis applied in the course of one of the three calendar months preceding the commencement of benefit payments. However, it may not exceed the minimum social wage by a factor of more than five (ie, €12,541.18 per month).

The employer cannot dismiss the employee for a period of 26 weeks as from the date of his or her incapacity.

3. 5. Is there a statutory retirement age? If so, what is it?

Luxembourg
BSP

The statutory retirement age is 65. However, early retirement is possible at 57 or 60 under certain conditions.

To be entitled to a retirement pension/early pension, the beneficiary must send a form to the National Pension Insurance Fund.

4. Discrimination and harassment

4. 1. What actions are classified as unlawfully discriminatory?

Luxembourg BSP

Under Luxembourg law, employees are protected against discrimination by the Labour Code and the Criminal Code, based on the principle of equal treatment.

The Labour Code prohibits any direct or indirect discrimination on the grounds of:

- religion;
- beliefs;
- disability;
- age;
- sexual orientation;
- real or presumed membership of a nationality;
- race; or
- ethnic origin.

Harassment on the basis of the abovementioned grounds and encouragement to discriminate on the abovementioned grounds are considered as discrimination.

Direct discrimination is where one person is treated in a less favourable way than another is, has been or would be treated in a comparable situation.

Indirect discrimination is where an apparently neutral provision, criterion or practice would put certain persons at a particular disadvantage compared with other persons, unless:

- that provision, criterion or practice is objectively justified by a legitimate aim; and
- the means of achieving that aim are appropriate and necessary.

The Labour Code also prohibits direct or indirect discrimination on the grounds of sex, by reference in particular to marital or family status.

In addition, the Criminal Code prohibits any discrimination between natural persons, legal entities or group of natural persons based on their:

- origin;
- skin colour;
- gender;
- nationality;
- sexual orientation;
- family situation;
- age;
- health condition;
- disability;
- customs;
- political or philosophical opinions;

- involvement in trade union activities; or
- real or presumed membership or non-membership of a particular ethnic group or a nation, people, race or religion.

4. 2. Are there specified groups or classifications entitled to protection?

Luxembourg
BSP

The prohibition of discrimination applies to all persons, public or private, physical or moral, as regards:

- conditions of access to employment, self-employment or occupation, including selection criteria and recruitment conditions, whatever the branch of work and including all levels of the professional hierarchy and promotions;
- access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- employment and working conditions, including dismissal and pay; and
- membership of, and involvement with, an organisation of workers or employers, or any organisation whose members carry out a particular profession, including the benefits provided by such organisations.

4. 3. What protections are employed against discrimination in the workforce?

Luxembourg
BSP

Any written discriminatory provisions included in employments contracts, collective bargaining agreements or internal policies are to be declared null and void.

Furthermore, employees are protected against dismissal or any other adverse treatment as a reaction to a complaint or to legal proceedings aimed at forcing compliance with the principles of equal treatment and non-discrimination. This protection also applies to anyone who witnesses such acts. Any dismissal in breach of the provisions on equal treatment is deemed null and void. The employee concerned shall have the right to claim in court, as a matter of urgency, the annulment of the dismissal and his or her reinstatement within the business.

4. 4. How is a discrimination claim processed?

Luxembourg
BSP

Where a person aggrieved by non-compliance with the principles of equal treatment can evidence before a court the facts from which it may be presumed that there has been direct or indirect discrimination, it is down to the respondent to prove that there has been no breach of the principles of equal treatment. As regards discrimination, the employee therefore benefits from a lighter burden of proof.

4. 5. What remedies are available?

Luxembourg
BSP

Where the dismissal of an employee is based on a discriminatory ground, he or she has the right to claim in court, as a matter of urgency, within 15 days of notification of the dismissal, the annulment of the dismissal and his or her reinstatement within the business.

