



Draft law on transparent and predictable working conditions: what practical implications for employers?



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Following the proclamation of the European Social Rights Framework by the EU institutions in November 2017, Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union was adopted on 20 June 2020 (the "**Directive**"). The Directive aims, inter alia, **to improve workers' access to essential information applicable to their employment relationship and to ensure that workers are protected against any adverse treatment or consequences**. Draft law 8070 (the "**Draft law**"), introduced in the Luxembourg Parliament on 7 September 2022, is intended to transpose the Directive.

The Draft law provides for changes to certain rules concerning employment contracts, apprenticeship contracts, temporary employment contracts, contracts of employment with pupils or students (excluding paid internship contracts) and maritime employment contracts. As it aims, among other things, to amend the mandatory clauses to be included in the above-mentioned contracts and to regulate certain clauses such as exclusivity clauses or the trial period, this Draft law will affect many employers. It is therefore strongly recommended that employers adapt their contracts now.

I. New protective measures

1. Protection against adverse treatment or reprisals (Article L. 010.2 of the Labour Code ("LC"))

The Draft law introduces a general principle of prohibition of any adverse treatment or retaliation against employees who have protested or lodged a complaint or appeal to have their rights respected.

This protection :

- covers both complaints lodged with the employer and proceedings, judicial or administrative, initiated externally to enforce the rights provided for in the Directive;
- extends to all employees who have testified to the existence of conduct contrary to the general principle, including employee representatives;
- deals specifically with the prohibition of any dismissal or adverse changes to an essential term of the employee's employment contract which would constitute an act of retaliation for protesting or responding to a complaint or action by the employee to enforce his or her rights;
- is particularly aimed at the case of the modification of an essential term of the employment contract to the detriment of the employee, which is to be understood as being "equivalent to dismissal". In this sense, a procedure is provided for requesting and communicating the reasons in writing in the case of dismissal and modification of an essential term of the employment contract with notice.

In the event of dismissal or modification of an essential clause of the employment contract to the detriment of the employee, which would constitute a retaliatory measure, the termination of the employee's employment contract may be the subject of an action for compensation for the unfair termination of the employment contract, which entitles the employee to damages.

2. Protection against unfair terms

The principle is established that any clause, which prohibits an employee or an apprentice (a "**Worker**") from working outside the normal working hours agreed in the employment contract or apprenticeship contract, in another employment relationship with one or more employers, is null and void. (Art. L. 121-4(8) of LC). Any clause that subjects the Worker to unfavourable treatment on the grounds that he or

she is engaged in another employment relationship with one or more employers outside the normal working hours agreed in the employment contract or apprenticeship contract shall also be null and void.

However, this prohibition does not apply when the combination of jobs is incompatible with objective reasons, such as health and safety at work, the protection of business confidentiality, the integrity of the public service or the prevention of conflicts of interest.

II. New provisions on the formalities of the employment contract

1. Delivery of the contract

These new provisions are intended to apply to **apprenticeship contracts, fixed-term and open-ended contracts** and **student contracts**.

The employer or training organisation must send the contract to the Worker, either in **paper form** or in **electronic form**, provided that:

- the Worker has access to it;
- the contract can be registered and printed, and
- the employer/training organisation keeps a record of its transmission or receipt.

Certain information must be communicated within a certain period of time (see tables below) and **given individually** to the Worker in the form of one or more documents.

Failing this, and after the employer or training body has been duly served with formal notice by the Worker to comply, the latter may, within a period of 15 days from the date of notification of the formal notice which has remained unsuccessful, request, by simple petition, the president of the labour court, who shall rule urgently and as in summary proceedings, to enjoin the employer or training body to provide the Worker with the missing information. This measure may be accompanied by a fine under penalty.

2. Modification of the apprenticeship contracts (Art. L. 111-3 (1ter) of LC).

The principle is established that any change in the essential elements of the apprenticeship contract must be the subject of **a written amendment** to the apprenticeship contract.

The training organisation shall draw up the amendment document in **as many copies as there are contracting parties**, one of which shall be given to the apprentice, the other being given to the training organisation **at the latest when the amendments concerned take effect**.

A **copy is submitted to the competent employers' professional chamber** or to the Vocational Training Department for training bodies that do not depend on any employers' professional chamber, unless the Minister for Vocational Training delegates this task to one of the employers' professional chambers.

In the absence of a written document and after the training body has been duly given formal notice by the apprentice to comply, the apprentice may, within a period of 15 days from the date of notification of the formal notice which has remained unsuccessful, request, by simple application to the president of the labour court, who shall rule urgently and as in summary proceedings, to enjoin the training body, including under penalty of a fine, to provide the apprentice with the amending document.

