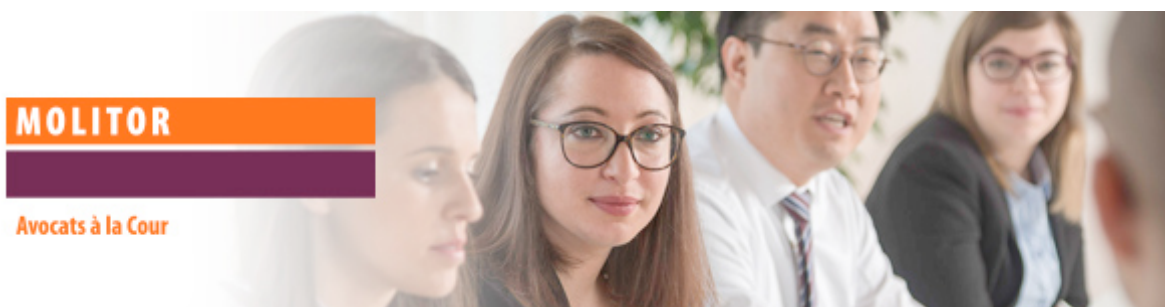


# Employment & Social Security News from Luxembourg



February 2017

## OVERVIEW: WHAT TO REMEMBER FROM 2016 AND WHAT TO EXPECT IN 2017

*2016 saw the implementation of significant changes in Luxembourg labour law, which should be continued in 2017.*

*2017 started strongly with the return of salary indexation, which had disappeared since October 2013.*

*This newsletter aims at summarizing the main changes that have occurred this past year and to give a quick overview of what to expect in 2017 and beyond.*

### ➤ REVIEW OF THE MAIN REFORMS OF 2016

#### New procedures

- **Internal and external re-employment:** the law of 23 July 2015 modifying the Labour Code and the Social Security Code regarding the internal and external redeployment procedure has been in force since 1 January 2016. Rules regulating the initiating of proceedings before the Joint Commission (*Commission Mixte*) have been simplified. As a result, the monitoring and control of people on such redeployment have been reinforced.
- **Social dialogue:** the law of 23 July 2015 modifying social dialogue had significantly modified the purpose and character of staff representatives. Its main changes, such as the suppression of the Joint Committee, will be visible after the next social elections in 2018. However, the lay-off procedure applicable to a

staff representative guilty of gross misconduct has been in effect since 1 January 2016.

#### Working conditions

- **Teleworking:** the Grand Ducal Regulation of 15 March 2016 declared of the convention concerning the teleworking legal regime concluded on 15 December 2015 between the OGB-L and LCGB trade unions, and the Union of Luxembourgish Companies (*Union des Entreprises Luxembourgeoises*) to be of general application. It renews the convention of 21 February 2006 which had the same purpose. The initial provisions of the convention remain unchanged. The introduction of teleworking allows the employee more working flexibility, while protecting the employer's labour contract.

This "atypical" form of work requires an agreement between the employer and

employee, who will in any case be granted an adjustment period, which can vary between 3 and 12 months depending on the intent of the parties.

### Family

- **Family allowances:** the law of 23 July 2016 reforming family allowances now provides for a single lump-sum of EUR 265 per child per month.
- **Parental leave:** the law of 3 November 2016 modifying parental leave came into effect on 1 December 2016 and offers new possibilities.

Both parents are now allowed to request full-time parental leave for 4 to 6 months or part-time parental leave for 8 to 12 months.

The first parental leave must be taken immediately following the maternity leave but the second can be taken until the child's sixth birthday.

The law also enables the parental leave to be split; an employee working 40 hours per week can reduce their activity:

- by 20% (one day per week) during a 20 month period ; or
- to 4 periods of 1 month for a maximum time-span of 20 months.

Parental leave is also increased for adopting parents, with a possibility to take the leave up until the child's twelfth birthday.

Finally, the reform inaugurates an income replacement for the parent benefiting from the parental leave, which will be paid by the *Caisse pour l'avenir des enfants* (CAE). This income is calculated on the basis of:

- the income declared by the employer to the *Centre d'affiliation de la sécurité sociale* for the 12 months preceding the beginning of the leave; and
- the average worked hours during the 12 months preceding the beginning of the leave.

