EMPLOYMENT LAW OVERVIEW
BELGIUM 2021-2022
Van Olmen & Wynant / Proud Member of L&E GLOBAL
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I. GENERAL OVERVIEW

1. INTRODUCTION

Belgium has fairly extensive protective labour laws, as enacted by Parliament. Moreover, collective bargaining between the so-called 'social partners', i.e. the employers’ organisations and the trade unions, plays a very important role in the shaping of the rules of labour law. Case law, in particular that of the Supreme Court and the Constitutional Court, can have considerable influence on the application of labour and employment law in practice. In Belgium, labour courts deal with disputes in relation to employment relationships. Enforcement of labour law provisions may also be initiated by other authorities, including the labour inspectorate or tax and social security authorities. The Social Inspectorate also provides information to employers and workers, gives advice, arbitrates and verifies whether labour law and the various collective labour agreements are complied with.

2. KEY POINTS

• Collective bargaining agreements are entered into on national or industry level between the trade unions and employers’ organisations or on company level between the trade unions and an individual employer. They include provisions with regard to wages and working conditions.
• Belgian labour law is characterised by stringent language regulations. All labour documents and labour-related communications with the employees must be conducted in either Dutch, French or German, depending on the location of the employer’s operating unit. The sanction is the nullity (with the exception of the Brussels and German regions where the sanction is the replacement of the document).
• As a rule, termination of an employment contract is not subject to any prior administrative or court approval in Belgium. The calculation of notice periods is based on the seniority of the employee. Moreover, all employees have the right to ask for the concrete reasons which have led to dismissal.
• Well-being and anti-discrimination have an increased importance in Belgian labour relations. For example, the way psychosocial risks are dealt with on the work floor was adapted to a great extent in 2014.
• The Belgian labour market is characterised by a high insider-outsider effect (especially for migrant workers, older workers and people with disabilities) and low professional mobility because of high minimum wages and high levels of protection offered by labour law provisions and the social security system.

3. LEGAL FRAMEWORK

Employment law in Belgium is mainly based upon the following sources:

• the Constitution;
• EU Regulations and Directives;
• different national Acts, in particular the Act of 3 July 1978 on employment contracts;
• Decrees of the Regions and Communities;
• Royal and Ministerial (executive) decrees;
• collective bargaining agreements, i.e. agreements on national, sectorial or company level between one or more trade unions, on the one hand, and one or more employers’ organisations or one or more employers, on the other hand, on a wide range of collective labour issues;
• employment contracts;
• work rules ('arbeidsreglement / règlement de travail'), i.e. a mandatory document including a set of rules that are proper to the employer and the employees of his/her undertaking;
• custom.

In principle, case law precedents have no legally binding force. Yet, in practice, decisions of the
highest courts, i.e. the Supreme Court (‘Hof van Cassatie / Cour de Cassation’) and the Constitutional Court, have strong persuasive authority, especially when confirmed repeatedly. Also, judgements of international courts like the Court of Justice of the European Union and the European Court of Human Rights, can have an important impact.

4. NEW DEVELOPMENTS

The absence of a real government with a majority in the parliament (since the end of 2018) has resulted in the fact that less major or important acts in the field of employment law were introduced. Many developments were consequences of earlier legislation or decisions which were taken (or voted) before the end of 2018. An important exception is the temporary rules regarding the COVID-19 pandemic in 2020.

In order to cope with the virus, a minority government was given special legislative powers to enact temporary legislation, this included the flexibilisation of temporary unemployment schemes, specific health and safety obligations, mandatory teleworking, the introduction of specified parental leave, the postponement of the social elections, etc. Since at the time of publication, most of these COVID-19 measures were only temporary (and the majority are no longer applicable), thus we will focus on permanent developments.

In October 2020 a new (majority) government was formed and so it is likely that a number of consequential new measures will be introduced as from 2021. The government agreement mentions, amongst others:

- the importance of the involvement of the social partners;
- evaluation and simplification of the reintegration procedure in case of long-term incapacity to work;
- evaluation of the different leave systems (especially for parents);
- flexibilisation of working time;
- a new legal framework for telework;
- the importance of the fight against discrimination (reform of the system of mystery shopping);
- equal pay initiatives.

In March 2018, the legislator installed a system whereby an employee who has a company car as part of his salary package (which he may also use privately), can exchange that car for a monetary mobility allowance (also called the “cash for cars system”), which corresponds to the financial advantage of the car and which is taxed in the same favourable way.

However, in early 2020, the Constitutional Court annulled this legislation. In order to give the (relatively low number of) employers and employees who have made use of the mobility allowance time to find another solution, the Court maintains the effects of the annulled law, pending, where appropriate, the entry into force of the new legal provisions and/or until 31 December 2020, at the latest. That said, employers and employees can still make use of the ‘mobility budget’ system that was introduced in 2019 and which has the support of the social partners. When an employer decides to introduce the mobility budget in his company, employees can exchange their company car or their right to a company car, for a mobility budget. Employees are free to spend this budget in 3 pillars, taking into account the spending possibilities offered by the employer. The first pillar is an eco-friendly car; the second pillar contains durable means of transportations (e.g. bikes or public transport) or housing costs, e.g. to adapt the house of the employee to make it suitable for telework, or costs in order to live closer to the workplace (e.g. renting an apartment). The third pillar is a monetary allowance, but the allowance of this residuary pillar is taxed less favourably than the options under the first two pillars.

Further, an Act of 9 May 2018, has implemented the EU ‘Single Permit’ Directive 2009/52, which obliges the Member States to use a single application procedure to establish the issuance of a single permit to non-EU nationals for residence and work. As the procedure of the single permit, which became applicable in 2019, was rather slow, the government introduced some minor changes in 2020 to speed up the process. Meanwhile, the new government wants to further simplify the procedure.

Next, an act of 4 February 2020 introduced several new protected criteria in the gender discrimination act of 2007. This legislative amendment equates
a direct distinction based on fatherhood, breastfeeding, adoption, medically assisted reproduction or gender characteristics with a direct distinction on the basis of gender.

Further, the Act of 18 July 2018, created a tax threshold of 6340 euro per year, under which employees can have an additional income from side jobs in the gig economy (through digital platforms), from work for non-commercial associations and from citizen to citizen work (small non-professional jobs for other citizens). For this additional income, there are no income taxes or social security contributions required. However, the Constitutional Court invalidated this system in the beginning of 2020, as it deemed it discriminatory compared to normal employees who cannot enjoy the favourable fiscal treatment. The Court has upheld the consequences of the system until the end of 2020. The new government wants to introduce a new system before the end of 2020.

Finally, the Act of 12 June 2020, has implemented the revision of the Posting of Workers Directive, which introduces some new information obligations for users of posted temporary agency workers and seconded employees.
II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

A. EEA NATIONALS

European treaties provide for the free movement of persons within the European Economic Area (European Union and Iceland, Norway and Lichtenstein - EEA). This means that employees who are citizens of one EEA Member State are, in principle, free to work in another Member State without a work permit.

B. NON-EEA NATIONALS

In principle, every non-EEA national working in Belgium must be in possession of a work permit, although some categories of workers are exempt from this requirement (e.g. students or spoused of EEA nationals). In 2019, Belgium introduced the single permit, which combines the work permit and the residence permit into one single procedure. The single permit has to be applied for in Belgium by the employer or an agent, and the employer must obtain prior authorisation to employ the foreign worker. The necessary documents have to be sent to the competent department of the Region where the worker is posted (where he will carry out his work).

The access to the single permit procedure is restricted to certain categories of workers, which are enshrined in the regional regulations. Most important for the majority of employers, are the categories of highly skilled workers and managerial employees. This means that the employees have to fulfil certain conditions of higher education degrees and higher wages or they have to take up certain leading functions within the company. As said before, the specific conditions to be fulfilled and the necessary documents which have to be submitted are laid down in legislation of the Regions, but in general the following documents will be necessary for posting non-EEA workers:

- copy of the passport of the worker
- copy of the degree(s) of the worker
- recent criminal records of the worker
- recent medical certificate of the worker
- employment contract between the posting company and the worker
- proof of health insurance coverage
- proof of the payment of the administrative fees
- power of attorney for the agent of the foreign employer

These documents have to be submitted together with the regional application form (signed by the employer and the employee). These application forms will only be in Dutch or French. Submitting English documents is allowed, but documents in other languages should be translated by an official translator.

