LUXEMBOURG

Trends and Developments

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BSP

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Overview of the Main Recent Trends and Developments in Luxembourg Employment Law

Introduction

Luxembourg has long been renowned for its strong and stable legal framework, which is conducive to business relationships while being designed to protect employees and ensure fair working conditions. Recent legislative developments continue to strengthen this framework, reflecting Luxembourg's commitment to aligning with European Union (EU) directives and addressing emerging workplace issues. Given the wealth of news in Luxembourg, the purpose of this section is to present three laws that have recently been adopted and a draft law that has been submitted to the legislature.

1. Law of 29 March 2023 on moral harassment in the context of labour relationships

Moral harassment or bullying has become a pressing problem in many workplaces. Aware of the negative impact of moral harassment on employees' mental and physical health, on their productivity and on the general atmosphere of the workplace, Luxembourg enacted the law of 29 March 2023 (the "Law") to address and mitigate this problem.

Since 9 April 2023, the date of its entry into force, the Law has introduced into the Labour Code several key provisions aimed at preventing and addressing moral harassment in the workplace:

Definition of moral harassment: The Law provides a clear definition of moral harassment, describing it as any conduct that occurs repeatedly and systematically and that undermines the dignity, psychological or physical integrity of a person. The new legislation also provides that an employer and its employees, but also any client or supplier of the company, must refrain from committing any act of moral harassment in the context of work relationships, thus extending the scope of application of the Law to persons outside the employer's premises and organisation.

Employer obligations: Employers must ensure that any act of moral harassment affecting their employees that comes to their attention, ceases immediately. To this end, as a first step, they are required to determine, after informing and consulting with the staff delegation (or the entire staff, as the case may be), preventive measures to protect the employees against moral harassment. In the event of proven mobbing, employers must take all possible measures to put an end to it immediately, and if they fail to do so, a real procedure must be in place for the employee

to refer the matter to the Inspectorate of Labour and Mines.

Reporting channels: The Law mandates the establishment of clear and accessible reporting mechanisms for employees to report instances of moral harassment. These mechanisms must ensure confidentiality and protect the identity of the complainant.

Investigation procedures: Upon receiving a harassment complaint, employers are obligated to conduct a prompt and thorough investigation. The investigation must be impartial and respect the rights of all parties involved.

Protection against retaliation: Like the whistle-blower protection law (see below), the Law prohibits retaliation against individuals who report harassment. Employees who face retaliation are entitled to seek legal remedies.

Penalties: Failure to comply with the relevant obligations of the Law is punishable by a fine of between EUR251 and EUR2,500 (or twice these amounts in the event of a repeat offence within two years).

2. Law of 16 May 2023 on the protection of persons who report breaches of EU law

Directive (EU) 2019/1937, commonly known as the whistle-blower protection directive (the "Directive"), was adopted by the European Parliament and the Council of the European Union to strengthen the protection of individuals who report breaches of EU law. The Directive aims to remove the significant obstacles faced by whistle-blowers, in particular the fear of reprisals and the lack of adequate protection, which have historically discouraged individuals from reporting illegal activities. The purpose of the law of 16 May 2023 (the "Law") is to transpose the Directive into Luxembourg law.

Coming into force on 21 May 2023, the Law introduced a general protective status for whistle-blowers in Luxembourg law, the key elements of which are as follows:

Personal and material scope: Taking up the "very broad" definition of persons eligible for whistle-blower protection in the Directive, the Law provides that all persons, linked in the broadest sense to the organisation concerned by the whistle-blowing, working in the private or public sector, who have obtained information about violations in a professional context, are covered. This includes, for example, self-employed or employed workers, shareholders and members of administrative bodies, paid or unpaid volunteers and interns, persons working under the supervision and direction of contractors, subcontractors and suppliers, whistle-blowers whose employment relationship has not yet begun in cases where information on breaches has been obtained during the recruitment process or other pre-contractual negotiations, as well as third parties who are related to whistle-blowers, such as colleagues or relatives.

The Law also extends the material scope of the Directive to all national law breaches (ie, all violations of national law will be covered, regardless of whether they are classified as administrative, criminal or civil).

