Luxembourg

Employment Law

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BSP BONN STEICHEN & PARTNERS

"Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration."

Abraham Lincoln

Summary

LUXEMBOURG EMPLOYMENT LAW

GENERAL

Luxembourg employment law is predominantly based upon the following:

- EU regulations;
- the domestic Labour Code ('*Code du travail*'): contracts of employment were originally governed by the provisions of Articles 1779 et seq. of the Luxembourg Civil Code as well as various other laws which were gradually implemented to regulate all aspects of the relationship between employer and employee.

However, a labour code ('the Labour Code') compiling the various laws entered into force on 1 September, 2006 and has since resulted in the repeal of most of the laws regulating employment;

- case law;
- collective bargaining agreements;
- under certain circumstances common practices may also act as a source of law, in particular as regards the entitlement of employees to bonuses.

Priority is given to mandatory provisions of European and domestic law, which take precedence over provisions in contracts of employment and collective bargaining agreements, unless the latter are more favourable to employees.

MAIN INSTITUTIONS

The Labour Ministry

The Labour Ministry determines and supervises the implementation of employment/labour law as well as defining the design and direction of policies relating to employment and industrial relations.

The Employment Administration

The Employment Administration (*Administration de l'Emploi*) registers and seeks work for unemployed persons.

The Labour and Mines Inspectorate

The Labour and Mines Inspectorate (*Inspection du Travail et des Mines* or *ITM*) is charged with:

- monitoring standards of health and safety for employees in all sectors of industry including commerce and tertiary industries but excluding public services;
- ensuring the implementation of all legislation related to working conditions and the protection of all employees subject to a contract of employment, except for those in the public sector;
- the prevention and resolution of industrial disputes;
- the granting of operating permits to establishments or for activities designated by law, which have the potential to increase risk to the health and safety of employees or the public or which create a nuisance;
- the supervision of collective agreements;
- the supervision of wages, working hours and holidays; and
- the monitoring of the election of employee representatives.

The National Conciliation Office

The National Conciliation Office (*Office National de Conciliation* or *ONC*) which is charged with the responsibility of preventing or settling collective labour disputes.

The *Comité de Conjoncture*

The *Comité de Conjoncture*, which is charged with supervising the development of the economic and cyclical situation in the Grand-Duchy of Luxembourg and the job market, as well as submitting a report to the Government Council every month. It is also notably in charge of issuing an opinion on every request for short-time work and early pension/retirement adjustments (*préretraite ajustement*).

ROLE OF THE NATIONAL COURTS

The Labour Court (*Tribunal du Travail*) has jurisdiction over individual disputes between employers and employees arising from either the contracts of employment, apprenticeship contracts, or complementary pension schemes and any disputes arising even after the termination of the contract.

The action is brought by way of a written brief indicating the name, profession and domicile of the parties, as well as the purpose of the action and a brief account of the points in dispute.

The court summons the parties to a hearing to examine the case, after which it pronounces judgment. The Labour Court usually orders compensation for damages as a result of unfair dismissal but may order the reinstatement of the employee at the employee's request if the continuation of the contract is still possible.

Either party may file an appeal against the judgment before the Labour Court of Appeal (*Cour d'Appel*) within 40 days of being notified of the judgement. The appeal court will then pronounce a judgment on appeal (*arrêt*).

Furthermore, the case may be referred to the Supreme Court (*Cour de Cassation*), but this may only be on questions of law.

Summary proceedings may be filed with the President of the Labour Court where the judge may grant an interim order. Either party may file an appeal against the order within a period of 15 days from the notification of the order to the parties.

EMPLOYMENT STATUS AND CATEGORIES OF WORKERS

Contract of employment or contract for services

A contract of employment may be distinguished from other forms of contracts such as a 'service agreement'. There exists no definition set out by the legal provisions of a contract of employment. However, Luxembourg case law defines a contract of employment as any agreement pursuant to which a person agrees to carry out work subject to the authority of the employer (who is responsible for issuing orders and guidelines as well as supervising the employee and imposing sanctions for shortcomings on the part of the employee) in exchange for monetary remuneration.

The contract of employment is primarily characterised by the element of subordination of the employee with regard to their employer: an employee must carry out work of whatever nature under the authority of an employer who will be issuing orders and guidelines as well as supervising the employee and imposing sanctions.

There are, therefore, three elements to a contract of employment:

- services rendered;
- payment or remuneration in exchange for those services; and
- subordination from a legal standpoint.

Legal subordination is the most important element as it excludes any other type of contract. Legal subordination is usually characterised by the following main factors:

- requirement to perform services according to a fixed schedule;
- compliance with daily/weekly working hours;
- duty to report to and execution of orders given by specific individuals;
- payment or remuneration by the employer;
- registration of the employee with the social security administration by the employer and compliance with the rules applicable to the payment of social security contributions;
- withholding of taxes from remuneration; and
- availability of working equipment.

Contract of employment and/or corporate mandate

Legal representatives of a company, such as the managers, managing directors or members on the board of directors carry out their duties as corporate mandate holders subject to the legal provisions of the civil code governing mandates and, therefore, may not normally be considered as employees. Directors (*administrateurs*) and managers (*gérants*) are appointed at a company's shareholders'/partners' meeting and managing directors are first approved at the shareholders' meeting and then formally appointed by the board of directors. The powers granted to managing directors or managers in charge of the daily management of a company is founded on the delegation of powers granted by the board of directors, who from a legal standpoint, are entrusted with the management of the company.

The first question to be raised relates to the nature of the contractual relationship: is it a relationship of employment or a corporate mandate?
The answer is crucial as it will determine whether employment protection rules are applicable. When determining whether an agreement is a contract of employment, Luxembourg courts are not bound by the terms the parties have included in the contract. If a corporate mandate is performed under the cover of a contract of employment, such contract is null and void.

The second issue that is often encountered is: if an individual is a corporate officer of a company, does he meet the requirements as determined by case law to concurrently enter into a contract of employment? In this scenario, the contract of employment will only be deemed valid on the condition that the duties carried out under its assignments can be clearly distinguished from the ones derived from the corporate mandate.

Categories of employees

Workers may be employed under different types of contracts such as:

• those concluded for part-time (less than 40 hours a week);

• those concluded for an indefinite period of time: these contracts run indefinitely until termination by the parties or by effect of the law; or

• those concluded for a fixed-term period in respect of specific and temporary tasks, which do not form part of the normal activities performed by the employer, such as:

(i) the replacement of an employee temporarily absent or whose contract of employment is suspended for reasons other than a collective conflict of work or the lack of work resulting from economic causes or inclement weather, as well as the replacement of an employee under an open-ended contract whose position has become vacant until a further employee can be hired to replace the original employee, on a permanent basis;

(ii) seasonal work defined by a grand-ducal regulation;

(iii) jobs for which in certain areas it is usual not to resort to a contract concluded for an indefinite period of time due to the nature of the tasks carried out or the temporary nature of the job, the list of these jobs being drawn up by a grand-ducal regulation;

(iv) the performance of a defined and specific task which does not form part of the normal and regular activity of the employer;

(v) the performance of a specific and temporary task such as is in case of a temporary and exceptional increase in the company's line of business or in the case of a start-up or an extension in the size of the company;

(vi) the performance of urgent works made necessary to prevent accidents, such as preparing for failures in equipment and organising emergency measures at company premises or buildings so as to avoid injury to the company and its staff;

(vii) the employment of an unemployed person registered with the Administration of Employment;

(viii) employment intended to support the recruiting of certain categories of job-seekers;

(ix) employment where the employer commits itself to ensuring professional training for the employee.

Such contracts may not be renewed more than twice and for a period of time exceeding 24 months.

Senior executives

Luxembourg labour law provides that senior executives are excluded from the application of certain rules, for example, they are excluded from the scope of application of collective bargaining agreements, unless otherwise stated, and from the application of the legal provisions governing 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. This takes into consideration the time necessary to perform their duties, whether remuneration is given in return for effective and real management powers, whether their tasks stipulate a well defined authority, and finally whether there exists a large amount of independence and freedom regarding working hours (notably absence of constraints to the working schedule).