The regional department of work will first check whether the application is complete. The department will notify the employer within 10-15 days if the application is admissible. If not, the employer has 15 days to submit the missing information or documents. If the application is complete, the department of work will send the application to the Federal Foreigners Office. Then the Department of work and the Foreigners Office have a maximum of 4 months (after the decision of admissibility) to decide upon, respectively, the permission to work and the permission to stay in the Belgian territory. If both decisions are positive, the Foreigners Office will notify the employer and the employee and it will send the necessary visa to the diplomatic post or to the municipality where the employee is staying. If the Foreigners Office’s decision is negative, an appeal is possible before the foreigners’ Litigation Council (administrative court). If the decision of the department of work is negative, an appeal is possible before the competent regional minister of work. An ultimate appeal in both cases is possible before the Council of State.
Employing a foreign employee on the Belgian territory, when he does not have a single permit is a serious crime, for which the employer can be punished with a penal fine of 4,800 to 48,000 euro, an administrative fine of 2,400 to 24,000 euro or imprisonment of 6 months to 3 years.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

A foreign employer does not need to work through a local entity in order to hire employees in Belgium. However, there are a couple of registrations and formalities to be fulfilled by the foreign entity, including registration at the National Social Security Office (NSSO), registration at the Tax collector’s office, conclusion of an industrial injuries insurance, and appoint an authorised officer to keep the required employment documents and receive official correspondence from the NSSO. In general, foreign employers join a Belgian pay roll agency, which can handle most of these requirements on behalf of the employer and will act as spokesperson with regard to the social security and tax authorities.

3. LIMITATIONS ON BACKGROUND CHECKS

Extensive background checks on employees are not common in Belgium. They should be limited to the strict necessity of assessing the applicant’s professional skills relevant to the job offered. The most common background checks relate to education, experience (past employment records), criminal records for certain occupations (e.g. in the security sector), confirmation that the applicant has the appropriate permission to work in Belgium, health and medical checks (which are required by law for roles involving safety, vigilance jobs that come in contact with food, or the driving of motorised vehicles, cranes or hoists); and more and more commonly, social media checks, despite the potential that such searches can come into conflict with the right to privacy of the applicant.

However, a lot will depend on the public status of the information.

Nothing prevents an employer from checking publicly available information on social media. If the access to this information is restricted, the information becomes of a certain private nature. If background checks are in conflict with the privacy rules of the GDPR, heavy administrative fines and other sanctions could be imposed on the employer. According to the Medical Tests Act, Biological, medical tests or the gathering of information, which have the objective to obtain information on the state of health or information on the genetic inheritance of an applicant, are only allowed if they are directly linked to the specific needs of the offered position. However, predictive genetic tests and HIV-tests are expressly prohibited, always.

The general rule, laid down in CBA no. 38, is that the information obtained can only be used if it is relevant to the job (relevance criterion). This is arguably the case for education records and experience (past employment records) checks. Applicants are sometimes asked to give persons of reference from previous jobs in order to ask them to evaluate the performance of the applicant. Employers can only contact these persons with the consent of the applicant.

It is less common to check the criminal records. In general, this is allowed for regulated professions which are listed by the Federal Public Service of Justice; which concerns, e.g. security agents, private detectives, taxi drivers, real estate agents, etc.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

Employers are forbidden by law, or restricted by CBAs, from asking certain questions of applicants or requiring them to undergo certain tests. The purpose of background checks must be to assess the applicant’s ability to perform the job. As a rule, an employer can only ask questions to an applicant that are genuinely relevant, taking into consideration the nature and working conditions of the job offered (such as diplomas, previous jobs, etc.).
The applicant has the right not to answer questions that are not relevant for the job or violate privacy and anti-discrimination laws. However, it is worth noting that applicants have an obligation to cooperate in good faith during the selection process. An applicant is not only bound to answer the employer’s relevant questions, but should also spontaneously provide the employer with all relevant information that he/she might be expected to know, and which would be important to the employer. In case an applicant provides false information, the employment contract could be terminated for serious cause based on error or deceit. However, this is only the case when the false information is relevant to the application procedure (for example, the applicant does not have the required diplomas or hides medical information that could endanger himself or a co-worker).

It is generally accepted that an employer can submit applicants to certain tests in order to obtain information about their abilities if these tests are job-relevant (for example, tests with regard to the use of computers and various software, personality and IQ tests which the former Belgian Privacy Commission recommends to be carried out under the responsibility of a psychologist or, if the applicant agrees, by a person who has been properly trained by a psychologist to administer the tests). Practical tests may not take longer than the time required to test the applicant’s competence. The results of the tests must be kept confidential and the processing of the obtained data requires the applicant’s approval.

As a general rule, the employer may not ask questions about an applicant’s credit and financial background. The general anti-discrimination Act of 10 May 2007 prohibits any discrimination based on personal wealth. Belgian law does not allow recruiters to have access to the financial information of applicants.
III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

In principle, an employment contract may be written or verbal. Yet, the following employment contracts and/or clauses (without limitation) must be in writing: (1) training clause; (2) non-competition clause; (3) employment contracts entered into for a fixed term or for a specific project; (4) part-time contracts; (5) temporary work or temporary agency work; (6) working from home; (7) arbitral clauses for high-paid employees with high management responsibilities, and (8) in certain cases, employment contracts entered into with a foreign worker.

For some of these exceptions, the contract must be signed before the employee actually starts his activity. Sanctions for failure to comply with the written contract requirement range from the nullification of the clause or contract to the creation of a legal presumption that the contract has been entered into for an indefinite term (open-ended employment contract).

Without prejudice to the above-mentioned stipulations, the law does not impose the inclusion of particular clauses in the employment contract. However, the mandatory legal and regulatory conditions, as well as the conditions within collective bargaining agreements are generally deemed to form an integral part of the employment contract, and no clause may validly depart from these conditions.

Uniquely characteristic to Belgium is that, when in written form, an employment contract must be drafted in French, Dutch or German, depending on the location of the employer’s operating unit. If the operating unit where the employee works is located in the Flemish region, the employment contract must be drafted in Dutch. If this operating unit is in the Walloon region, the employment contract must be drafted in French and if the location is in the German-speaking region, the contract must be in German. For the Brussels region, the employment contract must be either in French or Dutch depending on the language used by the employee.

Nonetheless, in the particular context of a cross-border employment contract, the European Court of Justice rendered a landmark decision stipulating that the principle of freedom of movement for employees requires the parties to be able to draft their contract not only in the official language of the Region of the workplace. Consequently, the Flemish Decree on the use of languages in social relations has, to a certain extent, been amended accordingly. This means that for employees who are employed in Flanders, next to the Dutch version, an English version of the contract can be added.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

The standard type of employment contract used in Belgium is the open-ended employment contract. With the exception of the clauses referred to above, a written contract is not required. Fixed term contracts are permitted, but a written contract must be produced by the commencement of the employment at the latest. Failing this, contracts for a fixed term are deemed to be open-ended contracts.

3. TRIAL PERIOD

Trial periods have been suppressed by the Unified Employment Status Act (except in relation to students, temporary workers and temporary agency workers).
4. NOTICE PERIOD

An important Belgian labour law reform entered into force on 1 January 2014, aligning notice periods for blue- and white-collar employees.
IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

In Belgium, the terms and conditions of employment are not only embedded in laws, but also in collective bargaining agreements (CBA’s). CBA’s are entered into either on an industry level between the unions and employer organisations or on a company level between the unions and an individual employer.

2. SALARY

In principle, minimum wages are fixed per sector of industry in collective bargaining agreements. Yet, these minimum wages may not be lower than the guaranteed average minimum monthly wage, fixed by national CBA, which amounts to 1,688.03 EUR (as of the age of 20 with 1-year seniority; figure in 2020). In addition to their monthly gross salary, employees are entitled to double holiday pay. Moreover, in most sectors of industry, the payment of an end-of-year premium is mandatory.

3. MAXIMUM WORKING WEEK

The maximum average working time is 38 hours per week and 8 hours per day. Yet, the maximum working time per week may be lower in some sectors of industry on the basis of a collective bargaining agreement. There are several statutory exceptions to this rule. In case of shift work, it is for instance possible to work up to 11 hours per day and in case of continuous work even up to 12 hours. Under certain conditions, flexible working time schedules with a weekly working time exceeding 38 hours may be introduced, provided that the quarterly or yearly average remains at 38 hours per week. Daily minimum working time is three hours, but statutory exceptions exist. Working at night, on Sundays and during public holidays is only allowed under strict legal conditions.

4. OVERTIME

Overtime work is normally prohibited, although there are several exceptions to this rule. Where overtime is authorised, overtime pay is at least 1.5 times the employee’s regular rate of pay, and twice his/her regular rate if the overtime is performed on a Sunday or a public holiday. Employees also benefit from paid rest periods in case of overtime. Rules relating to working hours and overtime pay do not apply to, amongst others, sales representatives, homeworkers and employees in a managerial role or a position of trust within the company.

5. HEALTH AND SAFETY IN THE WORKPLACE

A. EMPLOYER’S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

The basic regulation on health and safety in Belgium is the Act of 4 August 1996 on the well-being of employees during the performance of their work (‘Well-being Act’). The Well-being legislation defines goals, but not the means to achieve these goals. This grants flexibility to the employer. The legislation on health and safety also provides for the involvement of different key actors.

Every employer is obliged to establish an “Internal Service for Prevention and Protection at Work” (the ‘Internal Service’). This body assists the employer, the members of the hierarchical line and the employees with implementing the legal and
B. COMPLAINT PROCEDURES

Under Belgian law, complaint procedures mostly refer to the concept of ‘psychosocial risk’, which covers any potential psychological damage, potentially accompanied by physical damage, linked to work in its broadest sense (for example, organisation of work, working conditions, interpersonal relationships), on which the employer has influence, and which objectively involves a danger. Violence, moral or sexual harassment, stress and an excessive workload are types of psychosocial risks.

