

Employment and Social Security News from Luxembourg

MOLITOR



WHAT TO EXPECT IN 2016?

2015 ended on a positive note in terms of unemployment: the number of employment seekers declined by 3.5%¹ over a one-year horizon, fixing the Luxembourg unemployment rate at 6.7%, whereas the European unemployment rate is 10.5%.² It also gave rise to major reforms in the employment and pensions fields, most of them entering into force on 1st January 2016. This newsletter will provide you with a quick overview of the latest changes in employment and social security.

MAJOR REFORMS ADOPTED IN 2015

- **The law of 23 July 2015 adopting the “social dialogue reform”:** this extensively modifies the staff representatives system. It only applies from 1st January 2016 to new staff representatives whereas those already in place will remain unaffected until the upcoming elections in 2018. The key aspects of this reform are:
 - **Structural changes:** employees’ thresholds for electing staff representatives remain the same but staff representatives should now be looked for in every undertaking and not in every establishment. Central and divisional delegations, young workers delegations and joint committees are abolished.
 - **Reinforced and expanded missions:** strengthened and they will be able to seek assistance from experts. They will receive more hours of training, and restrictions on their movements, methods of communication and freedom of organisation have been relaxed. The safety delegate will also be in charge of health.
 - **Redesigned proceedings:** the principle of protection against dismissal remains the same. However, the proceedings have been completely redesigned granting certain options to both the employer and the staff delegate, i.e.:
 - (i) **Dismissal in spite of the protection:** the staff delegate can request the Court to cancel the dismissal and order a reintegration. Or, alternatively, he can request the Court to order a judicial cancellation of the employment contract and sentence the employer to pay damages.

¹Communication from the Statec (22.12.2015)

²<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=fr&pcode=teilm020&plugin=1>
rate for November 2015

(ii) **Termination for gross misconduct:** if the staff delegate is suspended by the Employer for a limited period of time (“*mise à pied*”), he must still be paid for the three months following the suspension. During this period, the staff delegate can ask the Court to maintain the remuneration after this 3-month period until the Court’s final decision on the gross misconduct and the dismissal. Whatever the final decision of the Court, the remuneration paid by the employer during the 3-month period is retained by the staff delegate. If the staff delegate does not use this option, he can ask the Court to order a judicial cancellation of the employment contract and sentence the employer to pay damages.

The employer will have one month after the notification of the suspension to ask the Court to examine the dismissal. If the Employer fails to do so, the staff delegate can then request the continuation of his contract and the cancellation of the suspension.

- **A greater dialogue:** the law provides a new mediation system where there is conflict between staff representative and employer.
- **The law of 23 July 2015 modifying the Labour and Social Security codes relating to professional reclassification.**

This law reforms both the internal and external reclassification system.

- **For internal reclassification,** the joint Committee (“*Commission Mixte*”) and the Social Security’s physician at the workplace (“*Medecin du travail*”) will be in charge of the request. The employee’s health status will be evaluated on a monthly basis. Protection against dismissal will start from the filing of the request with the Joint Committee. In every undertaking with at least 25 employees, the employees will benefit from a new preferential right of reemployment. The law also reinforces the sanctions against any employer who refuses to apply the internal reclassification decision.

- **For external reclassification,** the law creates a protective status in order to avoid an employee losing reclassification rights in the event of dismissal. The protection remains until the employee has recovered his full capacity to perform the tasks he used to do before the reclassification decision. During the external reclassification, the employee can be requested to do public works.

- **The law of 7 August 2015 relating to the new functions of the Social Security’s medical control.**

The role of the Social Security’s medical control has been reinforced in order to make it a bona fide medical expert.

Employers’ remuneration obligations have been modified during the incapacity / illness period:

If the CNS refuses to recognise the employee’s incapacity the employer must stop paying the employee’s remuneration.

In the meantime, the employee can request the Court to analyze his current incapacity:

- if the Court recognizes the incapacity, the employee has the right to the whole remuneration during the entire period;
- the period of protection against dismissal is therefore linked to the potential lawsuit of the employee. The employee has 40 days after the notification of the refusal decision to submit a claim to the Court. If the employee does not lodge a claim within such a timeframe, the employer could terminate the employment contract before the current 26-week period.

This reform took effect on 1st September 2015.

FINANCIAL SECTOR

- **The law of 23 July 2015 on the financial sector** implementing the Capital Requirements Directive (2013/36/EU) of 12 June 2013, applicable since 3 August 2015.

The law contains a new chapter 4bis on governance measures and remuneration policies for CRR firms.

The existing rules are strengthened: e.g. the distinction between fixed and variable remuneration have been clarified, qualitative and quantitative criteria must be followed to determine the firm's risk profile and what can be allocated for bonuses.

New requirements have also been put in place: e.g. a bonus cap - i.e. the variable remuneration cannot exceed 100% of the fixed part. This maximal ratio can be extended to 200% in certain circumstances.

STOCK OPTIONS

- **Circular 104/02bis of 28 December 2015 on the taxation of stock option plans of the Luxembourg tax Administration ("Administration des Contributions Directes")**. This supplements Circular n°104/2 of 20 December 2012 which determines the taxation of stock option plans allocated to employees and shareholders of capital companies.

Circular 104/02bis contains a rather straightforward new rule for employers, i.e. the stock-option plans and the list of the awarded employees have to be provided to the competent tax bureau (RTS) two months before the implementation of the plan.

Circular 104/02bis takes effect immediately and also applies to stock option plans that were put in place before 1st January 2016 but not yet allocated to employees.

UNEMPLOYMENT

- **The Law of 18 December 2015 on the continuation of the employment measures**

The current measures regarding vocational rehabilitation training ("*stage de reinsertion professionnelle*") for job seekers aged over 30 years old has been replaced by two new tools:

- professional training ("*stage de professionalisation*");
- a rehabilitation job contract ("*contrat de reinsertion-emploi*") dedicated in particular to job seekers aged over 45, employees in external reclassification, etc.

ALLOWANCES

- **Pensions upgrading**

According to the law of 21 December 2012 that reformed the pension system, pensions are adjusted with regard to the readjustment factor given by the General Inspection of the Social Security since 1st January 2016. This leads to an increase of 0.5%.

- **Extension of the expensive life's allowance ("Allocation de vie chère") in 2016.**

LEGISLATIVE PROCESS - TO BE EXPECTED IN 2016

FAMILY

- **Bill n°6832 of 3 July 2015** reforming the family allowance scheme.
- **Draft Bill of 16 December 2015** reforming parental leave has been adopted by the Government's Committee ("Conseil du Gouvernement").

ELDERLY WORKERS

- **Bill n°6678 of 3 April 2014** reforming the Labour Code and providing specific measures for aging policies.
- **Bill n°6844 of 3 August 2015 modifying Article L. 521-14 (5) and Title VIII of Book V of the Labour Code** abolishing the solidarity early retirement regime and adapting the other early retirement regimes.

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