III. New mandatory information in the contracts

1. Mandatory particulars in the apprenticeship contracts (Art. L. 111-3 of LC)

The apprenticeship contract will now have to contain the following information, which must be provided by the following deadlines:

| | MANDATORY INFORMATION | DEADLINE FOR DELIVERY |
|-----|---|---|
| 1° | the surname, forenames, profession, identification number and business address of the training manager; in the case of a legal person, the name, registered office, surname, forenames and capacity of the persons representing it under the contract and of the training manager and, where appropriate, the number under which it is entered in the trade register; | Delivery between 1st and 7th calendar day following the 1 st working day. |
| 2° | the surname, first names, identification number, date and place of birth, sex, nationality, contact details and address of the apprentice. If the apprentice is a minor, the surname, first names and address of his legal representative; | |
| 3° | the objectives and methods of training in the trade or profession concerned; | |
| 4° | the date of signature, the start date and the duration of the contract; | |
| 5° | NEW: details of the rights and duties of the contracting parties, as well as, where applicable, the collective agreements governing the working conditions in the trade or profession concerned ; | Delivered within the 1st calendar month of the 1 st working day. |
| 6° | NEW: the amount of the basic allowance and, where applicable, any supplements to the basic allowance, accessories, gratuities or bonuses which may have been agreed and which must be indicated separately, as well as the frequency and the arrangements for payment of the allowance to which the apprentice is entitled; | Delivery between 1st and 7th calendar day following the 1 st working day. |
| 7° | NEW: the agreed trial period of three months and its conditions of application ; | |
| 8° | NEW: the duration of the paid leave to which the apprentice is entitled or, if this is not possible at the time the contract is concluded, the procedures for granting and determining such leave ; | Delivered within 1st calendar month of the 1 st working day. |
| 9° | NEW: the duration and normal working hours , as well as the arrangements for the provision of overtime and its remuneration and, where appropriate, all arrangements for changing shifts; | Delivery between 1st and 7th calendar day |
| 10° | NEW: the place of apprenticeship: a fixed or predominant place or, failing that, the principle that the apprentice will be employed at various places in Luxembourg or abroad or will be free to determine his place of work; | |

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| 11° | in the case of a multiple system of training places: the names, addresses and contact persons of the training places; | following the 1 st working day. |
| 12° | the name, first name and contact details of the tutor; | N/A |
| 13° | NEW: the identity of the <u>social security institution(s) collecting the social contributions and the related social protection scheme</u> , as well as, if applicable, the existence and nature of a supplementary pension scheme, the compulsory or optional nature of this scheme, the rights to benefits under it, and the existence of any personal contributions; | Delivered within <u>1st calendar month</u> of the 1 st working day. |
| 14° | NEW: the <u>procedure to be followed by the apprentice or the training body in the event of termination of the apprenticeship contract</u> , including the formal requirements and the periods of notice to be observed or, if this is not possible at the time of conclusion of the contract, the methods for determining these periods. | |

In addition, if the apprentice is seconded for at least 4 consecutive weeks, the training organisation is obliged to issue a written document to the apprentice prior to his or her departure, which must contain at least the following information:

| MANDATORY INFORMATION | |
|-----------------------|--|
| 1° | NEW: the <u>country/(ies) in which the work is to be carried out</u> and the <u>duration of the work carried out abroad</u> ; |
| 2° | NEW: the currency in which the basic allowance is paid and <u>the remuneration to which he/she is entitled under the provisions of the host Member State</u> ; |
| 3° | NEW: where applicable, the benefits in cash and in kind related to the expatriation, as well as the <u>allowances specific to the secondment and the arrangements for reimbursement of travel, accommodation and food expenses</u> ; |
| 4° | NEW: where applicable, the conditions for repatriation of the apprentice; |
| 5° | NEW: <u>the link to the official national website set up by the host Member State in accordance with Article 5(2) of Directive 2014/67/EU of 15 May 2014 on the implementation of Directive 96/71/EC on the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("IM Regulation")</u> . |

2. Mandatory particulars in the fixed-term and open-ended contracts (art. L. 121-4 of LC)

The fixed-term and permanent contracts will now have to contain the following information, which must be provided by the following deadlines:

| | MANDATORY INFORMATION | DEADLINE FOR DELIVERY |
|-----|---|--|
| 1° | NEW: the identity of the parties <u>to the employment relationship</u> ; | Delivery between 1 st and 7 th calendar day following the 1 st working day. |
| 2° | the date of commencement of the performance of the employment contract; | |
| 3° | NEW: the place of work; in the absence of a fixed or predominant place of work, the principle that the employee will be employed in various places, particularly abroad, or will be free to determine his or her place of work and the employer's registered office or, where appropriate, domicile; | |
| 4° | the nature of the position held and, where applicable, the description of the functions or tasks assigned to the employee at the time of hiring and without prejudice to a subsequent new assignment subject to compliance with the provisions of Article L. 121-7; | |
| 5° | NEW: the employee's normal daily or weekly working hours and <u>the arrangements for the provision of overtime and its payment as well as, where appropriate, any arrangements for changing shifts</u> ; | |
| 6° | normal working hours; | Delivered within 1 calendar month of the 1 st working day. |
| 7° | NEW: <u>remuneration, including basic salary</u> and, where applicable, <u>any supplementary salary, wage accessories, bonuses or profit-sharing that may have been agreed, which should be indicated separately</u> , as well as the periodicity and <u>the terms</u> of payment of the salary to which the employee is entitled; | |
| 8° | the duration of the paid leave to which the employee is entitled or, if this is not possible at the time of the conclusion of the contract, the manner in which the leave is granted and determined; | |
| 9° | NEW: <u>the procedure</u> to be followed by the employer and the employee in the event of termination of the employment contract, <u>including the formal requirements and the periods of notice to be observed</u> or, if this is not possible at the time of conclusion of the contract, the manner in which these periods of notice are to be determined; | |
| 10° | NEW: the duration and <u>conditions of application</u> of any trial period; | |
| 11° | any derogatory or supplementary clauses agreed by the parties; | N/A |
| 12° | where applicable, the collective agreements governing the employee's working conditions; | |

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| 13° | <u>NEW:</u> <u>the identity of the social security body or bodies collecting the social contributions and the social protection scheme relating to it, as well as</u> , where applicable, the existence and nature of a supplementary pension scheme, the compulsory or optional nature of this scheme, the entitlement to benefits under it and the existence of any personal contributions; | Delivered within 1 calendar month of the 1 st working day. |
| 14° | <u>NEW:</u> if <u>applicable, the right to training granted by the employer.</u> | |

In addition, in the case of a secondment of at least **4 consecutive weeks**, the employer is obliged to issue the employee with a written document before his/her departure, which must contain at least the following information:

| | MANDATORY INFORMATION |
|----|---|
| 1° | <u>NEW:</u> <u>the country(ies) in which the work is to be carried out</u> and the duration of the work carried out abroad; |
| 2° | <u>NEW:</u> the currency in which the salary is paid and <u>the remuneration to which he is entitled under the provisions of the host Member State;</u> |
| 3° | <u>NEW:</u> where applicable, the benefits in cash and in kind related to the expatriation, <u>as well as the allowances specific to the secondment and the arrangements for reimbursing travel, accommodation and food expenses;</u> |
| 4° | if applicable, the conditions for repatriation of the employee; |
| 5° | <u>NEW:</u> <u>the link to the official national website set up by the host Member State in accordance with Article 5(2) of Directive 2014/67/EU of 15 May 2014 on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending the IMI Regulation.</u> |

3. Additional mandatory particulars specific to fixed-term contracts (Art. L. 122-2 of LC)

| | MANDATORY INFORMATION |
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| 1° | where it is concluded for a specific duration, the date on which the term expires; |
| 2° | where it does not contain a term date, the minimum duration for which it is concluded; |
| 3° | where it is concluded for the replacement of an absent employee, the name of the absent employee in the case of an indirect replacement of an employee absent due to parental leave, the contract will indicate the name of this employee, even if the replacement is made on another post; |
| 4° | <u>NEW:</u> the duration and <u>conditions of application of any trial period;</u> |

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| 5° | if applicable, the renewal clause. |
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4. Mandatory particulars in the temporary employment contracts (Art. L. 131-6 of LC)

The engagement contract will have to contain the following information:

| | MANDATORY INFORMATION |
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| 1° | NEW: the user's identity; |
| 2° | the reproduction of the clauses and information listed in Article L. 131-4§(2) of LC; |
| 3° | where it is concluded for a specific duration, the date on which the term expires; where it does not have a date on which the term expires, the minimum duration for which it is concluded; |
| 4° | where it is concluded for the replacement of an employee, the name of the absent employee; |
| 5° | NEW: the duration and <u>conditions of application</u> of any trial period; |
| 6° | if applicable, the renewal clause. |

5. Mandatory particulars in the student contracts (art. L. 151-3 of LC)

The internship contract will now have to contain the following information, which must be provided by the following deadlines:

| | MANDATORY INFORMATION | DEADLINE FOR DELIVERY |
|----|--|--|
| 1° | the surname, first name, date of birth and address of the pupil or student; | Delivery between 1 st and 7 th calendar day following the 1 st working day. |
| 2° | NEW: the surname, <u>first name</u> and address of the employer or, <u>if the employer is a legal person, the company name and registered office</u> ; | |
| 3° | the start and end date of the contract; | |
| 4° | NEW: the nature of the job and, where appropriate, the description of the functions or tasks assigned to the pupil or student at the time of recruitment, as well as the place of work to be performed or, in the absence of a fixed or predominant place of work, the principle that the pupil or student will be employed in various places, in particular abroad, or will be free to determine his or her place of work, as well as the registered office or, where appropriate, the domicile of the employer; | |
| 5° | NEW: the daily and weekly working hours and <u>the arrangements for the provision of overtime and its remuneration as well as, where appropriate, all arrangements for changing shifts</u> ; | |