Furthermore, on a general basis, employees who are victims of discrimination have the right to bring a legal action regarding the alleged discrimination before the Labour Court and claim reparation for the prejudice suffered. The Labour Code provides that an employer which publishes a job offer that is not in compliance with the principle of non-discrimination may be subject to a fine of between €251 and €2,000.

In case of sexual harassment, the employee may terminate his or her employment contract without notice and has the right to take judicial action against the employer to claim compensation for damages.

Finally, employees who are victims of discrimination have the right to bring a legal action before the Criminal Court. In such case, a conviction of imprisonment for between eight days and two years, and a fine of between €251 and €25,000 may be pronounced.

4. 6. What protections and remedies are available against harassment, bullying and retaliation/victimisation?

Luxembourg
BSP

Pursuant to the Labour Code, 'sexual harassment' is defined as any sexual behaviour or any other behaviour based on sex which knowingly hurts the dignity of a person in the workplace, where:

- the behaviour is inappropriate, abusive and hurtful;
- a person refuses to accept such behaviour from the employer, and another employee, client or supplier is explicitly or implicitly used by the employer to affect the rights of that person in matters of professional training, employment, continuance of employment, professional promotion, remuneration or any other decision relating to employment; and
- such behaviour creates a feeling of intimidation, hostility or humiliation for the victim.

The employer must do whatever is necessary to end any act of sexual harassment as soon as it is made aware of it. If it fails to do so, the president of the Labour Court may require it to do so.

A victim of sexual harassment is entitled to terminate his or her employment contract with immediate effect and the employer may have to pay damages to the employee if the court considers the resignation justified.

Largely modelled on the existing provisions on sexual harassment, a new law dated of 29 March 2023, which came into force on 9 April 2023, introduced specific provisions on moral harassment into Luxembourg law.

The Labour Code now defines moral harassment as "*any conduct which, by its repetition or systematic nature, undermines the dignity or the psychological or physical integrity of a person*".

The law imposes certain obligations on employers to fight against harassment. They must refrain from any moral harassment during the work relationship and must determine, after informing and consulting with the staff delegation (or, failing that, the entire staff), the measures to be taken to protect employees against harassment at work. When moral harassment is reported, employers must take measures to ensure that the situation immediately ceases and then proceed, always after consultation with the staff delegation (or, failing that, with the entire staff) to an internal evaluation of the effectiveness of the preventive measures already in place and the possible implementation of new preventive measures.

The Labour Inspectorate (ITM) may be contacted by the employee concerned by the acts of moral harassment or by the staff delegation - with the employee's agreement - if the moral harassment situation persists after the implementation of the above-mentioned measures or if the employer fails to take adequate measures. In the event of moral harassment, the Director of the ITM may order the employer concerned to immediately cease the acts of moral harassment within a certain period of time. If the injunction is not complied with, the director of the ITM may also impose an administrative fine of up to €25,000 on the employer.

5. Dismissals and terminations

5. 1. Must a valid reason be given to lawfully terminate an employment contract?

Luxembourg
BSP

Fixed-term employment contracts may be terminated before the expiry of the term in the event of gross misconduct or by common consent of the parties.

Indefinite employment contracts may be terminated at any time by either party. There are two types of procedures, depending on the cause of the dismissal: dismissal with notice and dismissal without notice. Dismissal with notice for serious cause must be based on the employee's aptitude or attitude, or on economic grounds or redundancy. Dismissal without notice period is with immediate effect for gross misconduct.

5. 2. Is a minimum notice period required?

Luxembourg
BSP

In the case of dismissal with notice, dismissed employees are entitled to notice pay.

Notice pay is the pay relating to the period of notice and which depends on the length of service of the terminated employee. The notice pay is paid in the same way as a salary, at the end of each month. The employer is required to withhold taxes and social security contributions.

Notice by the employer must be given as follows:

- Less than five years' seniority: two months' notice;
- Between five and 10 years' seniority: four months' notice; and
- More than 10 years' seniority: six months' notice.