EMPLOYING FOREIGN NATIONALS

The legislation on immigration requires an authorisation to enter the Luxembourg territory and practice on the employment marketplace: **a residence permit with authorisation to work**.

Who is concerned?

The following individuals do not need to apply for a residence permit with authorisation to work:

- citizens of EU member states, except Romanian and Bulgarian citizens, as forseen by the transitional provisions of the accession Treaty (until January 1st, 2014[1]);
- citizens of the member states of the European Economic Area;
- Swiss citizens;
- spouses/partners of any nationality, of European or Luxembourg citizens, who legally reside in Luxembourg;
- official asylum seekers.

The following individuals need to apply for a residence permit with authorisation to work:

- Romanian and Bulgarian citizens and their family members, also Bulgarian or Romanian citizens until the end of a transition period;
- third countries nationals.

Issuance of residence permit with authorisation to work

A residence permit with authorisation to work may be issued in respect of:

- a salaried activity;
- a highly skilled worker. A highly skilled worker is defined as any third country national with a university degree or having achieved a professional training of at least 5 years, applying for an employment requiring specific professional knowledge and skills;
- a worker temporarily transferred to another company within a same group of companies;
- a posted worker in the framework of a cross-border provision of services.

1 On December 9th, 2011, the Luxembourg Government decided to renew their decisions of October 6th, 2004 and of September 4th, 2008 for a period of two more years.

Residence permit with authorisation to work in respect of any salaried activity

The application for a residence permit with authorisation to work in respect of a salaried activity must be filed with the Ministry in charge of immigration (Ministry of Foreign Affairs) by the employee who intends to work in Luxembourg for a period exceeding three months.

The employer in Luxembourg must declare the vacancy with the Employment Administration (*déclaration de place vacante à l'ADEM :* http://www.adem.public.lu/forms/employeurs/places_vacantes/emploi_salarie.pdf).

This is an absolute pre-requirement and the application will be automatically rejected if the employer has not complied with this legal obligation. The application to obtain a residence permit with authorisation to work must contain the following documents in French, German or English:

- a certified copy of all the pages of the passport;
- an original birth certificate;
- a recent extract from the police record or an affidavit issued in the country of residence;
- a curriculum vitae;
- a certified copy of the diplomas and professional qualifications;
- an employment contract;
- an original letter of motivation.

The motivation letter must be drafted by the employer. The employer must explain the reasons why it has recourse to workforce located outside the EU, what are the job/position requirements and the qualifications of the employee.

The third-country national may confer mandate to a third person to submit the application in his/her behalf. In this case, the appointed person, except for lawyers, must present a duly signed and dated mandate from the third-country national. The signature must be preceded by a handwritten phrase "good for power of attorney".

The provisory authorisation to reside in Luxembourg will be issued for a period of 90 days during which the employee will have to enter the Luxembourg territory with a valid passport and a visa, register with the city administration within 3 days of arrival and apply for a residence permit within 3 months with the Ministry of Foreign Affairs. While applying for a residence permit with the Ministry of Foreign Affairs, the applicant will have to submit the following documents:

- a copy of the provisory authorisation to reside in Luxembourg;
- the receipt of the city administration;
- a medical certificate;
- evidence of appropriate housing, if requested;
- certified copy of the passport;
- a photo (OACI format);
- evidence of payment of a tax of EUR 30.- on the bank account CCPL n°LU46 1111 2582 2814 0000 (*MAE, Direction de l'Immigration*).

The residence permit with authorisation to work will be valid for a duration of one year for one sector of activity and one profession but for any employer. It is renewable for a period of 2 years. The second renewal and any subsequent renewal is for a duration of 3 years.
The residence permit takes the form of a sticker in the passport. If the employee obtains a new passport in the course of his/her stay, a new residence permit will have to be sought.

Residence permit with authorisation to work in respect of a highly skilled worker ("EU blue card")

The third-country national who wishes to reside in Luxembourg for more than three months to work as a highly qualified worker must be holder of an authorisation to stay "European blue card".

In order to obtain a blue card in Luxembourg, a highly qualified worker must satisfy the following conditions:

- be entitled to enter and stay on the Luxembourg territory;
- have entered into a valid employment contract for highly qualified employment for a period of at least one year (a highly qualified worker must have an university degree with at least three years of study or must have accomplished five years of professional relevant experience, or a combination of both);
- present a document attesting his or her relevant professional qualifications which are appropriate for the job mentioned in the employment contract;
- have agreed on a remuneration of 1,5 time the average gross annual salary in Luxembourg (in 2012 the applicable amount was of 66,564.- EUR).

Furthermore, the highly qualified worker must bring evidence of appropriate accommodation.

The application must be made and favourably advised before entering on Luxembourg territory.

The applicant must submit the following documents:

- a certified copy of his/her valid passport, in its entirety;
- a birth certificate;
- a recent extract from his/her police record or an affidavit issued in the country of residence;
- a curriculum vitae;
- a certified copy of his/her diplomas or professional qualifications;
- a copy of the work contract;
- a motivation letter to support the application;
- a mandate/proxy, if needed.

The EU blue card is valid for a period of two years or for the duration of the employment contract plus three months. It can be renewed upon request, if all requirements are satisfied.

The EU blue card allows the highly qualified worker to have a limited access to the employment market for a period of two years.

After this two-year period, the highly qualified worker benefits from equal treatment with Luxembourg nationals in respect to access to highly qualified employment, except for employment involving a direct or indirect participation to the exercise of public authority and to functions, which have as purpose the safeguard of the interests of the State or of other public authorities functions for which the Luxembourg nationality is the condition *sine qua non*.

In addition, the EU blue card beneficiary and the members of his/her family who have been residing for at least 18 months in another EU Member State are allowed to enter the Luxembourg territory and to apply for a new EU blue card with the ministry within a three month period of time.

In case of unemployment during the validity period of the EU blue card, it is not withdrawn and the highly qualified worker is allowed to stay in Luxembourg, provided that the unemployment period lasts less that 3 months and occurs only once.

Residence permit with authorisation to work in respect of a worker temporarily transferred in another company located in Luxembourg within a same group of companies

A residence permit with authorisation to work will be issued in respect of a worker temporarily transferred to another company located in Luxembourg within a same group of companies qualifying as one social and economic entity.

The application must be filed by the undertaking located in Luxembourg to the Ministry in charge of immigration (Ministry of Foreign Affairs) and must mention the identity of the workers to be transferred, the work to be performed and the duration of the transfer. The concerned worker(s) must be bound by an employment contract concluded for an indefinite duration with another company of the group.

The residence permit with authorisation to work will be issued for a duration of one year and may be renewed for the same duration.

Residence permit with authorisation to work in respect of a posted employee in the framework of a cross-border provision of services.

The application must be filed by the undertaking located in Luxembourg to the Ministry in charge of immigration (Ministry of Foreign Affairs) and must mention the identity of the posted workers, the nature and duration of the work to be performed and the exceptional circumstances that justify the issuance of an authorisation. The concerned worker(s) must be bound with the undertaking making the posting by an employment contract concluded for an indefinite duration since at least 6 months before the posting commences.

The residence permit with authorisation to work will be issued for the effective duration of the works as foreseen to perform the provision of services. It may be extended in exceptional circumstances.

As an exception, the undertaking located in any other EU member states, in any member states of the European Economic Area, or in Switzerland, may post, in the framework of a provision of services, its workers, irrespective of their nationality, to the Luxembourg territory, as far as those workers are entitled to reside and work during the posting in the country where the undertaking making the posting, is located.