Reporting channels: The Law requires the establishment of internal and external reporting channels. Since the Law came into force, private sector legal entities with 50 or more employees, as well as public sector legal entities, including any entity owned or controlled by such entities, such as municipal administrations with more

than 10,000 inhabitants, are required to establish internal reporting and monitoring channels and procedures. Since 17 December 2023, private sector companies with between 50 and 249 employees must also establish internal reporting channels and procedures.

In practice, employers must, among other things:

- establish reporting channels that are designed, established and managed in a secure manner that ensures the confidentiality of the identity of the reporter and any third party referred to, and that prevents access to said channels by unauthorised persons;
- designate an impartial person or department with the ability to follow-up on the reports in a diligent manner; and
- involve a staff delegation in the implementation of these procedures. In companies with fewer than 150 employees, the staff delegation must be informed and consulted. In companies with more than 150 employees, the agreement of the staff delegation is required under the co-decision principle.

External channels provide an alternative for individuals who prefer not to report internally or when internal reporting does not yield results.

Confidentiality and prohibition of retaliation: The Law states that whistle-blowing information must be treated as confidential, so that whistle-blowers can freely and safely speak out. Employers are prohibited from dismissing them or causing them any harm in any way as result of their disclosures. All forms of retaliation, including threats and attempted retaliation, are prohibited against the whistle-blowers.

Support and protection measures: Whistle-blowers are entitled to receive support, including legal advice and psychological assistance. The law also provides for interim relief measures to protect whistle-blowers during legal proceedings.

Penalties: The Law imposes penalties on individuals and organisations that retaliate against whistle-blowers or fail to establish the required reporting channels. For example, an entity that fails to put in place an internal whistle-blowing procedure that complies with the Law is liable to an administrative fine of between EUR1,500 and EUR250,000. In addition, certain competent authorities have the right to request, in writing, from the entity that the alert concerns, or in the event of failure to comply with the obligations to put in place an internal procedure and to carry out an investigation, the communication of all the information they deem necessary. Any entity that fails to comply with this request is liable to an administrative fine of between EUR1,500 and EUR250,000.

3. Law of 24 July 2024 on transparent and predictable working conditions

The law of 24 July 2024 on transparent and predictable working conditions (the "Law") transposes Directive (EU) 2019/1152 into Luxembourg law, which aims to strengthen the transparency and predictability of working conditions throughout the EU.

The Law, which came into force on 4 August 2024, amends certain rules relating to employment contracts, apprenticeship contracts, temporary employment contracts, employment contracts with pupils or students (excluding paid internship contracts), and maritime employment contracts. The purpose of this Law is to amend the mandatory clauses that must be included in the contracts and to regulate certain clauses

such as exclusivity clauses and trial periods. It therefore concerns all employers in Luxembourg.

Prohibition of unfavourable treatment or retaliation: First, the Law introduces the general principle of prohibition of any unfavourable treatment or retaliation against employees who have protested or lodged a complaint or claim to have their rights respected. This prohibition also applies to employee witnesses.

Form and content of the employment contract:For both fixed-term and permanent apprenticeship and employment contracts, employers may send the contract in paper or electronic form as long as the employee can access it, it can be saved and printed, and the employer concerned keeps proof of its transmission or receipt.

In addition, the Law now provides for an extension of the key information that must be given to "employees, apprentices, posted employees, temporary employees, sailors, civil servants, government employees, municipal officials, municipal employees" such as the daily or weekly working hours with the modalities for the provision of overtime, the remuneration including the basic salary and agreed wage supplements, and the length and conditions for applying any trial period (eg, the notice period applicable during the trial period), as well as deadlines for providing this information.

Probationary periods in fixed-term contracts: The Law limits the duration of probationary periods in fixed-term employment contracts to ensure that they are not excessively long. In that respect, any trial period agreed between the parties cannot be shorter than two weeks or longer than a quarter of the fixed term for a fixed-term contract, ie, up to a maximum of six months when the fixed-term contract is entered into for the maximum period, ie, 24 months.