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| 6° | the agreed salary, taking into account the provisions of Article L. 151-5 of LC and, where applicable, all supplementary salaries, accessories to salaries, bonuses or participations that may have been agreed, which must be indicated separately; | |
| 7° | NEW: the time and <u>manner of</u> payment of wages; | |
| 8° | the place where the pupil or student is accommodated, where the employer has undertaken to provide accommodation; | N/A |
| 9° | NEW: <u>the procedure to be followed by the employer and the pupil/student in the event of termination of the student contract, including the formal requirements to be met;</u> | Delivered within 1 calendar month of the 1 st working day. |
| 10° | NEW: <u>the identity of the social security body or bodies collecting the social contributions and the related social protection scheme;</u> | |
| 11° | NEW: <u>if applicable, a reference to the collective agreements governing the working conditions applicable to the pupil/student;</u> | |
| 12° | NEW: <u>if applicable, the right to training granted by the employer.</u> | |

6. Criminal sanctions

An employer that fails to comply with these obligations incumbent on it under the provisions of Articles L. 121-4, L. 122-2 and L. 122-10bis al.2, L.123-3bis al.2 of the Labour Code shall be liable to **a fine of between 251 and 5,000 per Worker concerned**. If the employer is a legal person, the fine is between 500 and 10,000 EUR. In the event of a repeat offence within 2 years, these penalties may be increased to twice the maximum.

The same sanctions are provided for a temporary employment agency if it does not comply with its obligations under Article L. 131-6§1 of the Labour Code.

IV. Duration of the trial period agreed in a fixed-term contract (Art. L. 122-11 of LC)

The Draft law aims to limit the length of the trial period in fixed term contracts. It provides that any trial period agreed between the parties in a fixed-term contract may not be **less than 2 weeks or more than 1/4 of the duration fixed in the fixed-term contract**, or of **the minimum duration for which the fixed-term contract was concluded**.

V. Transitional measures to another form of employment

At the end of the trial period, if any, agreed by the parties, an employee who has worked for at least 6 months with the same employer may request in writing, once every 12 months, either:

- the conversion of his/her fixed-term contract into an open-ended contract with all the other rights and obligations attached to it (Art. L. 122-10bis of LC); or



- to take up or resume a full-time or part-time employment (Art. L. 123-3bis of LC);

Within 1 month of the notification of the request, the employer is required to either:

- **amend** the contract by mutual agreement between the parties, or
- **indicate precisely and in writing the reasons for refusing** to grant the employee's request.

An employer who fails to comply with this obligation is liable to **a fine of between EUR 251 and 5,000 per employee concerned**. In the event of a repeat offence within 2 years, these penalties may be increased to twice the maximum.

VI. Details of training hours

The Draft law intends to introduce a general principle of free training. The following training courses are covered:

- trainings which must be provided for the performance of the work for which the employee is engaged by virtue of legal, regulatory, administrative, statutory or collective agreement provisions;
- those relating to safety and health; and
- those relating to first aid, fire-fighting and evacuation of employees.

The new legislation specifies that trainings must be provided **free of charge** to employees and that the hours spent on training must be considered as **actual working time** and that they must take place **during the employees' working time**.

Our employment law team remains available if you would like more information about this Draft law and its implications.

VII. Your BSP contacts



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VIII. BSP Employment, Compensations & Benefit practice

Our pragmatic and result-oriented approach enables us to deliver advice to our clients active in a wide variety of industries. We can support you on:

- Employment policies and procedures
- Employment contracts
- Employment termination and settlement agreements
- Information/consultation procedures
- Restructuring measures and transfer of undertakings
- Negotiation with employees, representatives and trade unions
- Collective bargaining agreements
- Social plans
- Schemes or alternative forms of remuneration such as share option plans, employee participation schemes
- Supplementary pension plans

Furthermore, our professionals have an extensive experience in litigation. They represent employers in court in all kinds of litigation including claims for unfair dismissal, discrimination claims, and enforcement of non-competition covenants.



IX. About BSP

BSP is an independent full-service law firm based in Luxembourg. We are committed to providing the very best legal services to our domestic and international clients in all aspects of Luxembourg business law.

Talented and multilingual, our teams of lawyers work side by side with our clients to help them reach their objectives and support them with tailor-made legal advice, creating in the process professional relationships based on mutual trust and respect.

Building on the synergy of our different professional experiences and the richness of our diverse cultural background, we stand ready to meet our clients' legal needs, no matter how challenging they are.

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