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EMPLOYMENT LAW OVERVIEW
LUXEMBOURG 2019-2020

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I. GENERAL OVERVIEW

1. INTRODUCTION

In Luxembourg, the labour market is characterised by the number of commuters from France, Belgium and Germany, which represents almost 50% of the labour force. In Luxembourg, the social peace is of utmost importance and usually secured by regular dialogue between social partners. Due to the recent codification of employment laws and with recent employment laws voted during the past few years, the Luxembourg labour code is increasing in volume. For example, we can highlight:

- the simplification act dated 23rd July 2016 reforming the staff representatives in Luxembourg.
- the new law of 8th April 2018 which made numerous amendments to the Labour Code, in particular to better protect employees' rights and improve the effectiveness of employment measures.
- the law of 10th August 2018 relating to the benefits employees are entitled to in case of incapacity to work.
- the entry into force of the GDPR and the impact on employee monitoring.

2. KEY POINTS

- The Labour Code came into effect on 1st September 2006 and regroups all existing employment rules.
- The termination of contracts is strictly regulated by the Labour Code with specified notice periods depending of the length of service with the same employer.
- The right of workers to strike is implicitly guaranteed by the Constitution under the freedom of association but is only possible under specific circumstances. A peace obligation exists in the frame of a collective labour agreement. Moreover, in order to be legal, every strike or lockout movement must first be referred to the National Office of Conciliation (ONC).
- The main institutions are the Labour Ministry, the National Employment Administration (Administration pour le développement de l'emploi) which is notably in charge of assisting unemployed people and the Labour and Mines Inspectorate (Inspection du Travail et des Mines), in charge of controlling standards of health and safety at work, compliance with employment legislation and supervising working conditions.

3. LEGAL FRAMEWORK

Luxembourg employment law is based on EU regulations, the Labour Code, case law, collective bargaining agreements, Grand-Ducal regulations and some employers' practices. The Labour Code came into effect on 1st September 2006 and is constantly updated. It combines all employment rules into one document that citizens can easily access. The Labour Code is divided into six parts:

- individual and collective employment relations,
- regulation of employment and working conditions,
- protection, safety and health of employees,
- staff representation,
- employment and unemployment benefits, and
- administration and other structures.

With the entry into force on 1st January 2009 of the law of 13th May 2008 on the Single Statute for employees of the private sector, the Labour Code is applicable to all employees within the private sector.

Under Luxembourg law, the relationship between employer and employee is in principle an individual one. The employment contract defines the terms

and conditions existing in the employer-employee relationship. The employment contract can add advantageous conditions to the employee but cannot establish exceptions to the minimum statutory requirements that are disadvantageous to the employee.

An employment contract is defined by case law as an agreement, whereby a person is providing his/her work to another person, under the subordination of whom he/she are placed in return for remuneration. A contract of employment is thus composed by a provision of work, remuneration and a position of subordination.

Collective bargaining agreements may be concluded with trade unions and modify some law rules and terms and conditions of employment. A collective bargaining agreement is defined by the Labour Code as a contract covering reciprocal relationships and general conditions of employment concluded, on one hand, between one or more representative trade union organisations, and a single company or group of companies in the same line of business, or all the enterprises in the same trade or industry, on the other.

A Grand-Ducal regulation may declare such collective agreements generally binding for all employees and employers between which they have been concluded. Grand-Ducal regulations also complete employment laws.

The individual disputes between employers and employees about contracts of employment are resolved before the Labour Court in first instance (Tribunal du travail). The Court of Appeal (Cour d'appel) has the jurisdiction for judgments on appeal. The case may eventually be referred to the Supreme Court (Cour de cassation), but only on questions of law.

Legilux (www.legilux.lu) is the legal portal of the Government of the Grand Duchy of Luxembourg including all published legislation.

4. NEW DEVELOPMENTS

The new law of 8th April 2018 aims to make numerous amendments to the Labour Code in order to improve the protection of the rights of employees, the effectiveness of employment measures and in particular:

- Give a more precise definition of the elements to be taken into account when determining the salary in the event of sick leave,
- Increase the weekly working time for students from 10 to 15 hours outside of school holidays,
- Adapt the labour legislation concerning the resignation of the employee for gross misconduct of the employer,
- Amend the legal provisions applicable in case a settlement agreement is signed between the employer and the employee during a judicial procedure,
- Amend the measures concerning re-employment assistance.

The new law of 10th August 2018 relating to the benefits employees are entitled to in case of incapacity to work, which was published on 21st August 2018, provides in particular that, starting 1st January 2019, employees will have the right to claim their benefits for 78 weeks of sickness, compared to 52 weeks until the end of 2018, during a reference period of 104 weeks. The employment contract will thus automatically expire by law after 78 weeks of sickness (compared to 52 weeks previously).

II. PRE-EMPLOYMENT CONSIDERATIONS

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

No. In Luxembourg, an employer has to pay social security contributions when hiring employees. In order to be able to pay these contributions, the employer has to file an operating declaration with the Joint Social Security Center (CCSS) in order to register as an employer. This may also be done by a foreign entity. The employer has to submit an operating declaration within 8 days of the date of entry of the first employee.

2. LIMITATIONS ON BACKGROUND CHECKS

According to article 8-5 (2) of the modified law of 29th March 2013 on the organisation of the criminal record, the employer is allowed to ask the candidate to submit a criminal record no 3. This request has to be submitted in writing and has to be expressly motivated by the specific needs of the proposed position. Furthermore, this request must already be indicated in the job offer. The employer can only retain the criminal record no 3 for one month after the conclusion of the employment agreement. If the candidate is not hired, the criminal record no3 has to be destroyed immediately. During the employment relationship, the employer can only ask employees to hand over a recent copy of their criminal record (certificate no 3) if specific legal provisions provide for this possibility. However, the employer can request a recent copy of a criminal record (certificate no 3) if the employee receives a new assignment, justifying a new evaluation of the

employee's good repute, in relation to the specific needs of the position, and the criminal record cannot be retained, after its issuance, beyond a period of two months.

3. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

In Luxembourg, before recruiting an employee and drawing up an employment contract, employers must first register the vacant position to the National Employment Administration (Agence pour le développement de l'emploi - ADEM). The employer is also required to inform the Luxembourg Social Security Services (Centre Commun de la Sécurité Sociale – Section affiliation) within 8 days of the recruitment and register the employee.

During the recruitment process, the employer may use different techniques such as a job interview or a selection test. The employer can also request an excerpt from the criminal record, which can be kept by the employer for a maximum period of 2 months.

Former employees dismissed for economic reasons, employees having tendered their notice at the end of their maternity leave or their adoption leave with the aim to fully concentrate on their children's education and former beneficiaries of employment initiation contracts (contrat d'initiation à l'emploi) who are unemployed again, must be informed of any suitable position that becomes vacant or is created within the company.

III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

The employment contract is individual and must exist in writing from the beginning of the employment period. There must be two copies of the signed contract: one for the employer and one for the employee.

- the identity of both parties,
- the date on which the contract takes effect,
- the place of employment or, in the absence of a fixed or main place of employment, the contract must state that the employee will be employed in various locations or abroad and must specify the head office or the employer's residence,
- the nature of employment and a description of the employee's tasks at the time of hiring, without prejudice to any subsequent change,
- the employee's normal working hours,
- the normal working schedule,
- the basic salary, any additional payment and the frequency of payment,
- the number of paid holidays or the method for determining the entitlement and the conditions of paid holidays,
- the length of the notice period in the event of termination of the employment contract,
- the length of the trial period,
- reference to additional clauses agreed by the parties,
- where applicable, reference to collective bargaining agreements governing the employee's working conditions and,
- where applicable, the existence and the description of a supplementary pension scheme, the optional or compulsory nature of this scheme, the rights to related benefits as well as the existence of any personal contributions.

Only the employee has the right to establish, by any means, the existence of the contract in the event no written employment contract exists. Employment contracts concluded orally are automatically deemed permanent employment contracts.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

The standard contract in Luxembourg is the open-ended contract. A fixed-term contract is prohibited for permanent work. It is permitted only in order to carry out a specific type of work over a defined period of time, such as: temporary replacement; seasonal work; performance of work in several specified sectors of activity or occasional and time-defined work; contracts concluded between an employer and a student or a pupil; or urgent and necessary works to prevent a negative impact on the business.

The Labour Code provides for a list of cases in which recourse to fixed-term contracts is authorised. If a fixed-term contract is signed outside the cases provided for by law, i.e. in order to carry out a type of work, which is not a precise and unsustainable type of work, the contract will automatically be reclassified as a permanent contract. By principle, fixed-term contracts cannot exceed a duration of 24 months including the possibility of two renewals, and the contract must include additional criteria: the activity; a reference to the term of the employment contract; and, where appropriate, a renewal clause. If a compulsory element is not included, the fixed-term contract will be deemed an indefinite employment contract.

3. TRIAL PERIOD

An agreed trial period may be written and signed before the employee starts working in both indefinite and fixed-term contracts. The general principle is that the trial period cannot be less than two weeks and not more than six months, depending on the qualifications of the employee. A contract can contain a trial period of 12 months, if the salary reaches a certain amount (fixed by a grand-ducal regulation). A trial period that does not exceed one month must be specified in weeks, whereas trial periods of over one month must be specified in months. Neither party to the employment contract may extend or renew the trial period. If employment is suspended for sick leave, the trial period is automatically extended accordingly, although by no more than one month.

4. NOTICE PERIOD

Employment cannot be terminated by any party during the first two weeks of the trial period. In the event of dismissal during the trial period, the employer is not subject to the same notice periods as after the end of the trial period. The duration of the notice period depends on the length of the initially stipulated trial period. No reasons of dismissal are required. If the trial period is expressed in weeks, the period of notice shall be as many days as the trial period is weeks. If the trial period is expressed in months, the notice to be given is four days per month, with a minimum of 15 days and a maximum of one month (see below).

DURATION OF THE TRIAL PERIOD	NOTICE PERIOD
2 weeks	Impossible, except gross misconduct (faute grave)
3 weeks	3 days
4 weeks	4 days
1 month	15 days
2 months	15 days
3 months	15 days
4 months	16 days
5 months	20 days
6 months	24 days
7 months	28 days
8 to 12 months	1 month

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

The Labour Code provides for minimum working standards. Both parties to the employment contract may only deviate from the Labour Code by being more favourable for the employee. Senior executives (cadres supérieurs) are excluded from the application of certain rules (for instance, the rules on working time). The Labour Code defines senior executives as employees enjoying a higher level of remuneration in comparison to other employees falling under the scope of a collective bargaining agreement and effective and real management powers, a well-defined authority, independence and freedom regarding working hours.

2. SALARY

Parties are free to negotiate the employee's basic salary, but they must respect the minimum social wage, which applies to all employees in Luxembourg. The applicable minimum wage varies according to the professional qualification of the employee and according to an index. Luxembourg's minimum wage increased by 1.1% at the start of 2019. The minimum wage of €2,071.07, however, rises by 20% for those classed as 'skilled workers' and decreases by 20–25% for those classed as adolescent workers. This means a skilled worker aged 18 or older must be paid 20% more than the standard minimum wage, totaling €2,485.29. Workers aged 17 or 18 face a 20% deduction from the standard rate and must be paid at least €1,656.86, while those aged 15 to 17 face a 25% deduction and a minimum wage of €1,553.30. Even workers who earn above the minimum wage are affected by the national indexation of salaries, a barometer on which employers must adjust the wages they pay

in line with the cost of living in Luxembourg. If the consumer price index rises or falls by 2.5% during a period, salaries in Luxembourg must be adjusted by this percentage.