This income is capped at 5/3 of the minimum social wage and cannot be less than the latter (for a full-time).

### ➤ OVERVIEW OF WHAT TO EXPECT IN 2017

#### Work time flexibility

The government had promised to reform the national plan for employment the validity of which has been continuously renewed since 1999 in order to allow for more work time flexibility.

This has been accomplished thanks to the law of 23 December 2016 regarding the work time structure, which came into effect on **1 January 2017\***.

It alters the work time structure within companies and, more specifically, affects the length of the reference period, the work organization plan and the average weekly working time.

#### Salary

**New Index:** since 1 January 2017, salaries have benefited from a 2.5% rise thanks to the increase of the index from 775.17 in 2016 to 794.54 in 2017.

As a result, from 1 January 2017, non-qualified minimum gross social wage (for adults) has gone up from EUR 1,922.96 to EUR 1,949.88. The qualified gross social minimum wage has increased from EUR 2,307.56 to EUR 2,398.30.

The guaranteed minimum wage ("RMG") and the income for the severely disabled have also increased by 1.4% while the minimum personal pension went up by 0.9%.

The index raise has also impacted the following elements:

- the minimal amount of salary on the basis of which the employer can plan for a **12 month trial period**: EUR 4,258.73 monthly gross;
- the minimum amount to take into account for the application of a **non-competition clause** following the termination of the

working relationship: EUR 54,164.35 yearly gross;

- the maximum tax-free amount of a **transactional indemnity** (Article 115-9 of the LIR): EUR 23,983.08.

- **Abolition of the crisis tax:** the temporary budget-balancing tax of 0.5% is terminated from 1 January 2017.

- **Gender equal pay:** the law of 15 December 2016 has modified the Labour Code by inserting a new title labeled “**salary equality between men and women**”. Every employer must ensure, for the same work or work of equal value, equality of salary between men and women (Article L.225-1 et seq. of the Labour Code Title II, Book II).

Equal treatment between men and women has to be ensured within companies both with regard to regular wages and benefits. Failure to comply with this obligation is punishable by a fine ranging from EUR 251 to 25,000.

- **Benefits:** the tax reform of 23 December 2016 effective from 1 January 2017 also impacts certain benefits allocated to employees by their employers, for example:

- tax relief planned for electric company cars. The valuation on a flat-rate basis will be 0.5% per month (emission 0 g/km);
- the value of luncheon vouchers is increased to EUR 10.87 from 1 January 2017. The value of payment in kind for the employee remains fixed at EUR 2.80.

### Hiring

The law of 23 July 2016 reforming the law of 29 March 2013 regarding the structure of criminal records came into effect on 1 January 2017\*. From that date, a person's criminal record is comprised of 5 different sections.

The employer is authorized to request, under certain conditions:

**Section 3**, which details criminal and correctional sentences.

**Section 4** regroups the contents of Section 3 and all driving offences. It is delivered on

demand of the concerned person. The employer may only request this section when having a driving license constitutes an indispensable condition to the practice of the professional activity and is required in the labour contract.

**Section 5** is designed to protect minors in situations where an employer is looking to hire a person whose activities will bring them in regular contact with minors. It is issued either at the request of the concerned person or the local authorities in order to review job demands in the education sector or in an academic institution administered by the municipality, always on condition that the concerned person has given their approval.

Where hiring takes place, the information has to be destroyed by the employer within a month of the conclusion of the labour contract (instead of within 24 months). When the potential candidate is not hired, the employer must destroy the information without delay.

### ➤ NEXT: REFORMS UNDERWAY

#### End of the labour contract

- **Gross misconduct of the employer:** the draft bill n°7086 aims at codifying recent case law from the Constitutional Court regarding the allowance of **compensation in lieu of notice** and **severance pay** where an employee resigns with immediate effect following gross misconduct of the employer, on the basis of the principle of equal rights.