The notice period to be given by the employee is equal to half the abovementioned notice period.

The notice period starts on the 15th day of the month if the notification of the termination was given before the 15th of the month, and on the first day of the following month if the notification was given after the 14th day of the month.

The contract of employment effectively terminates on the expiry of the notice period and Luxembourg law does not provide for payment in lieu of notice. The employer may, however, decide to release the dismissed employee from the obligation to work during the notice period.

5. 3. What rights do employees have when arguing unfair dismissal?

Luxembourg
BSP

Luxembourg law does not provide for pre-determined compensation for damages. The judges have wide powers to assess, at their own discretion, the amount of compensation. Compensation for damage is determined as follows.

Moral damages: In the event of unfair dismissal, the following criteria are taken into consideration to assess the amount of damages:

- problems caused by the dismissal;
- the circumstances in which the dismissal occurred;
- the employee's age; and
- the employee's length of service.

Compensation for moral damages generally ranges between €1,000 and €30,000.

Financial damages: Financial damages greatly depend on the professional situation of the employee after the dismissal and are determined on a case-by-case basis by the courts. The courts will take into consideration a reference period after the dismissal, which is deemed sufficient for the employee to find another job. The reference period starts at the expiry of the notice period. Compensation for financial damages is determined on the basis of the difference between the remuneration paid by the former employer and the salary or unemployment benefits paid to the employee after the expiry of the notice period. The reference period is generally set at six months and may be extended up to 12 months, depending on the employee's age and length of service. If the employee has been eligible for unemployment benefits over the reference period, the employer will also be ordered to reimburse the state for the unemployment benefits paid to the employee over the reference period.

5. 4. What rights, if any, are there to statutory severance pay?

Luxembourg
BSP

A dismissed employee is entitled to severance pay after at least five years of service with the employer. Severance pay is determined on the basis of the average gross salary effectively paid to the employee during the 12 months preceding the dismissal. Sickness benefits, bonuses and any recurrent payments are included in the computation; but overtime compensation, premiums paid on a discretionary basis and reimbursement of expenses are excluded.

Severance pay is excluded in certain cases specified by law (eg, where the employer is authorised to dismiss the employee for serious reasons or the employee is entitled to a normal old-age pension).

The amount of severance pay, in months of salary, depends on the employee's seniority as follows:

- At least five but under 10 years of service: one month's salary;
- Between 10 and 15 years of service: two months' salary;
- Between 15 and 20 years of service: three months' salary;
- Between 20 and 25 years of service: six months' salary;
- Between 25 and 30 years of service: nine months' salary; and
- More than 30 years of service: 12 months' salary.

6. Employment tribunals

6. 1. How are employment-related complaints dealt with?

Luxembourg BSP

The labour courts have jurisdiction over:

- individual disputes between employers and employees arising from either:
 - employment contracts;
 - apprenticeship contracts; or
 - complementary pension schemes; and
- any disputes that arise after termination of the employment contract.

The action is brought by way of a written brief indicating the name, profession and domicile of the parties, as well as the purpose of the action and a brief account of the points in dispute.

The court will summon the parties to a hearing to examine the case, after which it will pronounce judgment. Either party may appeal the judgment before the Labour Court of Appeal within 40 days of notification of the judgment. The Labour Court of Appeal will then pronounce a judgment on appeal.

Furthermore, the case may be referred to the Supreme Court, but this may be on questions of law only.

Summary proceedings may be filed with the president of the labour court, where the judge may grant an interim order. Either party may appeal the order within 15 days of notification of the order to the parties.

There are three labour courts in the Grand Duchy of Luxembourg: Luxembourg City, Esch-sur-Alzette and Diekirch.

The court of the principal place of work at the time of the dismissal will have territorial jurisdiction.

6. 2. What are the procedures and timeframes for employment-related tribunals actions?