Qualified workers include employees who:

- have a recognised official certificate at least equivalent to a vocational skills certificate (certificat d'aptitude technique et professionnelle - CATP) or a vocational diploma (diplôme d'aptitude professionnelle - DAP) from a Luxembourg technical secondary school;
- or have a manual skills certificate (certificat de capacité manuelle - CCM) or a certificate of vocational ability (certificat de capacité professionnelle - CCP) and proof of at least two years' experience in the trade in question;
- or have a vocational initiation certificate from a technical secondary school (certificat d'initiation technique et professionnelle - CITP) and proof of at least 5 years' practical experience in the trade or profession;
- or, if they do not have a qualification, provide proof of at least 10 years' practical professional experience (if a certificate exists for the required qualification);
- or provide proof of at least 6 years' practical experience in a trade requiring a certain technical capacity and for which an official certificate is not issued.

Salaries are paid on a monthly basis, generally at the end of the month. Even if it is not required for the employer, it is common to provide the employee with benefits in addition to the basic salary such as luncheon vouchers or additional health insurance. These benefits could depend on the employee's position.

3. MAXIMUM WORKING WEEK

Standard working time is limited to 8 hours per day and 40 hours per week, excluding higher-ranking employees (senior executives). A working day may never exceed 10 working hours and a working week may never exceed 48 hours. A rest period of 11 hours every 24 hours and of 44 hours for every 7-day period must be respected. In addition, collective bargaining agreements may provide for other (longer) breaks.

The reform introduced by the law of 23rd December 2016 on the organisation of working time introduced new rules on working time flexibility. It reformed, among other things, the existing mechanism of using a reference period, which allows the distribution of working hours over several days without them becoming overtime hours. Flexibility can be achieved either through (i) a POT (Plan d'Organisation du Travail) or (ii) a flexible work schedule (Règlement d'horaire mobile).

For the establishment of the POT, a ministerial agreement is no longer necessary. There are two possibilities for setting it up: (i) With a collective agreement, the social partners may fix a reference period of up to 12 months. Any compensation through additional holidays is also negotiated by the social partners. (ii) In the absence of a collective agreement, companies may opt for a reference period of up to 4 months after prior consultation with the staff delegation or, failing that, with the employees. The ITM needs to be informed of the decision. In return, employees are entitled to compensation through additional days off.

The POT includes the working times of the employees concerned and the following elements: (i) the beginning and the end of the reference period; (ii) the normal working time to enable the employees to know the organisation of the work; (iii) the closing days of the public holidays and individual or collective leave; (iv) and the weekly period of 44 hours of consecutive rest or the compensatory leave. If a flexible work schedule is introduced, the distribution of working time is scheduled by the employee. It allows the individual working time and hours to be arranged on a day-to-day basis in compliance with both the legal working time limits (10 hours per day and 48 hours

per week) and the rules to be pre-established within the framework of the mobile working time regulations.

4. OVERTIME

In Luxembourg, overtime is strictly regulated by law and is only permitted with a prior authorisation from or a notification to the Minister of Employment (Ministre du Travail). Where permitted, overtime is limited to two working hours per day and within the limit of 48 hours per week. For any overtime worked, employees are entitled to compensation in salary or free time. Sunday work is generally prohibited, but there are several exceptions. Employees who work on a Sunday are entitled to a special compensatory rest of either half a day or an entire day and a 70% premium on the normal rate of pay. Night work must be compensated with a salary supplement of 15 %, according to the law, where a collective bargaining agreement applies and in the HORECA sector.

5. HEALTH AND SAFETY IN THE WORKPLACE

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

The employer must ensure the safety and health of employees in all aspects related to his/her work. He/she must care for both the physical and mental health of his/her employees, stress or burnout must also be taken into account.

The Labour Code places an obligation on the employer to evaluate and identify the risks that exist in his/her company and then an obligation to avoid the risks, otherwise, if this is not possible, he/she must tackle them by taking into account advancements and choosing the least dangerous options.

In order to comply with their obligations, employers must take technical measures related to the layout of the premises and the choice of installations, machines, tools and work equipment, which must obviously comply with legal standards.

Employers must also put in place the necessary first aid, fire-fighting and evacuation measures for employees, which must be adapted to the size and type of business. They must designate a sufficient number of employees to be trained in first aid by the employer.

Employers must also provide the required personal protective equipment to employees (helmets, glasses, gloves, safety shoes, etc.) where needed.

Finally, mention should be made of legislation relating to the exposure of employees to chemical, physical or biological agents that present a health risk. The Labour Code provides the legal basis, but the standards are detailed in many grand ducal regulations.

In addition to technical measures, employers must ensure that employees receive the necessary information about safety and health risks. Oral information may be sufficient, however, when the question arises whether the employee has received the necessary information the burden of proof lies with the employer.

Often, the information is numerous and complex. In this case, employee training is required. Employees must receive sufficient, appropriate training specifically geared to their job or function. Training is the responsibility of the employer and must take place during working hours.

Pregnant women, women who have recently given birth and women who are breastfeeding, as well as young people and adolescents still enjoy special protection in terms of safety at work, particularly with regard to the nature of the work performed and the duration of work.

B. PROTECTION FROM RETALIATION

The employer must guarantee the health and safety of employees in every aspect of their work and they must be affiliated with an authorised Health and Safety Service.