Management of psychosocial risks revolves around three key phases: prevention, internal procedure and external remedies. Risk analyses constitute the keystones of the prevention system. Two types of analysis exist: (i) a general analysis, as an integral part of the overall management of risks that the employer is obliged to implement, and (ii) a specific analysis, relating to an individual work situation that poses a danger.

The employer is only obliged to carry out a specific risk analysis when he is asked to do so by a member of the hierarchical line or when at least one third of the representatives of the employees in the Committee for Prevention and Protection at Work (CPPW) require the employer to do so.

- an employee who is deemed to be a victim of a psychosocial risk may address his/her employer, a member of the hierarchical line, a member of the CPPW or a Trade Union Delegate directly.
- he/she may also resort to the internal procedure, consisting of two phases: (1) A compulsory preliminary phase prior to any request, during which the Confidential Counselor (‘vertrouwenspersoon – personne de confiance’) or the Prevention Advisor listens to the employee and advises him/her on the available procedures; and (2) Upon the employee’s choice:
  - an informal request for psychosocial intervention, consisting of interviews, conciliations and/or intervention from an outside party within the undertaking; or
  - a formal request for psychosocial intervention, with a special feature in case of acts of violence or moral or sexual harassment.
• besides the individual risk, the application for a formal intervention may also address a collective risk. This means that the psychosocial risk affects several employees and has an impact on the work organisation.

An employee who is the victim of violence, harassment or sexual harassment at work may claim compensation for the material and moral damage suffered, which, at the choice of the victim, consists of the actual damage suffered and to be proved by the victim, or a lump sum corresponding to the gross salary for three months. The flat-rate compensation is increased to six months’ gross salary in the event of discrimination, abuse of authority or serious offences.

C. PROTECTION FROM RETALIATION

Under Belgian law, the claimant of a moral or sexual harassment, or any witness formally intervening, is protected from retaliation measures. Except for reasons unrelated to the formal request, the employer may not terminate the employment relationship or take any prejudicial measure during or after the employment relationship, with the concerned employee, during the 12 months following the application of the formal request. The employee can claim a protection indemnity of 6 months of remuneration in case of violation. The burden of proving the reasons for dismissal and the justification of the modified working conditions rests with the employer.
V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

The Belgian Constitution guarantees the equality of Belgian citizens and the equality between men and women (art. 10). It also guarantees the exercise of the rights and freedoms for all Belgian citizens without any discrimination. This also covers the rights and freedoms of the ideological and philosophical minorities (art. 11). The framework of anti-discrimination legislation is mainly composed by three Acts:

• general anti-discrimination Act of 10 May 2007 (“the General Act”);
• Act of 10 May 2007 on discrimination between men and women (“the Gender Act”);
• Act of 30 July 1981 (“the Racism Act”) on punishing certain actions characterised by racist or xenophobic motives.

The anti-discrimination legislation is not applicable in cases qualified as harassment in the workplace. In such situations, the legislation on well-being at work is applicable. Therefore, in a case where the discrimination also constitutes harassment, the victim may choose the grounds on which he/she wants to introduce the procedure. If it is based on the legislation on well-being at work, the anti-discrimination legislation will not apply. The following principles are identical in the three anti-discrimination acts:

• a prohibition on every form of discrimination, direct or indirect, on the basis of a number of grounds or criteria, called ‘protected criteria’. Depending on the level of sensitivity of the criterion, it will be less or more difficult to justify a distinction on the basis of the concerned criterion. Indirect discrimination occurs when a seemingly neutral term or criterion appears to be especially disadvantageous to certain people characterised by a given protected criterion in comparison to other people.
• there is a difference between the concept of ‘discrimination’, which is always illegal, and the concept of ‘distinction’, which can be justified and permitted if there is a legitimate ground for the justification. A distinction, which is not justified by a legitimate ground of justification, constitutes discrimination and is therefore prohibited.
• compensation for damages in case of discrimination is either a lump sum amount equal to 3 to 6 times a monthly wage, depending on the circumstances, or the actual amount of the damage suffered. The different acts also include penal sanctions.
• a protection against dismissal and any other detrimental measure related to the filing of a motivated complaint for discrimination. This protection also includes compensation for damages equal to a lump sum amount of 6 times a monthly wage or compensation for the actual damages suffered.

2. EXTENT OF PROTECTION

The protected criteria are the following:

General Act:

• Sensitive Criteria: age, sexual orientation, religious and philosophical conviction and handicap.
• General Criteria: marital status, birth, wealth, political conviction, syndical conviction, language, current or future health condition, physical or genetic characteristics and social background.

Gender Act: sex, including pregnancy, giving birth, maternity, breastfeeding, fatherhood, adoption,
medically assisted reproduction (IVF), sex change and gender identity, gender expression and gender characteristics.

**Racism Act:** nationality, a so-called race, colour of skin, social background and national or ethnic origin.

Besides the explicitly protected criteria, a victim of discrimination can also revert to the common law liability rules. In this hypothesis, a victim must prove the existence of the three constitutive elements of this liability: (i) a fault, (ii) damage and (iii) a causal link between fault and damage. The victim cannot benefit from compensation provided for in the anti-discrimination legislation at the same time. It is important to note the existence of CBA no. 95 on equal treatment, which also enlists some protected grounds, including the “past health record” (as opposed to the “future health condition” in the General Act). Unlike the three anti-discrimination acts, CBA no. 95 is not provided with a specific procedure to claim against discrimination and will therefore often only be used as an additional tool.

### 3. PROTECTIONS AGAINST DISCRIMINATION

A distinction, which should be regarded as discrimination, pursuant to the conditions set out above, could nevertheless be regarded as lawful if it is justified by one of the motives below:

#### General grounds

For direct or indirect distinction, regarding all the criteria, except age and religious or philosophical conviction:

- Measures of affirmative action, provided that certain conditions are met (for an extensive overview of the rules in this respect, see below).
- A distinction dictated by law which is in conformity with the Constitution, the law of the European Union and international law.

#### Specific Grounds (for direct distinction)

- Age: (i) legitimate purpose of the policy in the field of employment, labour market or any other comparable legitimate purpose; and (ii) the means to achieve that purpose are appropriate and necessary.
- Religious or philosophical conviction: the nature of the activities or the context in which they are being performed constitute an essential, legitimate and justifiable professional requirement, given the nature of the organisation (applicable for organisations founded on the basis of a religious or philosophical conviction).

### 4. EMPLOYER’S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

According to Belgian legislation, employers are obliged to provide all reasonable accommodations that would allow a person with a disability to have access to a job, unless such measures would entail an unreasonable burden for the employer. Since the Belgian antidiscrimination legislation is predominantly a transposition of EU legislation, the case law of the ECJ is crucial for the determination of which accommodations can be deemed reasonable or not.
5. REMEDIES

Any provisions which are inconsistent with the anti-discrimination acts or which stipulate that a contracting party renounces any rights granted by these acts are null and void. Victims of discrimination and witnesses who testified are protected against detrimental measures taken by the employer. The employee (victim of discrimination) has a choice between compensation on a lump sum basis and compensation of the actual damage suffered. In the latter case, the employee has to prove the amount of the damage suffered. The compensation on a flat rate basis is the following:

- 6 months of gross wages in all cases, except in the situations described below;
- 3 months of gross wages if it is proven that the disputed disadvantageous treatment would also have been carried through on non-discriminatory grounds;
- 650,00 EUR if the material damage can be redressed by application of the general nullity sanction;
- 1,300,00 EUR if the material damage can be redressed by application of the general nullity sanction, but (i) there is no proof that the disputed disadvantageous treatment would also have been carried through on non-discriminatory grounds or (ii) other circumstances justify a higher sum, such as the particular gravity of the moral damage suffered.

When a person presents facts before the courts, which could lead to the suspicion of discrimination, it is up to the accused to prove that there is no discrimination. Other than the above-mentioned compensations for damages, victims of discrimination can request the order of cessation of the discriminatory actions in the frame of a summary proceeding before the Labour Court.

In 2018, the legislature made it possible for the social inspection to use the investigation method of mystery shopping to combat discrimination. In practice, this means that social inspectors can pretend to be applicants with certain specific characteristics (e.g. pregnant women or persons with foreign origins) in order to see if the employers would refuse their applications on grounds protected by the discrimination legislation. Certain conditions apply. There must be a complaint or notification of a discrimination; there should be an objective indication of discrimination; the inspectors should ask for the agreement of a public prosecutor (which will also control the actions ex post); and the actions may not constitute provocation. In practice, the social inspection rarely makes use of this method.