Invalidity of the so-called "exclusivity" clauses: Any clause prohibiting an employee or an apprentice from having another employment relationship with one or more employers outside the normal working hours as agreed in their contract is, as a matter of principle, now null and void. This prohibition therefore applies to so-called "exclusivity" clauses that are not justified by overriding and objective interests (health and safety at work, protection of business confidentiality, integrity of the public service or prevention of conflicts of interest).

Training obligations: If, by virtue of legal, regulatory or administrative provisions or provisions in collective bargaining agreements, the employer must provide training for the employee to carry out the work for which he/she has been hired, it is now provided that this training must be provided free of charge to the employee. The time spent on this training must be considered as actual working time and must take place during working hours.

Procedure for transition to more secure and predictable forms of employment: A new procedure for converting a fixed-term contract to an open-ended contract or a part-time contract to a full-time contract and vice versa has now been introduced. Any employee who has worked for at least six months with the same employer and after the expiry of any trial period agreed in the contract may now make such a request to his/her employer. The employer must respond to the request within a certain period. If the employer refuses, it must state the precise reasons for its refusal in writing. An employer who fails to give a reasoned response to an employee's request is now liable to a criminal fine.

Penalties: Previously there was no criminal sanction if an employment contract did not include the information set out in the Labour Code. One of the main new features of the Law is that employers who fail to comply with their new obligations are now at risk of criminal penalties ranging from EUR251 to EUR5,000 for individuals and from EUR500 to EUR10,000 for juridical persons. A fine will be incurred for each employee affected by the employer's failings. In the event of a repeat offence within two years, the penalties may be up to twice these maximum amounts.

4. Draft law No 8001 on electronic platform workers

The rise of the gig economy and the increasing prevalence of digital platforms have transformed the traditional employment landscape. Many workers now engage in platform-based work, providing services through apps and online platforms. However, this type of work often lacks the protections and benefits associated with traditional employment. Draft law No 8001 (the "Draft Law") aims to establish a new national legal framework to regulate the employment relationship of natural persons who provide services/work via platforms when their usual place of work is located in the territory of Luxembourg.

Tabled on 4 May 2022 and expected to be passed in the coming months, this Draft Law introduces several key provisions to protect electronic platform workers:

Scope of application: The Draft Law is intended to apply to employment relationships involving individuals who provide services/work via a digital platform and who are regarded as employees of the digital platform within the meaning of the new national provisions when their usual place of work is in Luxembourg or when their virtual place of work is in Luxembourg.

Employment status: The text seeks to clarify the employment status of platform workers, distinguishing between employees and self-employed individuals. The Draft Law sets out criteria for determining whether a job is carried out via a platform and creates a presumption of the existence of an employment contract as soon as one or more of the criteria set out is fulfilled. This presumption can be overturned by the platform if it can be demonstrated that there is no employment contract. Nevertheless, when at least three of the criteria set out are fulfilled, the existence of an employment contract within the meaning of Article L.121-1 of the Labour Code is established, without evidence to the contrary being admissible.

The criteria set out in the Draft Law are as follows:

- "The platform advertises itself on the market by offering the service(s) or work."
- "The platform defines the conditions for [the person providing or being willing to provide the service/work] accessing the services/work offered and ordered through it by the beneficiary(ies)."
- "The platform defines the conditions and/or limits for the remuneration for the services/work."
- "The platform receives the payment for the service/work that is to be delivered or has been delivered by the person providing or willing to provide a service/work through it."
- "The platform controls the quality of the work/service provided by the person providing or willing to provide a service/work through it."
- "The platform issues a classification for the people providing or willing to provide a service/work through it."
- "The platform is responsible for the interaction between the beneficiary and the person

providing or willing to provide a service/work through it."
- "The platform may decide to exclude the person providing or willing to provide a service/work through it and no longer grant him/her access to it."

Working conditions: The Draft Law mandates that platform workers must be provided with transparent information about their working conditions, including remuneration, working hours and the terms of their engagement (adapted to the specific working conditions in which they provide their services/work).

In conclusion, the laws and Draft Law presented demonstrate the public authorities' determination to strengthen workers' rights by promoting transparency, safety and fairness in the workplace, while adapting legislation to the new realities of the labour market.