Obligations of the employer hiring a third-country national

Any employer is obliged to:

(i) require that a third-country national, before taking up an employment, holds a valid residence permit or other authorisation for his/her stay,

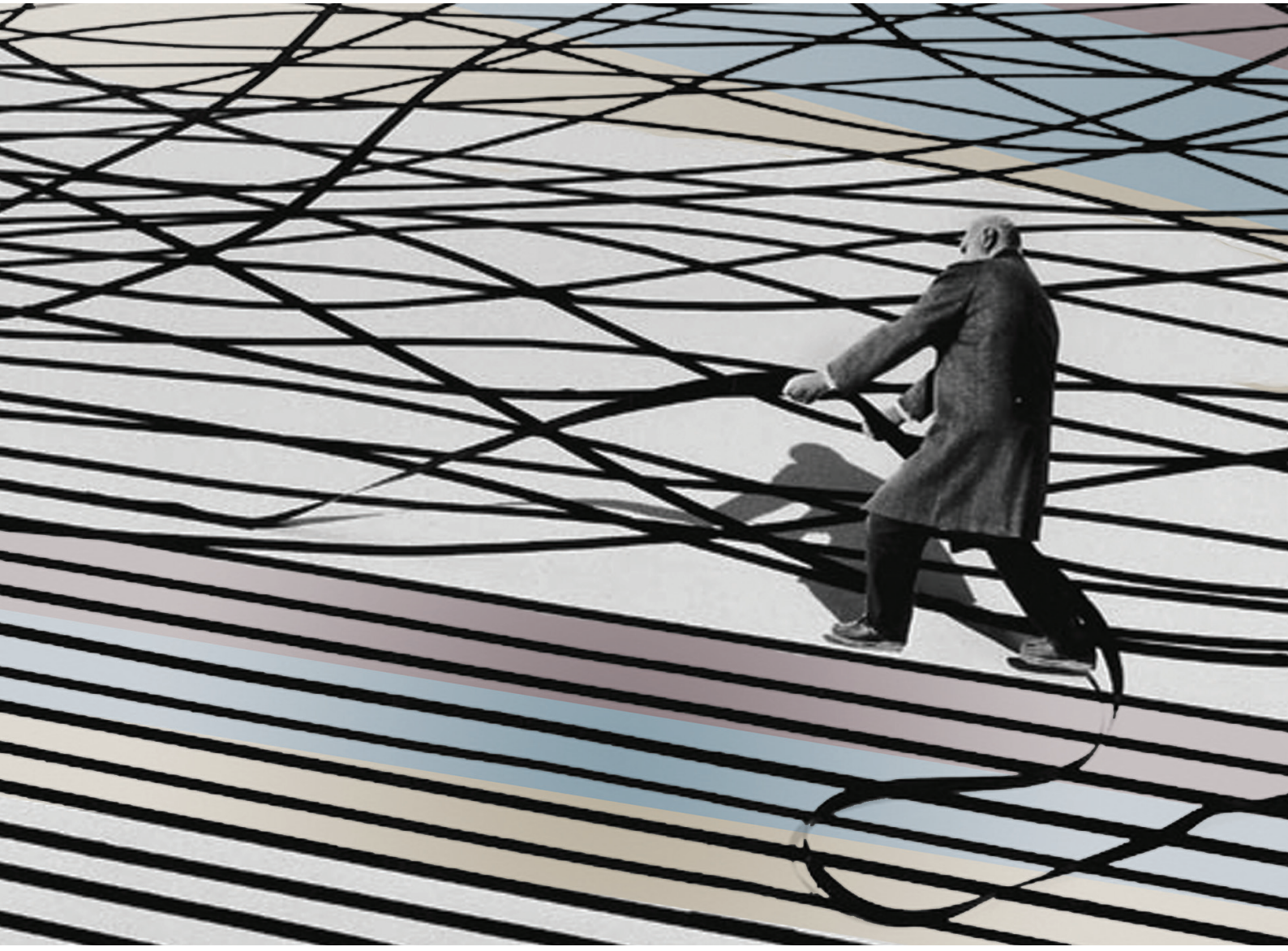
(ii) keep for at least the duration of the employment a copy or record of the residence permit or other authorisation for stay available for possible inspection, (iii) to notify the Ministry of Foreign Affairs of the start of employment within three working days from the first day of work of a third-country national.

Respect by the employer of these obligations increase the legal security and proves the good faith of the employer. In fact, employers that have fulfilled the obligations set out above should not be held liable for having employed illegally staying third-country national, unless the employer knew that the document presented him/her was a forgery.

Sanctions in respect of infringements of the prohibition referred to above are financial, criminal and administrative. In addition, the sanctioned employer shall be liable to pay:

(i) any outstanding remuneration as defined in Article L.572-9 of the Labour Code to the illegally employed third-country national, and

(ii) an amount equal to any taxes and social security contributions that the employer would have paid including relevant administrative fines, or legal fees.



Gilbert Garcin - *Changer le monde*

CONTRACT

A contract of employment enters into force as soon as the parties agree to the main elements characterising a relationship of employment as described on page 20. The consent of the parties must be freely given and the nature of and reasons for the contract of employment must be legitimate.

Formal requirements

A written contract is required regardless of whether the employment is for a fixed term or for an indefinite period of time. A written individual contract must be drawn up for each employee no later than the date an employee commences work. The contract must be drawn up in at least two originals, one for each party.

There is no specific requirement as far as the language is concerned. The contract of employment can, therefore, be written in either one of the three official languages in Luxembourg: French, German or Luxembourg, or in any other language understood by both parties (usually English).

If there is no written contract as required by law, the relationship of employment is valid, but only the employee may give evidence of the contract's existence and of its content, notwithstanding the cost of litigation. For example, in the event of litigation on the agreed remuneration, the employer will not be allowed to prove in court the amount of the remuneration as verbally agreed by the parties.

If either of the parties refuses to sign a written contract, the other party may terminate the contract without giving any period of notice and without any payment of compensation. However, such action must be taken no earlier than three days after making a request for a signed contract and no later than 30 days after the commencement of employment.

Implied terms

The majority of Luxembourg labour law provisions governing the contract of employment is of national public order. The parties to a contract of employment are authorised to depart from the mandatory provisions of the law only in a way more favourable to the employee, and any clause that aims to restrict the rights of the employee is null and void.

Provisions of collective bargaining agreements that are generally binding in a specific professional sector will also automatically apply to a relationship of employment falling under its scope of application. According to the Labour Code, collective bargaining agreements are defined as contracts covering reciprocal relationships and general conditions of employment concluded between one or more trade union organisations on the one side, and one or more employers' organisations, or a single business or a group of businesses in the same business sector, or all the businesses in the same sector, on the other. Such collective bargaining agreements may be declared generally binding on all employees and employers in the sector in which they have been concluded.

The parties to a relationship of employment must also comply, while performing their obligations under the contract of employment, with a general obligation of good faith derived from the Civil Code.

Finally, the employee must comply with any obligations and instructions set out in an internal policy issued by the employer on the basis of the employer's right to instruct its employees (this derives from the legal subordination of the employee).

TERMS AND CONDITIONS

Express mandatory terms

Any contract of employment must, as a minimum, state the following particulars:

- the identity of the parties;
- the date of effective commencement of work;
- the place of employment or, in the absence of a determined place of work, the employee may be employed in various locations and/or, more specifically, abroad or at the employer's private residence;
- the nature of the employment with, if appropriate, a description of the employee's tasks or functions at the time of employment, without prejudice to any subsequent appointment of tasks;
- the employee's normal working day or week;
- the normal working hours (schedule);
- the basic salary or wage to be paid, plus additional payments;
- the length of holiday leave with pay to which the employee is entitled;
- the length of the trial period (if any);
- the length of the notice period to be observed by the employer and the employee;
- a reference to any applicable collective bargaining agreement, any derogation from the general law where permitted, and any additional terms that the parties have agreed upon;
- a reference to the existence and nature of a pension scheme (if any), whether it is mandatory or optional and a description of the right to benefits, as well as a reference to personal contributions.

A fixed-term contract of employment must state the following particulars in addition to the above:

- a definition of its object;
- the expiry date when the contract is concluded for a definite period;
- the minimum employment duration when the contract does not provide an expiry date;
- the name of the absent employee, when the contract is concluded on account of the absence of an employee;
- the duration of any trial period;
- any renewal clause.

The contract may simply refer to these statutory provisions, or may set out further conditions that are more favourable to the employee.

Optional Terms

Trial periods

Trial periods may be provided by the employer for a minimum of two weeks to a maximum of 12 months, depending on the employee's qualifications and salary, and cannot be extended.