6. OTHER REQUIREMENTS

An affirmative action is subject to the following conditions:

- the existence of a manifest inequality within the sector of industry or the company. The evidence for this inequality can be delivered by any means.
- the definition of the objective and the concrete elaboration of the positive action:
  o must aim to eliminate inequality by achieving equal opportunities
  o be clearly defined and aimed at eliminating or reducing the problems underlying inequality
- the expected duration:
  o the positive action measure must be temporary
  o it should be withdrawn when the objective pursued has been achieved
  o at the latest after a period of 3 years
- proportionality: the measures must be appropriate and necessary in relation to the objective pursued
- the guarantee that the positive action measure does not unnecessarily restrict the rights of others.

The Royal Decree of 11 February 2019 lays down the procedure which has to be followed for installing an affirmative action through a collective bargaining agreement or an accession instrument. In any case, there should be an information and consultation procedure with the workers or with the workers’ representatives. This instrument has not yet proved to be popular in practice. However, several other measures constituting affirmative actions are set out in acts and regulations in order to address specific discrimination towards women, disabled people, young employees and homosexuals.

Furthermore, a law was voted on in 2012 to reduce the salary gap between men and women. The main idea is to make the salary gap more visible and transparent in order to allow the Social Partners...
to negotiate and decrease the gap. In view of this, certain measures have been taken (for example, the drafting of an analysis report on the remuneration structure at company level and a gender test for the functions’ classification at industry level).
VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

Article 157 of the Treaty on the Functioning of the European Union introduced the principle of equal pay between male and female employees for equal work. Translated into Belgian law, CBA no. 25, rendered obligatory by Royal Decree, imposes equal pay for men and women for equal or equivalent work. The text of CBA no. 25 is to be added to the Work Rules of the company.

The Belgian legislature took additional measures in order to fight against the wage gap between men and women. These measures include both the industry level (the CBAs and function classification systems at the industry level must be gender-neutral, which is checked by the Employment Ministry) as well as the company level. In this regard, Belgium adopted an Act on reducing the gender pay gap on 22 April 2012. According to this Act, differences in pay and labour costs between men and women should be outlined in the company’s annual audit (‘social balance’). These annual audits are transmitted to the National Bank in order for it to be publicly available. Moreover, the Act stipulates that every two years, companies with over fifty employees should establish a comparative analysis of the wage structure of female and male employees. If this analysis shows that women earn less than men, the company will be required to produce an action plan. Finally, if discrimination is suspected, women can turn to their company’s mediator (see below).

2. REMEDIES

As stated above, if the publication of the social balance or the bi-annual report leads to the suspicion of pay discrimination against women, an internal mediator can be appointed by the employer (at the proposal of the works’ council or, in absence, of the Committee for Prevention and Protection at Work). The mediator will establish whether there is indeed a pay differential and, if so, he will try to find a compromise with the employer.

Next, it is also possible for women who are victims of pay discrimination to file a complaint against their employer, based on the anti-discrimination act relating to gender (see Chapter V). In this case, the Belgian Institute for Equality between Men and Women may assist alleged victims before the courts.

3. ENFORCEMENT/LITIGATION

According to Eurostat, the Belgian unadjusted gender pay gap was 6% in 2018; this is one of the lowest percentages in the EU (EU-average: 14.8%). The unadjusted gender pay gap is defined as the difference between the average gross hourly earnings of men and women, expressed as a percentage of the average gross hourly earnings of men. It is called ‘unadjusted’ as it does not take into account all of the factors that influence the gender pay gap, such as differences in education, labour market experience or type of job. However, the Belgian Institute for Equality between Men and Women stated that the gender pay gap was 8% in 2017 and when looking at the average annual wages instead of the hourly wages, the gender pay gap was around 21%.

Wage discrimination can remain hidden. For example, sometimes different job titles are systematically used for the jobs of female and male employees and other pay scales are linked to those job titles. Often people do not know exactly how much their colleagues earn. In this way, even blatant differences can go unnoticed. Therefore, discrimination cases regarding a differential remuneration based on gender are quite rare. In a judgment of 6 February 2020, the Labour Court of Appeal of Brussels dismissed a complaint of a female bank employee who claimed that her employer used parallel pay scales, as the employee failed to prove any link to gender.
4. OTHER REQUIREMENTS

Next to the obligation to publish a bi-annual report and the possibility to take positive actions, the Act of 28 July 2011 inserted a quota of at least one third of the less represented sex for all members of the Board of Directors of autonomous public undertakings, listed companies and the National Lottery, which had to be fulfilled before specific deadlines. Failure to comply with these provisions may result in sanctions: nullity of the appointment or suspension of financial benefits. Parliament’s evaluation of the impact of the law on the presence of women on boards of directors, is scheduled for the twelfth year following its entry into force, i.e. 2023.
VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

It is common practice to regulate employees’ use of Internet and social media through provisions of an Internet Policy. This policy must however, be established respecting the framework imposed by CBA No. 81 of 26 April 2002, on employees’ privacy with regard to the control of electronic communications networks.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE’S ELECTRONIC COMMUNICATIONS?

Subject to compliance with legal, regulatory and contractual provisions, employers are free to determine the conditions in which the employment contract is to be performed. (Articles 17 and 20 of the Act of 3 July 1978 on employment contracts). Nowadays, it is undisputed that this includes the conditions of use of equipment made available to employees by the employer. Employers can therefore freely regulate the use of communication instruments within their company, particularly by prohibiting private use of the communication equipment available for use by the employees, by banning the access to certain websites (including social media sites) or by blocking this access by the use of filters. In that regard, the following principles must be stressed:

- the employer can decide whether to allow access to social media through its equipment and for what purposes;
- the employer has a right of control in order to make sure the company ICT policy and instructions are observed. However, this right of control is subject to the rules of the above mentioned CBA No. 81 of 26 April 2002. The control is limited to the nature of the website visited, the frequency of the visits, the periods and time of connections, and cannot target the content of the communications or the content of the pages consulted. Employees must be informed of such control and a statement should be submitted to the Supervisory Authority;
- in any event, the right to the protection of personal data must be respected when processing such data (GDPR (General Data Protection Regulation) and Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data).

2. EMPLOYEE’S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

An employee who disparages the employer via social media can be dismissed for serious cause when the statutory requirements are met. However, as always in case of serious case, the precise circumstances and the possible aggravating or alleviating circumstances should be taken into account. Furthermore, it is advisable to adopt clear guidelines in the company with rules on who can speak on behalf of the company via social media, both for professional and personal accounts, and what types of information may be divulged. Recent case law accepts as evidence of serious grounds for dismissal, the information present on public profiles, as well as some private profiles, where the confidentiality parameters allow the access of posts to an important number of friends and / or colleagues.
VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

From 1 April 2014, all employees with more than six months of seniority have the right to be informed of the reason for their dismissal. If the employer fails to inform the employee of the reason for dismissal, the employee can require the employer to give an explanation. If no (timely) explanation is provided, the employer owes a lump-sum civil fine of two weeks of salary. The employee is entitled to dispute the reason for dismissal before the labour court.

Employees engaged under an open-ended employment contract may claim damages, ranging between 3 and 17 weeks of salary, in the labour court if their dismissal is ‘unjustified’. An ‘unjustified dismissal’ would be considered as a dismissal (i) for reasons unrelated to the employee’s capability or conduct, or to the operational requirements of the undertaking, and (2) which would never have been decided upon by a normal and reasonable employer. This is also called a ‘manifestly unreasonable’ dismissal.

If a party has committed a serious fault, the employment contract can be terminated for serious cause without the serving of a notice period or the payment of an indemnity. Examples of a serious fault are theft, violence, ...

Some employees enjoy special protection against dismissal, meaning that they may not be dismissed on some grounds (e.g. pregnant women may not be dismissed because of their pregnancy) or cannot be dismissed unless for specific reasons provided by law (e.g. employee representatives in the Works Council and Committee for Prevention and Protection at Work (CPPW)). Also, non-elected candidates may only be dismissed for serious cause with prior approval of the labour court, or for economic or technical reasons that have been recognised by the competent joint committee.

2. COLLECTIVE DISMISSALS

Where multiple redundancies qualify as a collective dismissal, the legislation on collective dismissals applies, and possibly the legislation regarding the closure of undertakings. There is a collective dismissal where, during a continued period of 60 days, a minimum number of employees are terminated for reasons which do not relate to the person of the employees. This minimum number is:

- 10 in undertakings (or a division thereof) employing more than 20 but less than 100 employees;
- 10% of the total number of employees in undertakings employing at least 100 but less than 300 employees;
- 30 in undertakings employing at least 300 employees.

There is a closure of an undertaking if:

- there is a definite stoppage of the principal activity of the undertaking (or a division thereof); and
- the number of employees is reduced beneath one fourth of the average number of employees who were employed in the undertaking during the four quarters preceding the definite stoppage of the activity.

A collective dismissal or a closure triggers the prior information and consultation obligations towards the employees (either through the Works Council or, if there is none, the Trade Union Delegation, or, failing this, the employees in person). The intention to proceed with a collective dismissal or closure must also be communicated to the competent...
administration (the director of the sub-regional unemployment office).