The employer is obligated to take all appropriate measures necessary for the protection of health and safety, including activities aimed at preventing professional risks, appropriate information and adequate health and safety training. Some examples

of necessary protection and prevention measures are first aid, firefighting and the evacuation of employees in the event of serious and immediate danger. In addition, the employer has to adapt these measures to changing circumstances to improve the existing situation.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

The law of 28th November 2006 transposes into Luxembourg law two European directives (Directive 2000/43CE and Directive 2000/78CE). This law has amended the Luxembourg Labour Code and introduced a new title (V) relating to equal treatment in employment and occupation into book II of the Code. The law of 13th May 2008 modified the rules concerning gender equality by transposing the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

2. EXTENT OF PROTECTION

The discrimination grounds prohibited are religion, conviction or belief, disability, age, sexual orientation, real or assumed belonging to an ethnic group. Criminal law also prohibits discrimination if it is based on gender, sexual orientation, health issues or disability, nationality, real or assumed ethnic background or origin, political or philosophical belief, and union membership. A fine, prison sentence or both penalties can be imposed in case of discrimination. The employee can bring a claim at any time during the work contract. The discrimination can be direct (being treated less advantageously) or indirect (a neutral practice having a negative effect only on the persons discriminated against). The Labour and Mines Inspectorate is in charge of enforcing compliance with the principle of non-discrimination.

3. PROTECTIONS AGAINST HARASSMENT

In order to implement into national law, the framework agreement concluded on 26th April 2007 by social partners at the European level, the Luxembourg unions signed an agreement on moral harassment and violence in the workplace on 25th June 2009. This agreement has been declared as a general obligation by a grand-ducal regulation dated 15th December 2009 and thus applies to every employer in the country.

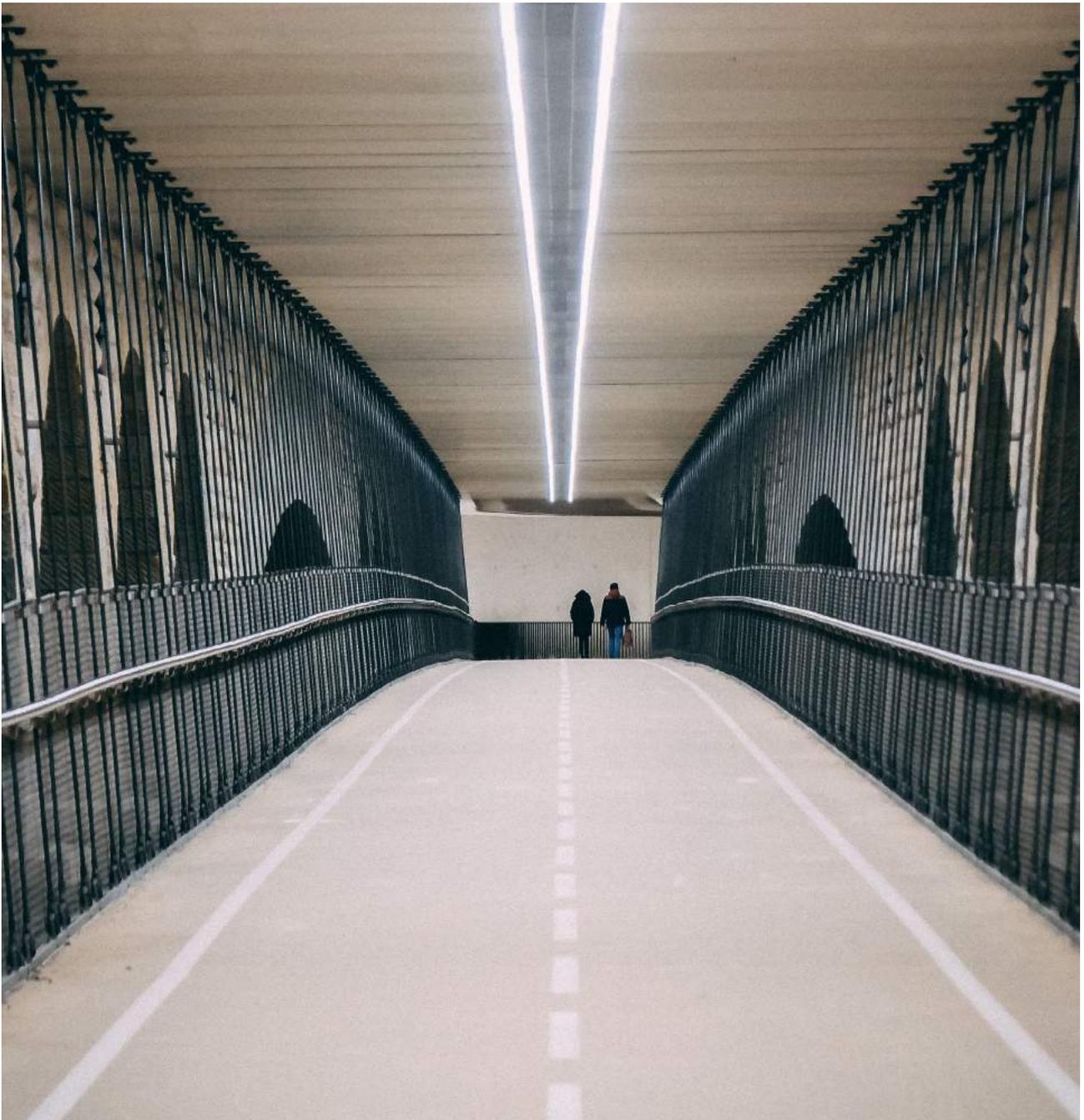
4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

Employers with more than 25 employees must allocate a certain percentage of positions to disabled workers. To help employers comply with this requirement, the State may take over some of the costs incurred with regard to the payment of wages, vocational training, adaptation of workstations and physical access to work, transport and the provision of adequate professional equipment.

5. REMEDIES

Employers must indicate that they will not tolerate any form of moral harassment or violence in the business. They must also remind managers and other employees that each of them is responsible

for ensuring that such acts do not occur in the workplace. Even if employers are not the perpetrator of the act of harassment or violence at work, they could be held liable for such an act as they are responsible for the prevention and penalisation of such behaviour. If a prohibited act occurs, the employer must conduct an internal evaluation, in particular on the efficiency of established preventive measures. The employer must implement a management procedure to address any issues with harassment and work-related violence.