Trial periods provide a mechanism for both parties to terminate the contract on short notice without providing grounds for termination as normally required. If neither party has given notice of termination within the trial period, the contract is deemed to be effective as of the first day of the trial period.

Exclusivity clause

The contract of employment may further provide that throughout the performance of the contract, the employee should devote substantially all of his/her time, attention and energy to the employer's business and shall act at all times in accordance with its orders and for the exclusive benefit of the employer.

Pursuant to such a clause, the employee may not exercise any other professional activities, either directly or indirectly, without the prior written consent of the employer.

Non-competition clause

A non-competition clause is defined as a clause whereby an employee agrees not to carry out, as a self-employed person, similar activities to those carried out by their former employer so as not to interfere with their former employer's interests, after the termination of their contract of employment. Such a clause must be in writing, and is deemed null and void, when the employee signing the contract of employment, is under 18 years of age and/or if the employee's annual remuneration when he leaves the employer does not exceed a certain amount. The non-compete clause is only effective if the restriction:

(i) applies to a specific professional sector and to similar activities to those carried out by the former employer;

(ii) does not exceed 12 months;

(iii) is limited to a geographical area (not outside the Grand-Duchy of Luxembourg) where the employee would be in a position to effectively compete with his former employer.

Governing law and jurisdiction

The contract may provide that it will be governed by and construed in accordance with the laws of the Grand Duchy of Luxembourg.

Applicable Luxembourg laws and regulations (in particular the Labour Code) will govern matters not expressly provided for in the contract. The contract is likely to provide that any dispute arising out of the performance, interpretation or termination of the contract is to be submitted to the exclusive jurisdiction of the courts of Luxembourg, unless the employee's principal place of work is not Luxembourg, in which case jurisdiction will lie with such principal place of work.

The contract may also refer to statutory provisions, regulations, administrative rules, staff rules or collective bargaining agreements providing for more favourable terms.

EMPLOYEE REPRESENTATION

Trade unions

Article 11 of the Luxembourg Constitution guarantees the freedom to join a trade union. Employees as well as employers are organised on a voluntary basis into a number of trade unions, trade and professional federations respectively, whose principal aim is to negotiate collective bargaining agreements.

Staff delegation

Staff delegations must be set up in every business in the private sector with at least 15 employees. The number of representatives elected to a staff committee should be proportionate to the total number of workers.

Joint works council

Every business employing at least 150 employees over a three-year reference period must have a joint works council. The number of members depends on the size of the business. Joint works councils are composed of an equal number of the employers' and employees' representatives.
The employer's representatives are chosen by the company's management and are elected via proportional representation in a secret ballot of the staff delegates.

Employee participation in company management

As an exception to the rule that directors are appointed at the shareholders general meeting, the Labour Code confers to the staff delegates the right to appoint directors representing the staff with the use of a ballot carried out under proportional representation rules. This representation applies only to a business under the form of a joint stock company employing at least 1,000 employees over a three-year reference period. The number of directors is set to at least 9.

INFORMATION AND CONSULTATION

Role of the staff delegation

General role of the staff delegation

The staff delegation is on a general basis in charge of safeguarding and defending the interests of the employees with regard to working conditions, protection of employment and of the social status, as far as those tasks do not fall within the scope of the Joint Works Council, if any.

The staff delegation shall in particular:

- express an opinion advice or issue proposals with regard to improvement of working conditions, employment conditions and social situation of the personnel;
- present to the employer any individual or collective claim;
- prevent or solve individual or collective litigation between the employer and any member of the personnel;
- refer any litigation or claim to the Labour and Mines Inspectorate concerning any breach of the legal or contractual provisions in relation to working conditions and protection of employees at the work place;
- give advice on the implementation of or change to any internal policy and supervise the application of such policy;
- suggest changes to the internal policy;
- participate in the training of apprentices if the undertaking has more than 150 employees;
- organise the apprenticeship schemes;
- promote the employment of disabled persons;
- participate in charities;
- participate in the protection of the work environment and prevent occupational hazards;
- give advice prior to the implementation, change or withdrawal of a complementary pension scheme.

The staff delegation shall moreover:

- assist harassed employees;
- assist employees when their parental leave application has been rejected and report it to the Labour and Mines Inspectorate;
- be consulted when the employer sets up a work organisation plan, and be informed of its application;
- give advice on the terms and conditions of the application by the employer of provisions regulating rest time as set out in a collective bargaining agreement;
- be consulted in the event of application to the Labour Minister for an authorization concerning overtime work;
- be consulted in the event of application to the Labour Minister for a temporary authorization to pay wages under the minimum level as provided for by the law;
- be provided with the list of employees working on Sunday, their tasks and working time;
- be informed of the employer's decision to postpone a parental leave;
- be informed of the use and risks of dangerous materials (e.g. asbestos, arsenic);
- be consulted by the employer prior to work stoppage due to weather conditions;
- be informed by the Labour and Mines Inspectorate of any breaches to labour law provisions by the employer.

Information and consultation on the normal running of the business

(i) The employer must communicate to the staff delegation any information on the running of the business, including the recent and probable progression of the business operations and of the economic situation. This communication should take place on a monthly basis in businesses where a Joint Works Council has been set up and three times a year in other businesses.
When the company is incorporated under the form of a stock company, the management must inform the staff delegation in writing at least once a year of the economic and financial progression of the business, as well as recent and probable activities of the undertaking.
The management presents in this respect a report on business activities, income, global results of the production, orders, structural progression, levels of remuneration and investments.

(ii) The employer must moreover communicate any information on:

- the risks to health and safety, as well as any protective or preventative measures to be taken by either the business as a whole, part of the business or for each specific type of job;
- the protection measures that must be taken and, if necessary, the protection equipment that must be used.

(iii) The employer must inform and consult the staff delegation as well as the staff delegate in charge of equality, on the situation, structure and probable development of employment, as well as any anticipatory measures, especially in the event where employment is threatened.

In this respect, the employer must provide the staff delegation with statistics on a biannual basis showing the distinction between men and women in respect of recruitment, promotions, transfers, termination, remuneration and training courses.

(iv) The employer must inform and consult the staff delegation prior to any decision which might entail major modifications in the organisation of work and in the employment contracts, as well as on any decision to carry out a collective redundancy or transfer of undertaking.

(v) The employer must inform and consult the staff delegation on the conclusion of "*contrats d'appui-emploi*", of "*contrats d'initiation à l'emploi*", as well as "*contrats d'initiation à l'emploi-expérience pratique*".

(vi) The staff delegation must also appoint a delegate to supervise the equality of treatment between men and women and a delegate in charge of health and safety within the undertaking.

Role of the joint works council

General role

The joint works council decides on various matters such as:

- implementation or application of any technical devices aimed at controlling the employees' behaviour and performance,
- implementation of or change to any measures regarding health and safety at work and prevention of illness,
- implementation of or change to the criteria applicable to hiring, secondment, transfer, and termination, and eventually to pre-retirement,
- implementation of or change to general criteria applicable to the appraisal of employees,
- implementation of or change to internal policies taking into consideration collective bargaining agreements, if any,
- granting of gratification to employees who have brought to the company a useful contribution through initiatives or proposals for technical improvements.

Information and consultation concerning employees

The employer must inform and consult the joint works council prior to any major decision relating to:

- the construction, alteration or extension of the production premises or offices;
- the implementation, improvement, replacement or transformation of equipment;
- the implementation, improvement, replacement or transformation of methods of work, production processes.

The employer must inform the joint works council about the consequences of these measures on working conditions and on the working environment.

The employer must at least once a year inform and consult the joint works council regarding existing and foreseeable personnel needs, training measures, and courses.

The employer must inform and consult the joint works council at least once a year, on the conclusion of "*contrats d'appui-emploi*", of "*contrats d'initiation à l'emploi*", as well as "*contrats d'initiation à l'emploi-expérience pratique*".

Information and consultation concerning company decisions

The employer must inform and consult the joint works council on every economical or financial decision that could have a significant influence on the company's structure or the level of employment (volume of production and sales, programme of production, investments policy, projects of cessation or transfers of undertaking or part of undertaking, projects of restriction, extension or modifications in the company's organisation, projects of merger, projects of change in the organisation of the undertaking, implementation, modification and abrogation of complementary pension.