In principle, a collective dismissal gives rise to the payment of a special monthly compensation during a period of 4 months, in addition to any indemnity in lieu of notice. Only employees entitled to a notice period of less than 7 months are entitled to this compensation for collective dismissal. For the purpose of the payment of a special monthly compensation, a slightly different definition of collective dismissal has been adopted. Collective dismissal in this context means any dismissal for economic or technical reasons affecting, over an uninterrupted period of 60 days, at least 6 employees if the undertaking employs at least 20 and less than 60 employees, and 10% of the average number of employees employed during the previous calendar year if the undertaking employs at least 60 employees.

In case of a closure of an undertaking and if the conditions are met, the employees will be entitled to a closure indemnity equal to a fixed amount per year of seniority within the undertaking and per year exceeding the age of 45, with a maximum total of 6,492.7 € (figure in 2020). In the majority of cases, employers and trade union organisations establish a social plan granting additional compensation to the employees’ concerned and other measures with a view towards reducing the consequences of the collective dismissal (e.g. early retirement schemes). If the employer employs more than 20 employees, a re-employment unit (‘cellule pour l’emploi’ / ‘tewerkstellingscel’) aimed at the activation of the dismissed employees has to be installed in case of a collective dismissal (in this context, yet another definition of collective dismissal is applied). An employer employing 20 employees or less is only obliged to install such re-employment unit if he wishes to dismiss employees within the framework of an early retirement (system of unemployment benefits with employer top-up) at an age lower than the age that is normally applicable for early retirement within the company. The re-employment unit has to make an outplacement offer to the employees who are dismissed and who participate in the re-employment unit.

Lastly, it is important to note that sectors can have additional procedures (laid down in CBA’s) that could provide for certain information and consultation rules, etc., which, even in the case of multiple dismissals, do not fall under the European and national collective dismissal rules.

### 3. INDIVIDUAL DISMISSALS

#### A. TERMINATION OF AN OPEN-ENDED EMPLOYMENT CONTRACT THROUGH SERVING A PERIOD OF NOTICE OR PAYMENT OF AN INDEMNITY

Employment contracts are generally terminated through serving a notice period or the payment of an indemnity in lieu of notice. A combination of both, where the serving of a notice period is followed by the payment of an indemnity for the remainder of the notice period is also possible. An employer does not require any authorisation to dismiss an employee (except for the dismissal of an employee representative or a prevention advisor, see below). As part of the recent Belgian labour law reform, notice periods for blue- and white-collar employees are now aligned for employment contracts taking effect from 1 January 2014. These notice periods are fixed by law and only depend on the employee’s seniority. They are expressed in weeks.

For open-ended contracts that took effect before 1 January 2014, the notice period to be observed in case of dismissal comprises two parts which must be added up. The first part is based on the employee’s seniority acquired before 1 January 2014 and will be calculated according to transitory rules; the second part is based on the employee’s seniority as of 1 January 2014 and is calculated on the basis of the new regime. A legislative modification took place in 2018 and changed (mostly reduced) the notice period for the termination of the employment contract in the first 6 months, applying to all terminations occurring after 1 May 2018.
The table below summarises the rules with regard to the notice periods to be respected for open-ended contracts that took effect on or after 1 January 2014 (only step 2), on the one hand, and contracts that took effect before 1 January 2014 (step 1 + step 2 = step 3), on the other hand.

<table>
<thead>
<tr>
<th>Blue collar employees</th>
<th>Employment agreement &lt; 01/01/2012</th>
<th>Employment agreement ≥ 01/01/2012 ('IPA-law')</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice by employer</td>
<td>Notice by employee</td>
<td>Notice by employer</td>
</tr>
<tr>
<td>&lt;6m : 28d</td>
<td>&lt;6m : 28d</td>
<td></td>
</tr>
<tr>
<td>≥6m and &lt;5y : 35d</td>
<td>≥6m and &gt;5y: 40d</td>
<td></td>
</tr>
<tr>
<td>≥5y and &lt;10y : 42d</td>
<td>≥5y and &lt;10y: 48d</td>
<td></td>
</tr>
<tr>
<td>≥10y and &lt;15y : 56d</td>
<td>≥10y and &lt;15y: 64d</td>
<td></td>
</tr>
<tr>
<td>≥15y and &lt;20y : 84d</td>
<td>&lt;20y : 14d</td>
<td>≥15y and &lt;20y: 97d</td>
</tr>
<tr>
<td>≥20y : 112d</td>
<td>≥20y : 28d</td>
<td>≥20y : 129d</td>
</tr>
</tbody>
</table>

Or deviating notice periods included in CBA’s applicable on 31/12/2013.

<table>
<thead>
<tr>
<th>Lower white-collar employees (salary on 31/12/2013 ≤ 32.254€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice by employer</td>
</tr>
<tr>
<td>3 months per started period of 5 years seniority</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Higher white-collar employees (salary on 31/12/2013 &gt; 32.254€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 month for each started year of seniority, with a minimum of 3 months</td>
</tr>
<tr>
<td>• 4.5m if wage &lt; 64.508€</td>
</tr>
<tr>
<td>• 6m if wage ≥ 64.508€</td>
</tr>
</tbody>
</table>
**STEP 2**

Notice period based on seniority after 01/01/2014

<table>
<thead>
<tr>
<th>Seniority</th>
<th>Notice by employer</th>
<th>Notice by employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-3 months</td>
<td>1 week</td>
<td>1 week</td>
</tr>
<tr>
<td>&lt; 4 months</td>
<td>3 weeks</td>
<td>2 weeks</td>
</tr>
<tr>
<td>&lt; 5 months</td>
<td>4 weeks</td>
<td>2 weeks</td>
</tr>
<tr>
<td>&lt; 6 months</td>
<td>5 weeks</td>
<td>2 weeks</td>
</tr>
<tr>
<td>6-9 months</td>
<td>6 weeks</td>
<td>3 weeks</td>
</tr>
<tr>
<td>9-12 months</td>
<td>7 weeks</td>
<td>3 weeks</td>
</tr>
<tr>
<td>12-15 months</td>
<td>8 weeks</td>
<td>4 weeks</td>
</tr>
<tr>
<td>15-18 months</td>
<td>9 weeks</td>
<td>4 weeks</td>
</tr>
<tr>
<td>18-21 months</td>
<td>10 weeks</td>
<td>5 weeks</td>
</tr>
<tr>
<td>21-24 months</td>
<td>11 weeks</td>
<td>5 weeks</td>
</tr>
<tr>
<td>As from 2 years</td>
<td>12 weeks</td>
<td>6 weeks</td>
</tr>
<tr>
<td>3 years</td>
<td>13 weeks</td>
<td>6 weeks</td>
</tr>
<tr>
<td>4 years</td>
<td>15 weeks</td>
<td>7 weeks</td>
</tr>
<tr>
<td>5 years</td>
<td>18 weeks</td>
<td>9 weeks</td>
</tr>
<tr>
<td>6 years</td>
<td>21 weeks</td>
<td>10 weeks</td>
</tr>
<tr>
<td>7 years</td>
<td>24 weeks</td>
<td>12 weeks</td>
</tr>
<tr>
<td>8 years</td>
<td>27 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>9 years</td>
<td>30 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>10 years</td>
<td>33 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>11 years</td>
<td>36 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>12 years</td>
<td>39 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>13 years</td>
<td>42 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>14 years</td>
<td>45 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>15 years</td>
<td>48 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>16 years</td>
<td>51 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>17 years</td>
<td>54 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>18 years</td>
<td>57 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>19 years</td>
<td>60 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>20 years</td>
<td>62 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>21 years</td>
<td>63 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>22 years</td>
<td>64 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>23 years</td>
<td>65 weeks</td>
<td>13 weeks</td>
</tr>
</tbody>
</table>

**STEP 3**

Total

The total notice period (NP) = NP step 1 + NP step 2

*But in case of notice by employee:*
- If step 1 resulted in the max. of 3, 4.5 or 6 months → no step 2
- step 1 + step 2 are limited to 13 weeks
The Unified Employment Status Act also provides for transitory measures for blue-collar employees of certain labour-intensive and competitive industries (e.g. construction, clothing, diamonds industry, etc.) and temporary and mobile workplaces. To be valid, notice must be given in writing and specify the starting date and the length of the notice period. If the contract is terminated by the employer, notice must be served by registered mail or by bailiff. Moreover, notice must be given in the correct language. If the employment contract is terminated with the payment of an indemnity in lieu of notice, no specific formalities need to be complied with.

B. TERMINATION FOR SERIOUS CAUSE

Either of the parties may terminate the employment contract for serious cause, irrespective of whether this employment contract had been entered into for a fixed term or for an indefinite term. ‘Serious cause’ is defined as a fault so serious that it renders any continuation of the working relationship immediately and definitively impossible. Where an employment contract is terminated for serious cause, no notice period needs to be observed nor does any compensation in lieu of notice have to be paid. In case of a termination for serious cause, the employer needs to strictly observe the following formalities: he must dismiss the employee within three working days as of the day he became sufficiently aware of the serious facts and he must inform the employee, by registered mail, of the grounds of his/her dismissal at the same time or within another 3-working-day-period.