VI. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

Employers must inform the employees within which limits they tolerate the use of computer tools as well as the devices put in place for personal purposes and the monitoring procedures of these tools. Without being exhaustive, the employer may give the employees the following information:

- periods and duration of use;
- the reasons and objectives of the monitoring, the nature of the data collected, scope and circumstances of the monitoring, the recipients of the data;
- the implementation of tools blocking websites;
- the mode of collection and use of surveillance data;
- who is authorised to use the surveillance data and under what circumstances;
- the retention period of surveillance data;
- decisions that may be made by the employer during a check;
- the role of employee representatives in the implementation of the supervisory policy;
- the terms of employee's right to access their data.

In the interest of transparency and loyalty in employment relations, the National Commission recommends that the employer adopts a charter, internal regulations or any other document relating to the use of computer tools and control procedures. The employer can restrict the employee's use of Internet and social media during working hours (ideally by including such a provision in the employment contract or an internal regulation). The employer may take disciplinary action should an employee not comply with the internal regulation. Consequently, for security reasons, the employer is authorised to impose browser configurations

and to prohibit or restrict access to certain sites, the downloading of certain files or the connection to discussion forums ("chat"). This is strongly recommended by the National Commission for Data Protection (CNPD).

Surveillance of the employee's use of Internet is strictly regulated by law. Even if the employer completely prohibits the personal use of computer tools, he does not dispose of the right to control the employee's use of the computer tools in a continuous way, except where legal exceptions are applicable. Employers cannot individually supervise an employee without having carried out an overall and non- personal supervision. They are however, allowed to make a list of website addresses viewed in a global manner over a certain period, without identifying the employees individually. If the employer has any indication of an internet use that is detrimental to the company by identifying an unusually long period of internet consultation or mentioning of addresses of suspicious websites, he may subsequently take the appropriate control measures and pass, in a second stage, this on to an individualised supervision.

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

Usually, each employee is assigned an e-mail address for his/her professional activity by the employer. This e-mail address and the corresponding mailbox are, as the emails are supposed to be sent and received in the name of the employer, the property of the latter. However, this is a simple presumption and the email can have the character of a private correspondence by inserting "Private/Personal" in the subject field. In this case, the employer cannot open the private emails of its employees, under penalty of violating the secrecy of correspondence,

which constitutes a criminal offense. Case law also holds that this prohibition to read private messages applies even in the case where the employer has prohibited the non-professional use of computer tools. The principle of secrecy of correspondence can, however, be removed in the context of a criminal investigation or by a court decision.

Anything not identified as “Private/Personal” is deemed professional and thus the employer is allowed to access it. The latter can obtain traffic and log data such as the volume, frequency, size, and format of their attachments. This information is checked without identifying the person concerned. In the event that irregularities are found, the employer can, in a second phase, identify the persons concerned and check the content of the professional emails. Moreover, the National Commission for Data Protection (hereinafter “CNPD”) suggests the following recommendations:

i. Distinguish private emails from professional emails: to prevent the employer from undermining the confidentiality of private messages, the CNPD suggests: (i) the installation of a twofold mailbox separating private messages and professional messages; (ii) storing private messages in a folder named “private”; (iii) employees indicate the private and personal nature of the subject of the messages and encourage their correspondents to do the same.

ii. Can the employer access the employee’s mailbox in the event of the absence of an employee to ensure business continuity? After informing employees and representative bodies, it is suggested to: (i) set up an automatic absence response from the office to the sender with an indication of who to contact in case of an emergency; (ii) designate a substitute who has a personalised access right to his colleague’s e-mail and who can read and process professional messages, but cannot read messages identified as personal; (iii) transfer all incoming messages to an alternate.

iii. The employee must know the identity of his substitute.

iv. If an employee permanently leaves the company, it is recommended that: (i) the departing employee transfers all current professional documents to a predefined person (for example,

his/her supervisor); (ii) he/she certifies that he has given his/her employer all the professional documents; (iii) he/she copies e-mail messages and other private documents to a private medium, then erases them from the company’s servers; (iv) the employer undertakes to block all computer accounts and to erase the employee’s mailbox(es) immediately upon departure; (v) people who send a message to the blocked address are automatically informed of the deletion of the email address and receive an alternate address.

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

By disparaging the employer, the employee violates his/her loyalty obligation and the employer may, as the case may be, take disciplinary action. Anonymous reports should however not be encouraged and only be accepted by an employer in exceptional circumstances. To avoid abuses, employees are encouraged to use the normal reporting line.

VII. AUTHORISATIONS FOR FOREIGN EMPLOYEES

REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

A. EEA NATIONALS

All EU citizens enjoy freedom of movement within the EU and the European Economic Area (European Union and Iceland, Norway and Lichtenstein – EEA) as well as Switzerland. This freedom of movement gives them the right to work and reside in any EU Member State for less than 3 months. Nationals of an EU Member State or a country treated as such must, when planning their journey, only have to hold a valid national identity card or passport.

EU citizens are entitled to reside in Luxembourg for more than 3 months if they meet one of the following conditions: i) they work as an employee or are self-employed; ii) they have the resources required to ensure that they or their family members are not dependent on the social welfare system and also have medical insurance; iii) they are registered with an approved public or private education institution in Luxembourg, and are attending a full-time educational course or, in this context, a professional training course. In this case, they must be able to demonstrate that they have the resources required to ensure that they or their family members are not dependent on the social welfare system and also have medical insurance.

Within 8 days of their arrival in Luxembourg, EU citizens must make a declaration of arrival at the administration of the municipality where they intend to establish residence. EU citizens must also complete a registration form in the same municipality within three months of their arrival in Luxembourg. To register, employees must give a

copy of their valid national identity card or passport and an employment contract compliant with Luxembourg labour law, dated and signed by both parties or a commitment to hire, dated and signed by the future employer. A secondary activity of less than 10 hours per week is not sufficient to receive an authorisation to stay for a salaried worker. After five years of residence, EEA nationals can ask for a permanent residence permit from the Immigration Directorate of the Ministry of Foreign and European Affairs.