The information and consultation must state the consequences of the contemplated measures on the volume and structure of employment, as well as on the employment and work conditions, social measures such as professional training.

In principle, information and consultation must occur prior to any decision, except if there is a risk of disturbing the management of the company or compromising an operation. In this case, the employer must give all necessary information and explanations to the joint works council within three days following the decision.

Information and consultation concerning the business's current financial and economic position

The employer must inform and consult in writing the joint works council at least twice a year on the economic and financial situation of the business. The employer must then submit a report on the activity of the business stating the turnover, global results of production, orders, evolution of the structure and level of remuneration and of investments.
When the company is incorporated under the form of a stock company, the employer must present to the joint works council, prior to the annual general meeting of shareholders, all documents presented to the shareholders, profit and loss accounts, annual balance sheet, report to the auditors, report to the board of directors as well as any other documents presented to the general meeting.

Company benefit plan

The joint works council supervises the company benefit plan set up for employees and their families, including measures concerning housing. The employer must communicate, at least once a year, a report relating to management of this plan.

Equality

The joint works council supervises the equality of treatment between men and women, as far as access to employment, training, working promotion, payment, and working conditions are concerned.

Joint competence of the staff delegation and joint works council

General provisions

The employer must provide the staff delegation/joint works council with the following information:

- the list of positions that pregnant and breastfeeding women cannot hold and the steps taken in order to ensure healthy working conditions to these employees,
- the yearly medical report,
- the setting up of a system managing employees' personal data.

The employer must consult the staff delegation/joint works council prior to any recourse to part-time work and temporary work, or to proceed with temporary lending of workforce to another undertaking.

The staff delegation/joint works council may also request special medical examination of employees.
The employer must inform the staff delegation/Joint Works Council prior to filing an application to the *Comité de Conjoncture* to obtain indemnification in the framework of partial unemployment.

The staff delegation/joint works council shall express an opinion prior to the conclusion of a progressive pre-pension scheme and the setting up of a training plan for employees.

In the event of transfer of the undertaking

The transferor and the transferee shall be required to inform the representatives (the staff delegation or joint works council, if any) of their respective employees affected by the transfer to the following:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees;
- any measures envisaged in relation to the employees.

The transferor must give such information to the representatives of his employees in good time before the transfer is carried out.
The transferee must give such information to the representatives of his employees in good time, and in any case before his employees are directly affected by the transfer as regards their conditions of work and employment.
Where the transferor or the transferee contemplates implementing measures in relation to his employees, he shall consult the representatives of his employees in good time on such measures with the view to reaching an agreement, notwithstanding the fact that the transfer may not be a cause of termination for the transferor as well as for the transferee.
The information and consultation shall cover at least the measures envisaged in relation to the employees.
The information must be provided and consultations taken place in good time before the change in the business affected by the transfer.

In the event of collective redundancy

The employer must enter into prior negotiations with the staff delegation/joint works council before proceeding to collective dismissals in order to come to an agreement relating to the establishment of a social plan. The social plan is a written agreement signed by the employer and the employees' representatives that contains the results of the negotiations.

Before the start of negotiations with a view to reaching an agreement on the signing of social plan, and at the latest at the beginning of the negotiations, the employer must inform in writing the staff delegation/ the joint works council of the proposed collective dismissal and must provide them with the following information:

- reasons for the proposals;
- number and description of employees affected;
- number and description of employees usually employed;
- period of time within which the dismissals are proposed;
- method of selecting employees to be dismissed;
- proposed method of calculating the amount of any redundancy payment.

In the event of employment maintaining plans

The staff delegation and employee members of the joint works council may initiate negotiations with a view to conclude an employment retention plan when they have the feeling that economic or financial difficulties within the undertaking might have a negative impact on the employment.
The staff delegation and employee members of the joint works council shall take part in the negotiations to set up an employment retention plan.

DISCRIMINATION ON THE GROUNDS OF RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION, ETHNIC AFFILIATION, RACE OR ETHNIC ORIGIN

Any direct or indirect discrimination as per the above-mentioned grounds is prohibited as regards:

- conditions of access to employment, self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of work and including all levels of the professional hierarchy and promotions;
- access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- employment and working conditions, including dismissals and pay;
- membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry out a particular profession, including the benefits provided by such organisations.

Breach of the legal provisions providing for such principles shall lead to imprisonment of up to a minimum of eight days and a maximum of two years and a fine between EUR 251 and EUR 25,000.

As an exception:

A difference in treatment based on a characteristic related to any of the above-mentioned grounds shall not constitute discrimination where, by reason of the nature of the particular occupational activity concerned or of the context in which it is carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

A difference of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, it is objectively and reasonably justified by a legitimate aim, including a legitimate employment policy, a labour market and vocational training objectives. The means of achieving that aim must also be appropriate and necessary.

Employees are protected against any dismissal or any other adverse treatment as a reaction to a complaint or to legal proceedings aimed at forcing compliance with the principles of equal treatment. Any dismissal decided in breach of the provisions on equal treatment is deemed null and void. The employee concerned shall have the right to claim in court as a matter of urgency, the annulment of the dismissal and his/her reinstatement within the business.

Any persons who consider themselves wronged because the principles of equal treatment have not been applied to their case, may bring before a court or other authority evidence of the facts from which it may be presumed that there has been direct or indirect discrimination. It shall be for the respondent to prove that there has been no breach of the principles of equal treatment.

EQUAL TREATMENT OF MEN AND WOMEN

The principle of equal opportunities between men and women also applies to:

• conditions of access to employment, self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of work and including all levels of the professional hierarchy and promotions;

• access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

• employment and working conditions, including dismissals and pay;

• membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry out a particular profession, including the benefits provided by such organisations.

As regards access to employment and including training leading to such employment, a difference of treatment based on sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

The legal provisions prohibit any direct or indirect references to the sex of the employee in employment offers or notices and in criteria for professional aptitude tests.

Any legal or contractual provision violating the principles of equal treatment is deemed to be null and void. All employers must ensure equal remuneration for men and women who do similar work or work of equal value. The minimum statutory wage is legally assured to any employed person irrespective of their sex.

Celibacy clauses are null and void, as are clauses providing that a woman's contract of employment may be terminated, or that a female employee may be dismissed on account of her marriage.

Employees are protected against any dismissal or any other adverse treatment as a reaction to a complaint or to legal proceedings aimed at forcing compliance with the principles of equal treatment. Any dismissal decided in breach of the provisions of equal treatment is deemed null and void. The concerned employee shall have the right to claim in court as a matter of urgency, the annulment of the dismissal and reinstatement within the business.

Any persons who consider themselves wronged because the principles of equal treatment have not been applied to their case, may bring before a court or other authority, evidence of the facts from which it may be presumed that there has been direct or indirect discrimination. It shall be for the respondent to prove that there has been no breach of the principles of equal treatment.

VICTIMISATION AND HARASSMENT

Pursuant to the Labour Code, sexual harassment is defined as being any sexual behaviour or any other behaviour based on sex which knowingly hurts the dignity of a person in the workplace, where:

- the behaviour is inappropriate, abusive and hurtful; and
- a person refuses to accept such behaviour from the employer, and another employee, client or supplier is explicitly or implicitly used by the employer to affect the rights of this person in matters of professional training, employment, continuance of employment, professional promotion, remuneration or any other decision relating to employment; and
- such behaviour creates a feeling of intimidation, hostility or humiliation for the victim.

The employer must do whatever is necessary to put an end to any act of sexual harassment as soon as they are made aware of it. If they fail to do so, the President of the Labour Court (*Président du Tribunal du Travail*) may require them to do so.

The Labour Code also introduces a new ground of termination of the contract of employment, namely resignation based on sexual harassment. The victim is entitled to terminate the contract of employment with immediate effect and the employer may have to pay damages to the employee if the court considers the resignation justified.