Luxembourg
BSP

The limitation periods for bringing employment claims depend on the type of claim involved:

- A lawsuit for payment of the employee's remuneration should be introduced within a three-year period from the due date; and
- Upon dismissal, the employee may initiate a court claim for unfair dismissal within three months of the date of notification of the dismissal or of the reasons for the dismissal (Article L124-11 of the Labour Code). However, if the employee challenges in writing the reasons for his or her dismissal to the employer, the legal timeframe to bring an action in court is extended to one further year from the date of the written claim.

7. Trends and predictions

7. 1. How would you describe the current employment landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Luxembourg
BSP

Current employment landscape: Since the entry into force on 2 February 2021 of the Convention of 20 October 2020 on the Legal Regime for Telework, declared of general obligation, all Luxembourg employers are subject to the convention. For several months, Luxembourg companies have thus been adapting their internal procedures and contracts to comply with the requirements of the convention.

On 27 December 2022, the Law of 23 December 2022 aimed at modifying the conditions under which parental leave can be granted came into force. The law provides that in order to be eligible for parental leave, an employee, a self-employed person or a public servant who is professionally active must have been subject to compulsory affiliation to the social security system during the 12 months preceding the parental leave. The condition of affiliation at the time of the birth is no longer required. Furthermore, the law provides that the grant of parental leave is conditional on the fact that "the employee/self-employed/public servant exercises a professional activity by means of one or more work contracts totalling at least 10 hours of work per week". The law introduced this amendment to clarify that the plurality of 'contracts' corresponds in fact to a plurality of status, activities or employers.

On the same date, the Law of 23 December 2022 aimed at introducing new rules in the road transport sector and adapting some general rules on posting came into force. As regards the general rules, the law makes provision for the following, among other things:

- a reduction in the list of information that must be sent to the Labour and Mines Inspectorate (ITM) at the latest as soon as work begins in the Luxembourg territory, without prejudice to the possibility of an earlier declaration by the posting company;

- a reduction in the list of documents requested by the ITM. Companies covered by the law must keep these documents for the duration of the posting:
 - at the workplace of the posted employee in the Luxembourg territory; or
 - in any place accessible to the reference person for communication with the ITM; and
- a limitation of the application of joint and several liability in the context of a company or subcontracting contract to the situation of subcontracting chains.

Furthermore, the Grand-Ducal Regulation of 25 January 2023 has introduced a new type of leave – cultural leave – which enables individuals who practise a cultural discipline or art in parallel to their main professional activity to take time off to participate in high-level professional events.

In addition, the Law of 29 March 2023, which came into force on 9 April 2023, introduced a definition of moral harassment into the Labour Code, as well as a system of protection against moral harassment in the workplace, requiring employers to comply with certain obligations.

On 28 September 2021, Bill 7890 amending the Labour Code in relation to the right to disconnect was submitted to the Chamber of Deputies. This bill provides, among other things, that in companies where employees use digital tools for work purposes, a regime ensuring the respect of the right to disconnect outside working hours must be defined, at the level of the relevant company or sector.

Furthermore, Bill 7945, submitted to the Chamber of Deputies on 10 January 2022, aims to introduce a new legislative framework for the protection of whistleblowers in Luxembourg, involving new obligations for employers. The purpose of the bill is to guarantee effective and balanced protection for whistleblowers by introducing an official whistleblower status, comprising clearly defined rights and obligations. Private legal companies with 250 or more employees will need to have procedures in place for internal reporting in order to comply with the law as soon as it comes into force.