B. NON-EEA NATIONALS

A third-country national who wishes to work in Luxembourg must have a stay permit (serving as work permit). Applicants must send their application to the Immigration Directorate of the Ministry of Foreign and European Affairs. They must state their identity and the exact address in their country of residence and add several documents depending on the type of permit they are applying for. The types of stay permits for which a third-country national can apply are the following: i) work permit for an occupation of less than three months. ii) work permit for an ancillary occupation for people who have obtained a residence permit for private reasons. iii) work permit for an ancillary occupation for a third-country national family member of a third-country national. iv) work permit for a highly qualified employee for an occupation of more than three months. After five years of residence, non-EEA nationals may apply for long-term resident status from the Immigration Directorate of the Ministry of Foreign and European Affairs.

VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

Grounds for termination of employment contracts include: Mutual agreement; Resignation with notice by the employee; Resignation by the employee for gross misconduct of the employer; Dismissal during the trial period; Dismissal with notice for real and serious cause based on the employee's attitude; Dismissal for gross misconduct (faute grave); Redundancy; Closure of business; Retirement; Employee's work incapacity; Death of one party.

2. COLLECTIVE DISMISSALS

The collective redundancy procedure must be applied by an employer who intends to dismiss for reasons that have nothing to do with the employee's attitude at work, at least 7 employees over a period of 30 days or at least 15 employees over a period of 90 days. The collective redundancy procedure in Luxembourg contains 4 main stages:

- i. Inform the National Employment Administration (ADEM) and the staff representatives or the employees directly if the business regularly employs less than 15 persons and provide the staff representatives or, if required, the employees, a copy of the notification sent to ADEM.

- ii. Negotiate a social plan; the negotiations must concentrate on preventing or reducing the number of redundancies and limiting the consequences by means of internal redeployment in the company; retraining; reintegration on the job market; or a more favourable financial compensation than established by law. A minimum notice period of 75 days must be respected. The negotiations cannot last for more than 15 days. If there is an agreement between the social partners, a social plan is signed. In the event of disagreement between the social

partners, a non-conciliation report is signed. The case is submitted to the National Office of Conciliation (ONC) to continue the negotiations for an additional maximum period of 15 days.

- iii. When the social plan is approved, the employer may begin to implement collective redundancies. He/she must notify each employee impacted by the redundancy in writing either by registered letter or by giving the letter to the employee in person against acknowledgement of receipt.
- iv. Request tax exemption for voluntary departure or severance pay, if applicable.

3. INDIVIDUAL DISMISSALS

A. DISMISSAL WITH NOTICE

A preliminary interview to discuss the reasons for the planned dismissal with the employee is required for employers who employ 150 persons or more. This invitation has to be sent to the employee by registered mail or handed to him/her with an acknowledgement of receipt. The length of the notice period depends on the employee's length of service, from 2 to 6 months of notice for the employer and half of the period for the employee.

EMPLOYEE'S LENGTH OF SERVICE	NOTICE PERIOD
Less than 5 years	2 months
From 5 to 10 years	4 months
10 years and more	6 months

Notice periods take effect only on the 1st or the 15th day of the month depending on the date of notification. Until the end of the notice period, the employee continues to work for the employer (unless the employer grants a discharge from work) and the employer must continue to pay the employee's salary.

In the termination letter, the employer does not need to state the reasons of the termination. The employee has one month from the receipt of the termination letter to request the reasons in writing. The employer is then obliged to provide the reasons in writing within one month of the receipt of the employee's written request. If the employer fails to answer within this one-month deadline or fails to provide sufficient reasons, the termination will be deemed unfair and the employee can introduce a claim for moral and material damages with the Luxembourg labour courts. It is therefore essential that in the answer, the employer states explicit and provable facts relating to:

- the employee's behaviour (if the dismissal is for personal reasons), or
- the business imperative due to which it is economically unsustainable for the employer to continue to employ the employee (if the dismissal is for economic reasons).

B. DISMISSAL WITH IMMEDIATE EFFECT

The employer may terminate the employment contract with immediate effect if the employee's actions or behaviour qualify as gross misconduct (faute grave). A gross misconduct is considered an offence, which renders the working relationship definitively and immediately impossible. The principle is that the dismissal of an employee without notice must take place within a month

following the day the employer was made aware of the misconduct. The notification for dismissal for serious misconduct varies according to the number of staff employed. The termination of the contract can be notified with immediate effect if there are less than 150 workers. A pre-dismissal interview is necessary for businesses that employ 150 staff or more.

C. IS SEVERANCE PAY REQUIRED?

Employers must pay a legal severance indemnity to any employee dismissed with notice with at least 5 years of service in the company. Entitlement to severance pay depends on the employee's length of continuous service with the same employer. The severance pay for employees who have received a notice of dismissal can amount to a maximum of one year's salary. This payment becomes due when the notice period expires. The severance pay is not applicable in case of termination for gross misconduct. Businesses employing less than 20 employees may pay a severance indemnity or extend the notice period of the dismissed employee.

EMPLOYEE'S LENGTH OF SERVICE	SEVERANCE PAY	NOTICE EXTENDED WITHOUT INDEMNITY
Less than 5 years	0	/
From 5 to 10 years	1 months	5 months
From 10 to 15 years	2 months	8 months
From 15 to 20 years	3 months	9 months
From 20 to 25 years	6 months	12 months
From 25 to 30 years	9 months	15 months
30 years and more	12 months	18 months

4. SEPARATION AGREEMENTS

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

A lot of settlement agreements are concluded in Luxembourg in order to avoid a court claim. The settlement agreement shall serve to create a secure legal basis between the parties in terms of their claims.

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

The standard provisions are that settlement agreements are to be concluded in writing and to reach an agreement with mutual concessions made by each party. The mutual concessions should be detailed comprehensively and precisely.