C. PROTECTED PERSONS STATUS

Some employees enjoy special protection against dismissal based on a specific circumstance, which they find themselves in. Therefore, it is explicitly forbidden for employers to dismiss someone because of this specific circumstance (e.g. pregnant employee, employees who have filed a complaint for harassment, employees on maternity leave, ...) during the protection period. In case of violation, special protection indemnities (equal to 3 or 6 months of salary) will be due in addition to the notice period or indemnity in lieu of notice. Employee representatives in the Works Council and the CPPW and also non-elected candidates may only be dismissed for serious cause with the prior approval of a labour court, or for economic or technical reasons that have been recognised beforehand by the competent joint committee. In each of the aforementioned cases, the law prescribes a specific and complex procedure. Violation of these rules of protection will oblige the employer to pay compensation to the dismissed employee, in a fixed and variable amount depending on the employee’s seniority within the company (from 2 up to 8 years of wages).

Also, for the dismissal of a member of the Trade Union Delegation or the dismissal of the prevention advisor, a specific procedure needs to be complied with. In case of violation, additional compensation will be due on top of the indemnity in lieu of notice (1 year of salary for the trade union delegate and 2 or 3 years of salary for the prevention advisor). Moreover, CBA’s entered into on industry level may include specific procedures to be complied with in case of dismissal and additional compensation in case of violation (e.g. banking sector).

D. IS SEVERANCE PAY REQUIRED?

Severance payment (indemnity in lieu of notice): an employer can choose to either terminate an employment contract with the granting of a notice period or to terminate the employment contract immediately with the payment of an indemnity in lieu of notice. A combination of both, where the serving of a notice period is followed by the payment of an indemnity for the remainder of the notice period is also possible. The indemnity in lieu of notice is calculated on the basis of the annual salary of the employee at the time of termination, including statutory and contractual fringe benefits. If the employment contract is terminated with the payment of an indemnity in lieu of notice, no formalities need to be complied with; this is contrary to a termination through serving a notice period.
4. SEPARATION AGREEMENTS

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

It is common practice (especially for higher-up employees) that the parties to an employment contract would conclude a separation agreement stipulating, i.e. the amount of the indemnity in lieu and that the employee waives any other claim he may have.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

It is customary to include: the indemnities that will be paid by the employer to the employee, upon signing the agreement; a confidentiality clause; a clause in which the employee waives the right to make any claim he may have; and a non-compete clause, among others.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

No.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

No.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

The employee can dispute:

• the length of the notice period served (although these kinds of claims have become exceptional as the new Unified Employment Status Act includes fixed notice periods now, contrary to what was the case before).
• the salary package used as a calculation base for the indemnity in lieu of notice.
• the fact that no (timely) motivation of the dismissal was given by the employer, although the employee asked for the reasons for his/her dismissal (indemnity of 2 weeks of salary).
• the reason for dismissal. If the dismissal is deemed unjustified, meaning that it was “manifestly unreasonable”, the employer owes damages for an amount ranging from 3 to 17 weeks of remuneration.
• the dismissal for serious cause. The employee can invoke that the 3 day-term to dismiss or to inform the employee on the grounds of the dismissal has been violated, or that the grounds for dismissal do not constitute a serious cause. If the claim is successful, the employee will be entitled to an indemnity in lieu of notice equal to the salary for the notice period that should have been served.
• the fact that the employer terminated the employment contract of an employee who enjoys special protection against dismissal, in violation of any rule with regard to the employee’s protected person’s status. If the court rules in favor of the employee, a special protection indemnity ranging from 3 or 6 months (in general) up to even 8 years of salary (maximum amount in case of a dismissal of a member of the Works Council or CPPW) will be due by the employer.
• that his/her dismissal was discriminatory. In that case, the employer risks to be sentenced to a supplementary indemnity of 6 months of salary.

The employee should bring any claim before the labour court within a maximum of one year as of the termination of his/her employment contract. If not, the claim will be deemed barred by the statute of limitation.

A. VOID DISMISSAL

Termination with a notice period: As indicated, any notice must be given in writing and in the correct language, stating when the notice period starts and its duration. Moreover, the employer must serve notice by means of a registered letter or via a bailiff. Failing this, the notice may be deemed null and void. In that case, the employment contract will have been terminated without serving notice so that the employer will be obliged to pay an indemnity in lieu of notice.
Termination for serious cause: In case of a termination for serious cause, the employment agreement should be terminated within three working days after the party who terminates the contract acquired enough knowledge with respect to the serious cause. The notification of the grounds for dismissal should also be presented to the other party no later than 3 working days after the termination and by registered letter or via a bailiff. If these strict deadlines and formalities are not complied with, the dismissal for serious cause will be null and void, and an indemnity in lieu of notice will be due to the employee.

6. WHISTLEBLOWER LAWS

The former Belgian Commission for the Protection of Privacy (‘Privacy Commission’) (now replaced by the Supervisory Authority) describes ‘whistleblowing’ as follows: ‘whistleblowing systems are mechanisms that enable individuals to report conduct of a member of their organisation, which in their opinion is contrary to a law or a regulation or to the basic rules established by their organisation’. The implementation of such a system implies to take into account the legitimate interests of all the parties involved (the organisation, its staff, the whistleblower, the person(s) incriminated, third parties, etc.).

There is no specific Belgian legislation governing whistleblowing. However, the relevant case law is a good indicator of the admitted practices. Although the number of cases is very limited in Belgium, there is a clear willingness to insert whistleblowing mechanisms in companies, in order to reach an appropriate balance between, on the one hand, the risk of late alerts and their influence on the working atmosphere and, on other hand, the need for transparency within companies.

In addition, since it can involve the processing of personal data, whistleblowing is subject to the provisions of the GDPR and the Act of 30 July 2018 on the protection of privacy in relation to the processing of personal data. In this regard, the former Privacy Commission adopted a recommendation related to the compatibility of the whistleblowing systems with the data protection legislation (Recommendation n° 1/2006 of 29 November 2006). This recommendation includes the implementation of a whistleblowing policy, in order to install an adequate mentoring programme to prevent unjustified charges, process justified reports, describe the consequences of justified and unjustified alerts, and avoid a ‘whistleblowing culture’. A report must be collected and processed by a person specifically appointed within the organisation (this person must be bound to professional confidentiality, protected from pressure, work with autonomy and discretion, etc.). Also, protection must be provided for the whistleblower (against dismissal, discrimination, and harassment) and for the person against whom allegations have been made. The latter must be informed immediately and has the right to access, rectify, or delete the personal data concerning him/her.

Further, the EU approved the Whistleblowing Protection Directive 2019/1937 on 23 October 2019. The Directive is applicable to companies with 50 or more employees and provides protection to a wide scope of persons working in the private or public sector, who have acquired information on breaches in a work-related context, irrespective of whether they are, factually, employees, self-employed, freelance or civil servants. The Directive demands the introduction of an internal reporting procedure to deal with whistleblowing in order to prevent direct leaks to the public or press. In this way, companies would be obliged to confirm the receipt of a complaint within seven days and will have to give feedback to the reporter within three months. Also, external reporting processes to the authorities have to be made clear and easily accessible (by the Member States).

Finally, reporting publicly (to, e.g., the media or online) is addressed as a possibility when the reporters have reasonable grounds to believe that there is an imminent or manifest danger to the public interest or a risk of irreversible damage. Interestingly enough, the Directive offers a protection for whistleblowers against any form of retaliation, including dismissal, negative evaluation, suspension, demotion, discrimination, etc. The main deadline for the implementation of the Directive is 17 December 2021. However, for companies of 50 to 249 employees, the implementation deadline is two years later. At the moment of publication, Belgium has not yet implemented the Directive.
IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

As a general rule, article 6 of the Employment Contracts Act stipulates that all clauses which are not compatible with the content of the said act, are null and void, insofar as such clauses limit the rights or aggravate the duties of the employee. For some types of clauses, a legal framework is foreseen in the Employment Contracts Act. One example is Article 17 of the Employment Contracts Act, which provides that during the contract and after its termination, the employee must abstain from i) divulging manufacturing secrets, trade secrets and secrets pertaining to any matter of a personal or confidential nature, the knowledge of which the employee may have acquired in the exercise of his/her professional activity, and ii) performing or cooperating with any act of unfair competition. These two obligations result from the duty of good faith, which governs any contract under the rules of Belgian civil law. Other types of clauses (e.g. place of residence clause for fire fighters) are not legally defined but are nevertheless legal under certain conditions.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES / NON-SOLICITATION OF CUSTOMERS

As a consequence of the principle of good faith, the employee is prohibited from competing with his/her employer during the execution of the employment contract. A non-compete clause, which recalls this prohibition, may validly be inserted into the employment contract without any specific formality or condition. For a non-compete clause to apply after termination of the employment contract, strict conditions have to be complied with. The clause must be in writing and is valid if the employee’s annual gross remuneration exceeds 71,523 EUR. There are further restrictions on its applicability if the annual gross remuneration does not exceed 71,523 EUR, as a CBA authorising it must be entered into at an industry or company level and the annual gross remuneration must in any case exceed 35,761 EUR (these amounts, applicable for 2020, are updated annually).