Moral harassment is not specifically regulated by the Labour Code but has been recognised by the Labour Courts and by a Convention signed by the social partners on June 25, 2009. Such convention has been declared generally binding on all employers by a Grand-Ducal Regulation dated December 15, 2009. Moral harassment is defined by the Convention as being any erroneous, repetitive and intentional behaviour committed by any individual in connection with the business towards any employee or manager, which has the effect of either, damaging his/her rights or dignity, altering his/her working conditions, jeopardising his/her professional future in creating an intimidating, hostile, degrading, humiliating or offensive environment, or impacting on his/her physical or mental health.

RIGHTS AVAILABLE TO PARENTS

Maternity leave

All pregnant employees are entitled to maternity leave as follows:

- 8 weeks of pre-natal leave
- 8 weeks of post-natal leave, which is extended to 12 weeks if the employee is breastfeeding, or in the case of premature or multiple births.

At the expiry of maternity leave, the employee may abstain from returning to work for a period of one year in order to take care of her child(ren), without having to give notice to her employer and without having to pay any termination indemnities. She may request to be re-employed within one year, in which case the employer must give her priority in positions corresponding to her qualifications. If the employer re-employs the employee, it must provide her with the same benefits as those applying at the time of the employment termination.

Paternity leave

Each father is entitled to 2 days' paternity leave on the birth of a child.

Parental leave

Each parent is entitled under certain conditions to take parental leave at the time of birth or adoption of a child. One parent must take it directly at the end of the maternity leave period ('first parental leave'); the other parent may take it at any time until the child reaches the age of 5 ('second parental leave').

The duration of the parental leave period is 6 months, or 12 months if the employee keeps working at least half the time.

The employer may not refuse a first parental leave, but may request to postpone a second parental leave for a maximum of 2 months under certain circumstances as defined by the Labour Code.

Special leave for family reasons

Any employee may request leave for family reasons in the event of a child who is less than 15 years of age needing the presence of one parent in the event of a serious illness or accident. This special leave may not usually exceed 2 days per year for each child.

DISCIPLINE AND TERMINATION

Discipline

There are no statutory provisions governing disciplinary actions that an employer may take, except for dismissal based on the behaviour of the employee. The Labour Code merely provides that an employer is entitled to temporarily suspend a contract of employment with immediate effect in the event of gross misconduct by the employee until the employee is notified of his/her dismissal. The employee temporarily suspended remains entitled throughout this suspension period to his/her remuneration and to any other benefits until the day of notification of dismissal.

A verbal or written warning is not a pre-requisite to dismissal. The employer is entitled to dismiss an employer if the employee's breach is serious enough.

As a general rule and in the event of recurrent breaches of the contractual obligations by the employee, the employer should send a letter of warning to the employee by registered mail, detailing the employee's failures and threatening the employee with dismissal, should the employee not improve his/her performance or alternatively commit further failures. An employee may not be sanctioned twice for the same act of misconduct. If the employer has issued a warning letter for specific acts of misconduct, it will not be able to allege the same acts of misconduct as a ground for dismissal, except if new acts of misconduct have occurred after the warning letter.

Termination

A contract of employment for a fixed term may be terminated before the expiry of its term in the event of serious misconduct or by common consent of the parties.
A contract of employment for an indefinite term may be terminated by either party:

- with immediate effect in the event of gross misconduct by the other party, or
- with notice period where there is a real and serious cause for termination,

It may also be terminated by common consent of the parties.

Termination by the employer: dismissal

Dismissal with notice

Termination with notice may only arise in the case of a contract concluded for an indefinite period of time. Reasons for dismissal must be supported by demonstrable and explicit facts. Such facts may include:

- reasons connected with the employee's aptitude;
- reasons connected with the employee's conduct;
- reasons arising from the operating needs of the business, establishment or department. Any employer employing at least 15 persons, must notify the *Comité de Conjoncture* of any termination/redundancy taking place for any grounds not linked to the employee's aptitude or attitude. Such notification must be carried out at the latest when the employee is notified of the termination.

If the employer wishes to dismiss an employee, a letter of notice of dismissal must be sent by registered mail, failing which the dismissal may be declared invalid. The employee's countersignature on the letter of dismissal is proof of receipt.

Any employer with 150 employees or more who contemplates dismissing any employee must, before reaching any decision, interview the employee concerned.

Notice of such interview must be given in writing by registered mail or by hand delivery with acknowledged receipt. The letter must give an indication of the purpose of the interview and its date, time and place. Whether dismissal requires a period of notice or is for gross misconduct, notification of such dismissal must be:

- no earlier than the day following the interview;
- no more than one week later.

If the employee does not attend the interview after being summoned to do so, notification of dismissal must be:

- no earlier than the day following the day set for the interview;
- no more than one week later.

Dismissed employees are entitled to notice pay and severance pay.

Notice pay is the pay relating to the period of notice and which depends on the seniority of the dismissed employee. The notice pay is paid in the same way as a salary, at the end of each month. The employer is required to withhold taxes and social security contributions.

For dismissal, notice by the employer must be given as follows:

Length of service	Notice required
Less than 5 years	2 months
Between 5 and 10 years	4 months
10 years+	6 months

Notice takes effect only on the first or the fifteenth day of the month. Notice given before the fifteenth of the month takes effect on the fifteenth; notice given after the fourteenth day takes effect on the first day of the following month.

Any dismissed employee is moreover entitled to a severance pay if he/she has given to the company at least 5 years of service. The severance pay is determined on the basis of the average gross salary effectively paid to the employee over the 12 months preceding the dismissal notification. Are taken into account in the calculation the sickness benefits, bonus and any recurrent payment, but excluding overtime compensation, premium paid on a discretionary basis and reimbursement of expenses.

Length of service	Salary Required
At least 5 but under 10	1 month
Between 10 and 15	2 months
Between 15 and 20	3 months
Between 20 and 25	6 months
Between 25 and 30	9 months
More than 30	12 months

The employee may request communication of the reasons for dismissal, however, such request must be made to the employer in a letter by registered mail within one month of the date of the notification of dismissal. The employer must state their reasons in detail within one further month in another letter by registered mail.

If the employer fails to provide the employee with the grounds for dismissal within the legally required period of time or fails to provide the employee with detailed grounds, the dismissal is deemed abusive.

Dismissal as a consequence of gross misconduct

In the event of gross misconduct by the employee, the employer may terminate the contract without notice in the case of a contract concluded for an indefinite period of time, and before the end of its term in the case of a fixed-term contract.

Gross misconduct is considered to be any conduct that immediately and unequivocally makes it impossible to continue the working relationship. The conclusion of the existence of such conduct is factual and it is for the court to decide if such conduct is present.

The employer must give notification of dismissal in a letter by registered mail. The employer must also immediately state in the dismissal letter the explicit and detailed reasons for the dismissal.

If the employer fails to provide the employee with detailed grounds in the letter of dismissal, the dismissal is deemed abusive.

Statutory claims – unfair dismissal

Dismissal is regarded as unfair if:

• the employer fails to provide the employee with detailed grounds as required by law,

• the dismissal is not founded on valid grounds related to the employee's aptitude or conduct, or arising from the operating needs of the business, establishment or department,

• the reasons are not real,

• the reasons are not serious enough,

• the dismissed employee was legally protected against any dismissal (during sickness leave).

If the employee challenges the reasons provided by the employer in support of the dismissal, the onus is on the employer to prove not only the factual circumstances but also their validity and seriousness.

The employee must act within 3 months as follows:

• directly bring an action in court for unfair dismissal and claim compensation for damages; or

• address a written claim in a letter by registered mail to the employer within 3 months, claiming that the dismissal is unfair and that the employee reserves all his/her rights to claim compensation for damages. In this case, the legal time period in which to bring an action in court is extended to 1 year from the date of the written claim.