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

No. All employees may conclude a settlement agreement irrespective of their age.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

No. Any other provision is normally freely negotiable and included by mutual consent between the employer and the employee.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

If an employee considers his/her termination as unfair, he/she can introduce a claim for moral and material damages to cover the financial loss he/she has sustained with the Luxembourg labour

courts. If damages are awarded, the amount is generally calculated with reference to the age of the employee, his/her seniority with the employer, his/her qualification and his/her family status. In practice, unfair dismissal cases are often settled out of court. The parties are free to negotiate the content of the settlement agreement and the employer will often agree to pay a voluntary indemnity equal to one or several months of salary.

6. WHISTLEBLOWER LAWS

The Act of 13th February 2011 on the protection of employees in the fight against corruption amended the Labour Code, which was supplemented by an additional title entitled "Protection of employees in the fight against corruption, influence peddling and illegal taking of interests". It includes Articles L.271-1 and L.271-2. These laws provide protection for employees who report acts of corruption, of which they are victims and/or of which they are aware. In case of corruption, protection is only due in case of an alert to the "superior" or "competent authorities". To encourage employees to report the facts of which they are aware, the legislator has provided for a lighter burden of proof: the employee simply advances the facts and it is up to the employer to prove that the facts have not been proven. If the employee is dismissed following his denunciation, he can appeal to the labour court to be reinstated.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

The sole restrictive covenant that is regulated by the Labour Code is the non-compete clause. With this type of clause, the employee shall refrain from engaging in any independent activities, which correspond to those of his/her former employer and which compromise the employer's interests following the end of his/her employment.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES

A non-compete clause must be agreed in writing and included in the employment contract. With this type of clause, the employee shall refrain from engaging in any independent activity, which corresponds to those of his/her former employer and which compromise the employer's interests following the end of his/her employment. Moreover, the non-compete clause may only apply to an employee whose salary reaches the legal threshold. Other conditions that have to be respected:

- the employee cannot be a minor when signing the contract;
- the clause cannot be related to a period of time which extends to more than 12 months after the end of the employment contract;
- the scope of the clause must be geographically restricted and never extended outside Luxembourg; and
- the clause must relate to a specific occupational sector and to activities that are at least similar to those of the employer.

B. NON-SOLICITATION OF CUSTOMERS

This type of clause is valid under Luxembourg law, but the Labour Code does not regulate such clauses.

C. NON-SOLICITATION OF EMPLOYEES

This type of clause may be inserted in an employment contract.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS—PROCESS AND REMEDIES

Under the Labour Code, there is no obligation to provide financial compensation for the non-compete covenant. The non-compete clause is not applicable in cases where the employer has terminated the contract for gross misconduct and the termination is considered wrongful or does not observe the legal notice period.

4. USE AND LIMITATIONS OF GARDEN LEAVE

An employer can exempt an employee from work during the notice. There is no statutory right to pay in lieu of notice but during the exemption, the employee must be remunerated with the same salary and benefits as if he/she were working.

X. TRANSFER OF UNDERTAKINGS

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

In case of a business transfer, all employees, rights and duties arising from an employment relationship with the seller that already existed on the date of the transfer are automatically transferred to the buyer. After a transfer of undertaking, employees are, as the case may be, protected against the termination or the unilateral modification of their employment contracts for economic reasons during a period of two years (such protection could be provided for in a collective bargaining agreement).

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

The buyer assumes all rights and obligations arising under the employment relationship with the seller. In addition, if a collective agreement remains applicable, the terms of employment can only be modified after the collective agreement expires. If no collective agreement applies, it is possible to harmonise the transferred employees' terms of employment with those of the buyer's other employees, provided that this harmonisation is mutually agreed on between the buyer and each individual employee.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

In Luxembourg, the employees' representation takes place on two levels: mandatory and voluntary. The registration of employers and employees in one of the 5 professional chambers is mandatory. In addition, both employees and employers can be members of a trade union on a voluntary basis. The employees have two general organisations concerning all workers: OGBL (Onafhängege Gewerkschaftsbond Lëtzebuerg) and LCGB (Lëtzebuenger Chrëschtliche Gewerkschaftsbond). The main employer association is the UEL (Union des entreprises luxembourgeoises). Other sectors have their own trade unions, such as the ALEBA in the financial sector.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

The rate of employees who are members of a trade union is 30% (2015). The principle of union freedom is enshrined in article 11 of the Constitution. With the Law of 12 June 1965, the trade unions received the right to conclude collective agreements and to represent workers. The unions provide information and legal counselling in labour law matters and guarantee improvement of the social situation through the work of the staff delegations. The legislator has provided five professional chambers, including 3 employer chambers and 2 employee chambers including the main chamber: the Chamber of Employees (Chambre des salariés – CSL). The key mission of the professional chambers

is to safeguard and defend the interests of the professional groups they represent. They have the right to submit proposals to the government on matters for which they are competent. The CSL also provides information about economic and social developments. Social peace is the objective in the Luxembourg social model. Employment law decisions are often taken after a consensus between employer chambers, employee chambers and government.

3. TYPES OF REPRESENTATION

Employers in the private or public sector who regularly employ 15 or more employees are obligated to set up a staff delegation. Until the next social elections, all private organisations that had at least 150 employees within the past three years, must have established a joint works council, composed of an equal number of employer and employee representatives. The recent law of 23rd July 2015 will abolish the joint works councils after the social elections that will take place on 12th March 2019. From the next social elections, there will only be a central staff delegation on company level.

A. NUMBER OF REPRESENTATIVES

The size of the staff delegation and the works council, for the time the institution still exists, varies according to the number of employees represented.

B. APPOINTMENT OF REPRESENTATIVES

According to the Labour Code, the staff delegates must organise at least six meetings a year including

a minimum of three meetings with the management of the company. Notice must be given at least five days before to the employer.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The general mission of the staff delegation is the protection and defence of employees' interests with respect to working conditions, security of employment and social status. Whenever a staff delegation is set up, employers are required to:

- periodically inform them about the business's activities, corporate life and about environmental health and safety issues;
- inform and consult the staff delegation on the organisation of work and employment issues, etc.
- provide them, at least once a year, with a business activity report if the company employed less than 150 employees during the 12 months, which preceded the first day of the posting of the announcement of elections.