- **Dismissal for gross misconduct and out-of-court settlement agreements:** draft bill n°7086 modifying the Labour Code, recommends that a new Article L.521-4bis regarding the enforceability of out-of-court settlement agreements against the State should be inserted into the Labour Code. The latter provides that when an employee has been **dismissed with immediate effect**, but the action is discontinued following an out-of-court settlement, the gross unemployment allowance provisionally paid will be reimbursed to the Fund for Employment (“*Fonds pour l'Emploi*”) in

**equal parts by the employer and the employee.**

### Working conditions

Draft bill n°7102 aims at modifying the Labour Code in order to add a title regarding **equal treatment in terms of employment and labor**. As a result, any direct or indirect discrimination based on religion or convictions, handicap, age, sexual orientation, true or alleged belonging to a race or ethnic group is forbidden.

The Labor and Mines Inspectorate will have control and ensure respect of this prohibition notably at the following levels: conditions for access to employment, selection criteria, hiring conditions, access to professional training at all levels and types of professional orientation, dismissal conditions and remuneration.

### Family

In line with the reform of parental leave adopted in 2016, the legislator now intends to address the following three types of leave: leave for designated personal reasons, post-natal leave and family leave (draft bill n°7060).

**Leave for designated personal reasons:** the proposed amendments mainly aim at giving more free time to the father of a child. The draft bill opts, at the moment, for a possible reduction of special leave granted in cases of marriage or partnership. In the same way, the 2 days granted in cases of a move will be maintained but this special leave can only be granted once every 3 years.

**Post-natal leave:** the draft bill proposes a general lengthening of this leave to 12 weeks so as no longer to prejudice women who give birth but who do not wish or cannot breastfeed their child.

**Family leave:** the draft bill introduces a new system in which parents have more flexibility to use their leave.

### Income

The guaranteed minimum wage ("RMG") could be replaced by the social inclusion income ("Revis") aiming at encouraging return to the

labour market, and an administrative simplification of its formalities (draft bill n°7113).

### Posting

Draft bill n°6989 aims at transposing directive 2014/67/UE of 15 May 2014 regarding the execution of directive 96/71/CE concerning the posting of workers in the Labour Code. This directive intends to improve and update the conditions applicable to the posting of employees within the European Union. The draft bill especially provides for:

- a reinforcement of controls for posting companies by adding fines and administrative sanctions;
- joint liability of the originator and the direct subcontractor in all activity sectors if the salaries of posted workers are not paid.

### Immigration

Draft bill n° 6992 aims at transposing two directives (n° 2014/36/EU and 2014/66/UE). It plans for facilitated entry and residence conditions for **third country nationals** in the context of:

- seasonal employment;
- temporary intragroup transfer under Luxembourg law.

The draft bill contains other specific provisions among which is the creation of a residence permit for "*investors*".

*\* To be detailed in following newsletters*

For more information, please contact:

## The Employment and Social Security Team

Michel Molitor, *Managing Partner*

[michel.molitor@molitorlegal.lu](mailto:michel.molitor@molitorlegal.lu)

Paulo Lopes Da Silva, *Partner*

[paulo.dasilva@molitorlegal.lu](mailto:paulo.dasilva@molitorlegal.lu)

François Cautaeys, *Partner*

[francois.cautaeys@molitorlegal.lu](mailto:francois.cautaeys@molitorlegal.lu)

Virginie Liebermann, *Senior Associate*

[virginie.liebermann@molitorlegal.lu](mailto:virginie.liebermann@molitorlegal.lu)

Stéphane Bohr, *Senior Associate*

[stephane.bohr@molitorlegal.lu](mailto:stephane.bohr@molitorlegal.lu)

Alexanne Bouvignies, *Associate*

[alexanne.bouvignies@molitorlegal.lu](mailto:alexanne.bouvignies@molitorlegal.lu)

Anke Geppert-Luciani, *Associate*

[anke.geppert-luciani@molitorlegal.lu](mailto:anke.geppert-luciani@molitorlegal.lu)

Stéphane Decker, *Associate*

[stephane.decker@molitorlegal.lu](mailto:stephane.decker@molitorlegal.lu)

Sara Borges, *Junior Associate*

[sara.borges@molitorlegal.lu](mailto:sara.borges@molitorlegal.lu)

Sarah Lamm, *Junior Associate*

[sarah.lamm@molitorlegal.lu](mailto:sarah.lamm@molitorlegal.lu)