Bill 8070, submitted to the Chamber of Deputies on 7 September 2022, aims to transpose EU Directive 2019/1152, which promotes more transparent and predictable employment, and protects workers against adverse treatment or consequences. The bill will introduce provisions relating to the following, among other things:

- an increase in the list of essential information that must be provided to employees in relation to their working conditions, as well as the formal requirements and the deadlines within which this information must be provided;
- a framework for the duration of the agreed trial period in fixed-term contracts;
- the introduction of effective, proportionate and dissuasive sanctions for the infringement of national provisions relating to rights deriving from the directive;
- the introduction of a procedure for transitioning to more secure and predictable forms of employment, such as open-ended employment contracts or full-time employment contracts;
- the generalisation of the principle of accessibility and free access to training courses, which is the responsibility of the employer by virtue of:
 - legal, regulatory or administrative provisions; or
 - provisions resulting from a collective agreement declared to be of general obligation, or from an agreement on cross-industry social dialogue declared to be of general obligation; and
- the prohibition of provisions aimed at prohibiting apprentices, employees or temporary employees from taking up a parallel job; and more particularly, the prohibition of so-called ‘exclusivity’ clauses which

are not justified by legitimate and objectively verifiable higher interests.

New developments: From 1 July 2022 to 30 June 2023, a transitional period for the social security affiliation of frontier workers who telework from their country of residence has been established. During this period, an administrative tolerance will be applied, allowing frontier workers to continue to telework from their homes without fear of changing their social security affiliation if the 25% threshold provided for in European legislation is exceeded. France, Belgium and Germany have confirmed that there will be no change in the social security legislation applicable to cross-border teleworkers. The tax agreements negotiated in the context of the COVID-19 pandemic remained in force until 30 June 2022. The thresholds as provided by the bilateral tax agreements between Luxembourg on the one side, and Germany, Belgium and France on the other have applied since 1 July 2022. Thus, the taxation of employees who are normally employed in Luxembourg and who work remotely from their home is maintained at 100% in Luxembourg if the following thresholds are not exceeded:

- Germany: maximum 19 teleworking days per year;
- France: maximum 34 teleworking days per year; and
- Belgium: maximum 34 teleworking days per year.

The salary in relation to all days worked outside Luxembourg will be taxable in the employee's country of residence if the above thresholds are exceeded.

In addition, the Luxembourg government has proposed to:

- establish a new national legal framework to regulate the employment relationships of natural persons who provide services or work via digital platforms when their usual place of work is located within the territory of Luxembourg (Bill 8001);
- clarify the system for extraordinary leave and introduce new types of extraordinary leave:
 - one day out of a 12-month employment period on the grounds of *force majeure* relating to urgent family reasons in the case of a family member's illness or accident making the immediate presence of the worker indispensable and certified by a doctor;
 - five days out of a 12-month period of employment to provide personal care or support to a family member or a person living in the same household as the employee who is in need of significant care or support for a serious medical reason certified by a doctor (Bill 8016); and
 - a right to extraordinary leave where a child is born to anybody recognised as an equivalent second parent under the applicable national legislation, as well as for the self-employed (Bill 8017); and
- prohibit the use of 'zero-hours' contracts – employment contracts that include a particular clause on the working time to be performed by the employee which provides for a minimum of zero hours to be performed (Bill 8147). The bill states that:
 - the minimum working time may not be set at zero hours; and
 - if the working time is expressed in time intervals, the minimum working time may not be less than 10 hours.

8. Tips and traps

8. 1. What are your top tips for navigating the employment regime and what potential sticking points would you highlight?

Luxembourg BSP

Since the entry into force on 9 April 2023 of the new law on the protection against moral harassment at work (see question 4.6), companies must comply with the new legal framework by establishing measures to protect against moral harassment in the workplace.

Furthermore, given the specific nature of Luxembourg labour and employment law – which is characterised by a patchwork of sources and continual evolution – and the bills that are currently being discussed in the Chamber of Deputies, which will affect the labour and employment regime in 2023 – we would recommend that companies follow developments in Luxembourg law, in particular through the assistance of a lawyer who specialises in labour and employment law.

If the bills discussed in question 7.1 are adopted in 2023, companies will have to do the following, among other things:

- set up a regime to respect the right to disconnect outside working hours (Bill 7890);
- set up internal reporting channels (Bill 7945); and
- adapt their template employment contracts (Bill 8070).



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