As from the next social elections, the tasks and duties assigned to the joint works council will be transferred to the staff delegations in companies, which had at least 150 staff during the 12 months before the day of the posting of the announcement of elections. Until these elections, the joint works councils currently in place will continue to carry out their tasks.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

A. REPRESENTATION IN A PUBLIC LIMITED COMPANY

When a public limited company ("société anonyme") has 1,000 or more employees over a reference period of 3 years, the board must have at least 9 members of which one third must be employees. The same obligation applies to public limited companies in which the state has a participation of at least 25%. These employee managers are elected

by the staff delegates. The Labour Code foresees some exceptions; for example, in the steel industry, the employee managers are elected by the trade union. The employee managers also benefit from a special protection against dismissal.

B. EUROPEAN WORK COUNCIL

Undertakings that employ at least 1,000 employees through different companies within the European Union and have at least 150 employees in two countries must establish a European Works Council or a procedure for informing and consulting employees.

C. REPRESENTATION IN EUROPEAN COMPANIES

A specific representation of employees is also foreseen in European Companies, which are elected by the staff delegates, as well as the creation of a special negotiating body representing the employees.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

Each staff delegate must appoint a health and security delegate and a delegate for equal treatment. The health and security delegate has a mission of supervision and observation and the employer must consult the delegate on important subjects of health and security in the workplace. The mission of the delegate for equal treatment is to defend gender equality in relation to access to employment, training, promotion, remuneration and working conditions. The ITM also assumes additional responsibilities for management and staff delegation relations.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

The Luxembourg social security system has been codified by the law of 13th May 2008 into a single unified system. The CNS (Caisse Nationale de Santé) and the CNAP (Caisse Nationale d'Assurance Pension) are the two national health-care and pension insurance administrative units. A central administrative unit called CCSS (Centre Commun de la Sécurité Sociale) is in charge of the data processing, membership records and contributions of all affiliates to the various schemes. The rates of contributions apply to compensation and earnings up to a maximum of five times the minimum reference social wage. The employee's and employer's contributions are the same (about 3,05 % for sickness and maternity leave and 8 % for retirement).

2. HEALTHCARE AND INSURANCES

The health-care insurance organises the reimbursement of medical costs and compensation for sick leave, maternity leave, adoption leave, leave for family reasons and also dependence. The pension insurance has the main task to allocate statutory pensions to its affiliates and to grant loans for construction or renovation. Invalidity pensions are also envisaged in Luxembourg law. Accident insurance is financed by employer's contributions.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Each employee benefits from a minimum of 25 days paid leave per year, with some CBA's providing for more holidays for example, in the banking and insurance sectors. Employees are entitled to take paid leave for the first time only after having worked with the same employer for an uninterrupted period of three months. Paid leave must be taken

during the calendar year to which it applies but can exceptionally be postponed to the following year, in which case it must be taken before 31 March.

There are 10 statutory public holidays established by the Labour Code. They are the 1st January, Easter Monday, 1st May (Labour Day), Ascension, Whit Monday, 23rd June (national holiday, the celebration of the Grand Duke's birthday), Assumption, 1st November (All Saints), 25th December (Christmas) and 26th December (Boxing Day). In Luxembourg, a public holiday falling on a non-working day is replaced by a compensatory day off to be taken within a period of three months. In addition, the Labour Code provides for several extraordinary leave types for family reasons or other specified events.

B. MATERNITY LEAVE AND PARENTAL LEAVE

Maternity Leave: Maternity benefits are paid during antenatal and postnatal leave. In principle, maternity benefits amount to the highest salary received during the three months prior to the maternity leave for employees or the contribution base in force at the time the maternity leave is taken for a self-employed worker. Financial maternity benefits must be between one and five times the social minimum wage maximum.

Parental Leave: Parental leave is taken by parents of a child who is less than 6 years old. The objective is to take a break in their professional career or to reduce their work hours to fully devote themselves to the education of their child. The parental leave was reformed by a law of 3rd November 2016. The main changes concern the duration of the parental leave and the introduction of divisible parental leave for people working full-time. The new parental leave allows both parents to stop working during 4 or 6 months on a full time basis; or 8 or 12 months on a part-time basis (with the employer consent). The law also provides the possibility of split parental leave: with reduction of the working

hours by 20% per week for a period of 20 months; or over 4 one-month periods for a maximum period of 20 months. The reform introduces a real replacement income. The employee receives a real salary compensation, calculated in view of the loss of salary during the parental leave, with a maximum limit of EUR 3,200.

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C. SICKNESS LEAVE

In the event of absence from work due to illness duly notified by informing the employer on the first day of absence and providing them with a medical certificate at the latest on the third day of their absence, all employees under the age of 68 are entitled to statutory sickness pay (indemnité pécuniaire de maladie) for a period of up to 78 weeks within a reference period of 104 weeks as from 1st January 2019. The employer must continue to pay the employee's salary and receives reimbursement of 80 % of the costs from the Luxembourg Mutual Insurance Scheme. From the month following the month during which the employee reaches an absence of 77 days, the employee is paid directly by the Social Security authorities. The payment of Social Security premiums is compulsory and allows to finance the statutory sickness pay. Employees on sickness leave are protected against dismissal for the first 26 consecutive weeks of their absence. If an employee is still unable to work after the end of the statutory sickness pay, they may apply for an invalidity pension (pension d'invalidité). As from 1st January 2019, the contract lapses with immediate effect after a period of 78 weeks of absence for illness, compared to 52 weeks previously.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

The normal old age pension is generally granted at the age of 65, provided a 120 months contributory period of compulsory, voluntary or elective insurance or purchase periods has been completed. However, there are exceptions to this minimum retirement age where the worker can retire at the age of 57 or 60 under certain conditions.

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