In general, a non-compete clause is valid if it is limited to activities similar to those presently performed by the employee and to a well-defined geographical area limited to the national territory, if the new employer is a competitor, and provided that the clause does not exceed 12 months. Except for sales representatives, the clause must provide for the payment of an indemnity to the employee equal to at least 50 % of the salary corresponding to the duration of the non-compete provision. The clause is not applicable if (i) the employer terminates the contract during the first six months of employment, (ii) if after the first six months of employment, the employer terminates the employment contract with a notice period or an indemnity in lieu of notice, or (iii) the employee puts an end to the agreement on the basis of a serious breach committed by the employer. Provided that some specific requirements are met, various deviations from the conditions of the general non-compete clause can be carried through (i.e., the ‘special non-compete clause’). This clause may only be used for certain categories of enterprises and for white-collar employees (except sales representatives) with specific functions.

The enterprises concerned have to comply with one of the following conditions:
they must have an international activity or considerable economic, technical or financial interests in the international markets; or

they must have their own research department.

In such enterprises, the special non-compete clause may only be applied to those employees whose work allows them to directly or indirectly acquire a practice or knowledge peculiar to the enterprise, which, if used by another entity, could be detrimental. If these conditions are met, it is possible to deviate from the general non-competition clause insofar as it restricts the geographical application of the non-compete to the national territory and is limited to a maximum period of 12 months. The special non-compete clause may also be applicable when the employment contract is terminated by the employer with a notice period or an indemnity in lieu of notice after the first six months of employment have elapsed, or if the contract is terminated during the first six months of employment, whatever the cause of the termination may be.

B. NON-SOLICITATION OF EMPLOYEES

It is not uncommon to foresee a ‘non-solicitation of employees clause’ in employment contracts or separation agreements that entails a restriction not to approach employees of the (former) employer. In principle however, former employees are allowed to approach employees of the former employer, as long as such actions cannot be qualified as unfair competition (i.e. with the sole intent to harm the former employer).

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

It is customary to foresee the possibility of damage claims in case the employee would violate certain restrictive covenants. The enforcement possibilities for certain restrictive covenants are however defined by law. In case an employee violates the non-compete clause for example, the damage claim cannot be higher than the repayment of the indemnity awarded to the employee (see supra IX. 2. (i)) on top of indemnity equal to the same amount.

4. USE AND LIMITATIONS OF GARDEN LEAVE

Garden leave is not allowed under Belgian employment law, because it entails that the employee would not be allowed to perform his/her job, as this condition is deemed an essential element of every Belgian employment contract. A garden leave where the employee is exempt from performing his/her duties during the notice period, is only possible with the employee’s explicit consent. The unilateral decision of an employer to send an employee on garden leave, would grant the employee the right to claim damages, or the contract could even be regarded as being terminated by the employer (constructive dismissal).
X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES’ RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

Under Belgian law, the transfer of an undertaking (or of a division thereof) is governed by Collective Bargaining Agreement n° 32bis of 7 June 1985. If a business or a division of a business, forming an economic entity, is transferred to a new employer, so that there is a ‘going concern’ of the activity of the business (division) after the transfer, there is a transfer of undertaking as referred to in CBA 32bis. In the event of a transfer:

- all employees working in the transferred business division are automatically transferred to the transferee. In principle, the employees may not oppose the transfer, unless the transfer would entail serious modifications to an essential element of the employment contract (e.g. salary, place of work, duties). In the absence of such modifications, a refusal on the part of the employee could be considered as an implicit resignation. Alternatively, the employer (the transferee) could also dismiss the employee concerned for serious cause.
- the rights and obligations of the transferor arising from the employment contracts existing on the date of transfer are automatically transferred to the transferee.
- it is prohibited for both the transferor and the transferee to dismiss employees on the grounds of the transfer of undertaking, besides dismissals for just cause and dismissals based on technical, economic or organisational reasons. Any employee illegally dismissed by the transferor will have the possibility to introduce a court procedure against both the transferor and the transferee in order to obtain the payment of a termination indemnity and/or damages (the illegality of the dismissal does not have, as a consequence, that the dismissal would be considered null and void). Case law generally sets the amount of the damages between 500€ and 5.000€.
- a joint and several liability of transferor and transferee vis-à-vis the transferred employees and the National Social Security Office, is in place for the debts existing on the date of the transfer.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

Under Belgian law, the transferor and the transferee have an obligation to inform their respective employee representative bodies (i.e. the Works Council, or in the absence thereof, the Trade Union Delegation, or in the absence thereof the CPPW) about a proposed transfer (which includes a merger, concentration, take-over, closure or other important structural change negotiated by the company). The employees must be informed individually about the proposed transfer in case (i) there is only a Committee for Prevention and Protection at Work, or (ii) there are no employee representative bodies within the undertaking.

The transferor and the transferee must also consult the employee representative bodies in particular with regard to the repercussions on the employment prospects for the personnel, the work organisation and the employment policy in general. The information and consultation process should take place before a decision on the planned transfer is made. Failure to comply with this obligation would render the employer liable to criminal sanctions (a fine of 300€ to 3.000€, multiplied by the number of employees involved, up to a maximum of 300.000€), in accordance with Article 196 of the Penal Social Code.
XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES’ AND EMPLOYERS’ ASSOCIATIONS

The most important employers’ organisation in Belgium is the VBO/FEB (‘Verbond van Belgische Ondernemingen/Fédération des Entreprises de Belgique’). It is organised on a national scale and its members are the various employers’ organisations that are each active in a specific industry or sector. In addition, several regional employer organisations exist. By application of the constitutional freedom of association, employees have the right of decision whether or not to join a trade union. Any employer applying pressure to join or not to join a trade union will be liable to criminal sanctions. Closed shops and non-union shops are outlawed in Belgium.

In Belgium, there are no restrictions regarding the creation of a trade union. However, only a few unions, considered as representative, are granted by law a specific role and specific rights. The three main representative unions are:

- the Belgian General Federation of Labour (FGTB / ABVV);
- the Confederation of Christian Unions (CSC / ACV);
- the Central Organisation of Liberal Trade Unions of Belgium (CGSLB / ACLVB).

In certain fields, the Belgian National Confederation of Executives and Managerial Staff (CNC / NCK) is also considered a representative union. As their names suggest, the above-mentioned large unions federate several smaller trade union organisations, traditionally competent in a given geographical area and within a set branch of activities.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Traditionally, unions choose not to organise themselves under a form that would entail a separate legal personality. As a result, they only exist as legal entities to perform specific acts that are assigned to them by law. Trade unions, but not their members, essentially enjoy immunity from responsibility. Representative unions have a place on the National Labour Council and the joint committees (committees at industry level where collective bargaining agreements are negotiated).

In addition, they have the power to: 1) conclude collective bargaining agreements with one or more employers or representative employers’ organisations; 2) put forward candidates for elections to the Works Council and the Committee for Prevention and Protection at Work; 3) ensure that the correct procedure is observed for the election of representatives; 4) depending on the circumstances, form a Trade Union Delegation within the company; 5) propose lay judges to sit on the labour courts and labour courts of appeal; 6) represent their members before labour courts; and 7) in some circumstances, engage in legal action on their own behalf in order to defend the interests of their members.

3. TYPES OF REPRESENTATION

The representative bodies that must be set up within the Belgian undertakings if the conditions are met, include the Works Council, the Committee for Prevention and Protection at Work (CPPW) and
the Trade Union Delegation. Works Councils must be set up in undertakings employing at least 100 employees on average. A Committee for Prevention and Protection at Work (CPPW) must be set up in undertakings normally employing at least 50 employees on average. The notion “undertaking” is to be understood as a “technical operating unit”, i.e. an entity having a certain social and economic autonomy, whereby the social criteria are considered as more important than the economic criteria. An undertaking does not necessarily correspond to the legal entity (incorporated company).

A Trade Union Delegation must be established at the request of one or more representative trade unions in undertakings employing a minimum number of employees determined by CBA. The employer is obliged to accept this request. In the event that there is no Works Council, the tasks of the Works Council are transferred to the Committee for Prevention and Protection at Work and/or the Trade Union Delegation.

A. NUMBER OF REPRESENTATIVES

The number of employee representatives within the Works Council and the CPPW depends on the number of employees employed within the undertaking at a certain time within the election procedure (see section 3 below) and ranges from 4 (for undertakings employing less than 101 employees) up to 22 employee representatives (for undertakings employing more than 8,000 employees). If the undertaking employs at least 15 managerial employees, the number of mandates within the Works Council (not the CPPW) will be increased with one or two. The employee delegation within the Works Council and the CPPW also consists of substitute members, equal to the number of effective members. The number of union representatives within the Trade Union Delegation is fixed by CBA entered into on industry level.

B. APPOINTMENT OF REPRESENTATIVES

Both the Works Council and the CPPW are composed of an employer’s delegation and an employees’ delegation. The employer’s delegation consists of one or more acting or substitute members designated by management and chaired by the head of the undertaking. The employee representatives within the Works Council and the CPPW are union members, nominated by their union and elected within the frame of social elections, which must be organised by the employer every four years.