The three-month time period commences either:

• as of the date when the dismissal letter is sent out if the dismissal took place for gross misconduct with immediate effect, or with notice if the employee failed to request communication of the grounds for dismissal within one month following the notification of the dismissal;

• as of the date when the employer provides the employee with the grounds of the dismissal as requested by the employee within the legal time period, when the dismissal has taken place with notice;

• as of the date the employer should have replied to the employee providing him/her with the grounds for dismissal, in the event that the employee formally requested communication of the grounds but the employer never replied. For example, say notification of dismissal occurs on 12 September. Consequently, the employee then requests communication of the grounds for dismissal in a letter by registered mail sent on 8 October, but the employer never replies to this request. The employee must either bring an action in court or challenge in writing the dismissal and reserve their rights at the latest on 8 February (three months after 8 November, the expiry date for the employer to reply).

The Luxembourg Labour Code does not provide for pre-determined compensation for damages. The judges in Labour Courts have the widest powers to judge, at their own discretion, the amount of the indemnification. However, generally compensation for damages is determined as follows:

Moral damages

In the event of unfair dismissal, the following criteria are taken into consideration in calculating the amount of damages:

• troubles raised by the dismissal;

• circumstances in which the dismissal has occurred;

• age;

• length of service.

Compensation for moral damages generally ranges between EUR 1,000 and EUR 30,000.

Financial damages

Financial damages greatly depend on the professional situation of the employee after the dismissal and are determined on a case-by-case basis by the courts. The courts take into consideration a reference period after the dismissal that is deemed a sufficient amount of time for the employee to find another job. The reference period starts at the expiry of the period of notice or with the notification of dismissal if the employee has been released from the obligation to work during the notice period. The compensation for financial damages is determined on the basis of the difference between the remuneration paid to the employee by the former employer and the salary or unemployment benefits paid to the employee after the expiry of the period of notice. The reference period is generally set at 6 months and may be extended up to 12 months, depending on the age of the employee and length of service.
The employer may also be required to reimburse the Luxembourg State for the unemployment benefits paid to the employee over the reference period.

Special statutory protection against dismissals

An employer who has been duly notified of their employee's incapacity to work within the proper length of time (i.e. on the first day of incapacity), or who has received a medical note from the employee in due form within the proper length of time (i.e. on the third day of absence at the latest), is prohibited from notifying the employee of the termination of their contract or summoning them to the interview prior to dismissal. Any notification of dismissal by the employer to the employee during this period is unfair. The employer's right to dismiss an employee is then suspended for a maximum of 26 weeks following the date of incapacity.

The following employees enjoy a special protection against termination as well:

- a woman whose pregnancy is medically approved cannot be dismissed during her period of pregnancy and for a maximum of 12 weeks following the birth of the child. Any notification of dismissal during this period is deemed to be null and void.
- an employee during parental leave. Any notification of dismissal during this period is deemed to be null and void.
- Staff representatives, as well as their alternates, are protected against dismissal throughout their term of office. Any dismissal is deemed to be null and void, whatever the reason. This protection period is extended to former representatives for 6 months following the end of their term of office, and to candidates for election to such office for a period of 3 months following the announcement of their candidacy.
- Members of the Joint Works Council may only be dismissed with the consent of the joint works council to which they form part.

Termination by the employee: resignation

An employee willing to terminate his/her contract of employment must send a letter by registered mail to the employer. Unless the contract of employment is terminated on account of gross misconduct on the part of the employer, the employee must give notice of resignation. The period of notice required for resignation by the employee is half that required in the case of dismissal by the employer.

Termination by common consent

Parties to a contract of employment for a fixed or indefinite term may terminate the contract by common consent at any time. The common consent of the parties must be stated in writing in two original documents failing which the termination is declared null.

Special termination procedure applicable to protected employees

The employer is entitled to suspend a staff representative, a member of the joint works council or their alternates or a pregnant woman (hereinafter 'protected employee') in the event of gross misconduct.
During the suspension, the protected employee will not be entitled to remuneration, unless they make a request to the Labour Court.
The employer must immediately refer the matter to the Labour Court, which will rule on the termination of the contract of employment based on the grounds of gross misconduct.

Automatic termination of the contract of employment

The contract of employment also automatically terminates in the following circumstances:

- death, physical disability and bankruptcy of the employer (except if the business is taken over by another employer further to a transfer of undertaking within the meaning of the law) ;
- if the employee is declared unable to take up the envisaged position with the result of a medical examination prior to employment;
- when the employee meets the legal requirements for an old-age pension and at the latest at the age of 65, this being conditional upon the employee being entitled to an old-age pension;
- when the employee meets the legal requirements for a disability pension;
- at the end of the employee's entitlement to sickness benefits;
- for employees who have been declared unable to perform their job, the day of notification of the decision of a special commission charged with deciding the reinstatement of the employees outside the business.

COLLECTIVE DISMISSALS

Definition of collective dismissal

The statutory procedure regarding collective dismissals must be followed as soon as an employer contemplates dismissing at least seven employees within a period of 30 days or dismissing 15 employees within a period of 90 days.

Collective redundancies' means dismissals effected by an employer for one or more reasons not related to the concerned employees.

Procedure to be followed in the event of a collective dismissal

The employer must enter into prior negotiations with the employee representatives in order to come to an agreement relating to the establishment of a social plan. The social plan is a written agreement signed by the employer and the employee representatives, which contains the results of the negotiations.

The employee representatives are either the staff representatives, the joint works council and/or the trade unions, in the case where a collective bargaining agreement applies to the employer/employee relationship.

The negotiations shall at least cover ways and means of:

- avoiding collective redundancies or reducing the number of workers affected;
- mitigating the consequences of the redundancies by recourse to social measures aimed at, inter alia, redeploying or retraining the workers made redundant; and.;
- granting financial compensation.

The following matters will notably have to be discussed:

- application of the law governing short-time working;
- implementation of changes to working hours;
- temporary reduction in working hours and participation in training sessions or redeployment of workers;
- training sessions or redeployment within the company or within another company in the same sector;
- application of the law governing the temporary lending of workforce;
- personal support for a change of career, with eventual recourse to external experts;
- application of the legal provisions governing the pre-retirement regime;
- principles and procedures governing the implementation and the follow-up of selected measures.

Companies who put in place an employment retention scheme approved by the Labour Minister in the 6 months preceding the beginning of the negotiations are exempt from the obligations provided by the above-mentioned provisions.

Procedure to be followed in the event of a collective dismissal

Before negotiations start, or at the very latest at the beginning of the negotiations, the employer must inform the employee representatives in writing of the proposed collective dismissal and must provide them with the following information:

- reasons for the proposals;
- number and description of employees affected;
- number and description of employees usually employed;
- period of time within which the dismissals are proposed;
- method of selecting employees to be dismissed; and
- proposed method of calculating the amount of any redundancy payment.

The employer must send a written notification of the contemplated redundancies to the Employment Administration (*Administration de l'Emploi*), as well as a copy of the above-mentioned notification before the negotiations start. The Employment Administration will then forward the written notification to the Labour and Mines Inspectorate (*Inspection du Travail et des Mines*).

The employer and the employee representatives must come to an agreement relating to the establishment of a social plan within 15 days from the start of negotiations.

At this stage, if the parties have come to an agreement, they must sign the social plan. After the signing of the social plan, the employer is entitled to notify each employee of their dismissal on an individual basis.

If the parties have not come to an agreement within the 15-day time period as provided for by the law, the minutes of the negotiations stating the attitude of the parties regarding the issues in negotiation are signed and immediately forwarded to the Employment Administration.

Both parties must jointly refer the matter to the National Conciliation Office (*Office National de Conciliation*) within 3 days of signing the minutes of the negotiations. Within 2 days of this the President of the National Conciliation Office will summon the joint committee (*Commission paritaire*) and within 3 days of the convening notice, the joint committee will hold a meeting. The committee will consider the matter within 15 days of the first meeting. The minutes of their discussions are forwarded to the Employment Administration and to the Labour and Mines Inspectorate.

After the National Conciliation Office has signed the minutes the employer is entitled to notify each employee of his/her dismissal on an individual basis. Any notification of the dismissal to the employees before the signature of the minutes is null and void. The dismissals come into effect after a period of 75 days, notwithstanding any longer period of notice as determined by the law or provided for in the contract of employment or in the collective bargaining agreement.