2020 is a social elections year (the most recent social elections took place in May 2016). The election process starts 150 days prior to the election date, so that Belgian employers had to start with the preparations of the elections in December 2019. The social elections were supposed to be held in May 2020, but they were postponed to November 2020 due to Covid-19. The members of the Trade Union Delegation are employees of the undertaking who are either appointed by the unions or elected by the other unionised employees of the undertaking (although not in the frame of social elections). Detailed regulations governing its establishment are laid down in CBAs concluded at industry and undertaking level.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

Works Council: a Works Council is a representative body at company level designed to foster information, consultation and collaboration between employer and employees. The Works Council has competence in four areas:

- the right to information;
- advisory competence;
- decisive competence; and
- organisational competence.

In terms of content, they are competent at the technical, economic and social level. For instance, the employer is obliged to provide the Works Council with economic and financial information concerning the undertaking at regular intervals. The Works Council also has a right to be informed (and in some cases consulted) regarding the employment structure of the undertaking, any planned changes and their consequences on the workforce, as well as employment matters such as work organisation, collective lay-offs or closure, early retirement issues, time-credit, etc.
Committee for Prevention and Protection at Work (CPPW): the CPPW plays an advisory role in health and safety matters and is also closely involved in the recruitment of prevention officers.

Trade Union Delegation: the Trade Union Delegation is a body representing union members within the undertaking whose competencies include matters relating to (i) industrial relations (supervision of the observing of employment legislation) and (ii) negotiations for concluding Collective Bargaining Agreements (CBAs) without affecting existing CBAs or other agreements concluded at other levels. They also have a crucial role to play in conflict resolution and mediation between parties.

5. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

In addition to the representative bodies mentioned above, Directive 2009/38/EC aims to establish a European Works Council (EWC) or a procedure for informing and consulting employees in Community-scale undertakings and Community-scale groups of undertakings. This Directive has replaced Directive 94/45/EC, which was implemented by CBA no. 62. Directive 2009/38/EC was implemented by CBA no. 101 and by CBA no. 62 quinquies.

A “Community-scale undertaking” means an undertaking with at least 1,000 employees in the Member States and at least 150 employees in at least two different Member States. A Community-scale group is a group of undertakings meeting the following conditions:

- it has at least 1,000 employees in the Member States;
- it consists of at least two undertakings belonging to the group, in different Member States, and
- at least one group undertaking has at least 150 employees in one Member State, and at least one other group undertaking has at least 150 employees in another Member State.

The procedure for setting up a European Works Council is to be initiated either on the initiative of the central management itself, or at the written request of the central management by at least 100 employees, or their representatives, employed in at least two establishments, or two undertakings, situated in at least two different Member States. Next, a special negotiation group will try to set up a European Works Council, but they can also decide to stop the negotiations. The special negotiation group will determine the main tasks and competences of the EWC.
XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

Unless stated otherwise by an international agreement, employees working in Belgium for an employer established in Belgium, or an operational office in Belgium, will in principle be subject to the Belgian social security scheme for salaried persons. It is impossible to deviate from the Belgian social security scheme by special agreement, which would be null and void by law.

The Belgian social security system for employees covers:

- old-age and survivor’s pensions;
- unemployment benefits;
- insurance for accidents at work;
- insurance for occupational diseases;
- family allowances;
- sickness and disability benefits; and
- annual vacation (only for blue-collar employees).

A. CONTRIBUTIONS

In the scheme for employees, both employees and employers have to pay contributions to the National Social Security Office (RSZ - ONSS). The employer’s contributions amount to approximately 27% for white-collar employees and around 33% for blue-collar employees (percentages valid for 2020). The employee’s contributions are fixed at 13.07% and are deducted from his/her gross salary.

2. HEALTHCARE AND INSURANCES

On top of the protective Belgian healthcare system, employees benefit on a regular basis from complementary insurances covering the costs of hospitalisation, medical treatments or ambulatory fees (those costs are sometimes even covered for the employee’s family members).

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Employees are entitled to remuneration for 10 official public holidays. If a public holiday falls on a Sunday or on a day on which the employee does not usually work, the employer must grant a replacement day.

The number of days of annual leave to which an employee is entitled for a given year, is determined in proportion to the number of days worked (and deemed to have worked e.g. where the employee was on maternity leave or sick leave) during the preceding calendar year, referred to as the ‘holiday reference year’. Generally, for a full holiday reference year, employees have the right to between 20 and 24 days of annual leave, depending on whether their working regime includes five or six working days per week.

As from April 2012, employees who are starting their careers or who are restarting their activities after a long time off, are entitled to additional holidays after an introductory period of three months, so that they have the possibility to benefit from four weeks of holiday over one year. The employee will receive holiday pay that is equal to his/her regular salary. The holiday pay will be financed through a deduction from the double holiday pay of the next year.

B. MATERNITY AND PATERNITY LEAVE

Women may take up to 15 weeks of maternity leave (with a possible extension of 2 weeks in case of multiple births). At least nine weeks must be taken after the birth and at least one week must be taken before the expected date of birth. Following the birth of a child, the father has a right to ten days of paternity leave, seven of which will be paid for
by the social security system at 82 percent of the employee’s ceiled salary. This leave must be taken up within four months after the birth. Women receive maternity benefits whilst on maternity leave. This benefit, paid by the social security system, is equal to 82 percent of the employee’s salary for the first 30 days and then drops to 75 percent of her salary (which will be capped). During this period, the employer is not obliged to make any payments to the employee. This leave must be taken within four months after the birth.

C. SICKNESS AND DISABILITY LEAVE

It is important to note that there is no difference between sickness leave and disability leave in Belgium. In case of illness or private accident, the employee continues to receive his/her normal salary during a period of thirty calendar days. This is the so-called ‘guaranteed salary’. To be entitled to the guaranteed salary, the employee needs to comply with some legal obligations, which includes, amongst other things, immediately informing his/her employer of his/her incapacity to work and presenting a medical certificate. Moreover, the employer may call upon an independent medical officer (the ‘controlling officer’) to verify an employee’s incapacity for work.

During the first year of incapacity following the period covered by the guaranteed salary, the employee will receive sickness benefits from the Health Insurance Fund (‘ziekenfonds - mutuelle’). As of the second year, the employee will be entitled to invalidity benefits if the Medical Board for Invalidity of the National Sickness and Invalidity Insurance has confirmed the invalidity (the level of incapacity for work must be at least 66%). These invalidity benefits amount to 65% (for an employee with at least one dependent), 55% (for a single employee) or 40% (for a cohabiting employee without dependents) of the employee’s gross capped remuneration. The Health Insurance Fund also reimburses numerous medical and pharmaceutical costs.

In 2017 a new procedure came into force to reintegrate employees who have been absent from the workforce during a long period, because of illness (now included in the Code of the Well-being at Work). In short, the employee or the employer can request a reintegration procedure. In this procedure, the (medical) prevention advisor will investigate the rest capabilities of the employee, in order to see whether he/she can (gradually) return to the workplace, and if the workplace, or the work itself, should be adapted. The employer should investigate the recommendations of the prevention advisor, in order to evaluate if the necessary changes to the work or the workplace are possible or not. However, until now in most cases the prevention advisor has concluded that the employees concerned were not able to be reintegrated, which often resulted in the end of the employment contract due to medical force majeure.

D. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

Employees have the right to be absent from work without loss of salary on the occasion of:

• certain family events (marriage, funeral, childbirth, adoption, holy communion, non-confessional youth celebration, etc.)
• for meeting civil duties (jury service, participation in the electoral process, etc.)
• appearance before a court.

The reasons for such short leave periods, as well as the duration of the allowed time-off (the day of the event, up to a couple of days) for each absence are provided for in the Royal Decree of 1963. Yet, more favourable provisions may be determined at an industry or company level.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

The statutory retirement age in Belgium is officially 65. However, by the Act of 10 August 2015, the Federal government has decided at the beginning of June 2015, that this age will increase to 66 by 2025 and to 67 by 2030. Nevertheless, there are exceptions to this minimum retirement age (i) for labour-intensive professions and (ii) in case the employee can prove a minimum number of years worked (63 years of age and 42 years worked by 2019). The employee receives a pension from the Belgian social security system. Apart from these social security benefits (the “first pillar”), many employees are entitled to an additional pension
insurance (the “second pillar”) paid by the employer as part of their salary package. Occasionally, the second pillar pension is organised at sectoral level. Some people also add to these two pillars, a private pension insurance scheme (the “third pillar”).

5. ANY OTHER REQUIRED OR TYPICALLY PROVIDED BENEFITS

The following benefits are often granted to Belgian employees:

• collective bonus (CBA n°90), warrants, stock options, profit sharing
• company car, company bike or mobility budget
• computer, tablet, smartphone, Internet connection
• travel and subsistence costs
• family allowances and other kinds of allowances complementary to fringe benefits
• meal vouchers
• eco-vouchers.

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