If an employee is notified of his/her dismissal before the procedure or before the social plan is signed, it is deemed null and void. Consequently, the dismissed employees must be reinstated. Employees dismissed within a collective dismissal not conforming to the law, are allowed to claim damages for unfair dismissal.

The period of notice starts either on the first day of the following month or on the fifteenth of the month depending on the day of notification of the dismissal. The period of notice will start on the first of the following month if notification has been given after the fourteenth of the previous month and will start on the fifteenth if the notification has been given before the fifteenth.

The notice pay is paid in the same way as a salary, at the end of each month. The employer is required to withhold taxes and social security contributions.

The length of the period of notice depends on the years of service of each employee. The length varies from 75 days where the period of employment was less than five years, to four months where employment was between five and 10 years and to six months where there has been more than 10 years' service.

Each employee is entitled to severance pay varying from one month to 12 months depending on seniority.

Any additional payment is not provided for by the law, or by a collective bargaining agreement, but is common practice. The method of calculation of such additional indemnities will exclusively depend on the negotiations.

We may provide you with some examples as follows:

Redundancy indemnity

Such indemnities vary with the age, length of service and family situation

Increased notice pay

During the notice period, the employer may decide to release some or all employees made redundant from the performance of their work. If he decides to have some of them keep working during part or all of the notice period, he should then pay an increased notice pay to compensate them.
In case of release, the employer may provide in the social plan that the payment of the notice pay will cease if the employee has found another job before the expiry of the notice period. The employer may also provide that such notice pay will be paid in any case, even if the employee finds another job.

Extended notice period

Trade unions sometimes request to extend the notice period. This solution is more expensive for the employer, as he must keep on paying his part of the social security contributions. The dismissed employees will remain on the payroll longer than normally required by law and will only be eligible to unemployment benefits at the expiry of the extended notice period.

Other examples

Indemnity for unemployed spouse, Indemnity for each children, Outplacement and any kind of support to find another position, Organisation or payment of seminars and (re)training courses, Drafting of detailed work certificates, Re-employment priority, etc...

A social plan may provide for other types of indemnities as determined by the negotiating parties.

Article 115 (10) of the Income Tax Law provides that any allowances granted to employees in the framework of a social plan are tax exempted upon agreement of the "*Comité de Conjoncture*" up to 12 times the monthly minimum social salary, which means that currently the tax exemption reaches EUR 21,617.99(index 756.27). The employer usually takes the commitment in the social plan to assist employees in obtaining such tax exemption.

An employee made redundant on a collective basis has the same rights as an employee made redundant on an individual basis. In other words, such employee may bring an action in court against the employer and claim compensation for damages as a result of the dismissal that he/she alleged to be unfair. Hence, to prevent the employee from filing a claim with the court, we usually recommend to have each employee made redundant as a result of the social plan, sign a letter mentioning that he/she is aware of the grounds for termination, that he/she accepts them, that with the implementation of the social plan, all claims against the employer on the basis of the employment contract and its termination have been fulfilled and that he/she does not have any further claims against the employer.

EMPLOYMENT RETENTION SCHEME

The "*Comité de Conjoncture*" may require social partners to enter into negotiations with a view to signing an employment retention scheme, at any time and at the latest when an employer carries out 5 dismissals for economic reasons over a reference period of 3 months or 8 dismissals for economic reasons over 6 months.

The social partners within the meaning of the Labour Code are on one hand the employer or employers' organisations and the other hand the staff delegation, employees' representatives of the joint works council, trade unions having signed the Collective Agreements or representative trade unions at a national level.

The plan aiming at maintaining the level of employment shall contain the results of the discussions on the following issues:

- application of the legal provision governing short-term work;
- implementation of changes to the duration of work;
- part-time employment;
- implementation of time saving accounts;
- temporary reduction of working time and participation in training sessions or edeployment;
- training sessions or redeployment within the company or within another company in the same sector;
- application of the legal provisions governing temporary lending of workforce;
- personal support for a change of carrier, eventually having recourse to external experts;
- application of the legal provisions governing the pre-pension regime;
- period of time over which the plan is applicable;
- conditions and procedures governing the implementation and follow-up of the plan.

OVERVIEW OF OUR PRACTICE

Bonn Steichen & Partners is a full service Luxembourg law firm committed to providing the highest quality legal services. With in excess of 60 professionals we offer a wealth of knowledge and experience in all aspects of Luxembourg law.

We represent a wide range of clients in matters that cross many areas of law.

Considering the fast moving world in which we live and the hostile business environment our clients may face, our experience grows continuously with the needs of our clients and our lawyers are required to remain attentive in order to constantly adapt themselves to new laws and regulations, situations and challenges.

With regard to the scope of law and matters in which we are active, we have subdivided those into three main categories:

Regulated Activities

Banking
Bank Lending
Capital Markets
Financial Services (Funds)
(Re) - Insurance
Securitisation
Structured Finance

Unregulated Activities

Corporate - M&A
Insolvency & Restructuring
Private Equity / Funds
Tax

Dispute Resolution

Compensation & Benefits
Employment
Dispute Resolution
Commercial
IP / IT
Real Estate & Construction

FOCUS ON SOME PRACTICE AREAS

Employment, Compensations & Benefits

Our lawyers advise on all aspects of employment law.

The services we provide include drafting employment contracts and general employment termination, assisting clients in information/consultation procedures, negotiating with employees representatives and trade unions and entering into collective bargaining agreements and social plans.

Our team also has an extensive experience in structuring schemes or alternative forms of remuneration for large international companies, such as share option plans, employee participation schemes, and supplementary pension plans.

We also frequently represent individuals and corporate clients in labor courts and in out-of-court dispute resolutions.

Dispute Resolution

Our lawyers advise clients at all stages of potentially contentious matters, from the setting-up of a strategic plan aimed at avoiding or preparing a litigious case in the best fashion, through advising, assisting and representing them in all state jurisdictions, up to the highest court in the country ("*Cour de Cassation*"), until enforcement of the decisions.

Arbitration is also a specialty, with a wide experience in this practice, both for national and international arbitration proceedings.

Luxembourg being part of the New York convention, and having a national set of applicable rules, is a friendly environment for arbitrating international disputes.

Our dedicated team is able to assist clients in English, French, Italian and German, and is consistently highly regarded in several international publications (Legal 500, International Lawyer, etc.)

OUR PARTNERS AND SENIOR COUNSEL

Anne MOREL
Partner
Employment Compensation & Benefits
Dispute Resolution
IT & General Commercial
Contact:
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Qualified
Luxembourg Bar, 1994

Education
- *DESS en Droit des Affaires et Fiscalité* (LIL.M. in Business and Tax Law) - Université Nancy II, France,
- *Diplôme de Juriste Conseil d'Entreprise*, DJCE (Post-Graduate Degree in Business Law -), 1993 - Université Nancy II, France,
- *Maîtrise en Droit des Affaires* (Master in Business Law), 1992 - Université Nancy II, France/ University of Saarbrücken, Germany,

Selected Experience
- Anne assists clients in individual as well as collective employment relationships: such as assisting clients in information/consultation procedures, negotiations with employees' representatives and trade unions and entering into collective bargaining agreements, collective dismissals.
- She has an extensive experience in structuring schemes or alternative forms of remuneration for large international companies, such as share option plans, employee participation schemes, and supplementary pension plans.
- Restructuring and rationalisation measures of a US worldwide industrial group of companies, active in the manufacturing business, which entailed the closing of the Luxembourg office (assistance to consultation phase and drafting of all documents required together with assistance to negotiation phase relating to collective dismissal and social plan implementation).

Professional Associations
- Founding member and Vice-President of ELSA (Employment Law Specialist Association, Luxembourg).
- Member of EELA (European Employment Lawyers Association)

Additional Information
Anne is author of numerous articles on Labour and Employment Law for legal books and journals.
She is a regular speaker at conferences (notably IFE, Meetincs).

Languages
English, French, German

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BANKING & FINANCE
CORPORATE
DISPUTE RESOLUTION
EMPLOYMENT, COMPENSATION & BENEFITS

INVESTMENT
IP, IT & GENERAL COMMERCIAL
REAL ESTATE, CONSTRUCTION
TAX

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