



Luxembourg newsflash

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Reform of parental leave

On 11 October 2016, draft law no. 6935 concerning the reform of parental leave was voted by the Parliament. The Law concerning the reform of parental leave (hereinafter the “**Law**”) should come into force on 1 December 2016, while the new application forms for the new parental leave may be downloaded on the *Caisse pour l’avenir des enfants* (hereinafter the “**CAE**”) website from 1 November.

Providing more flexible forms of parental leave is the guiding theme of this Law, the primary aim of which is to improve the family and work life balance and to encourage both parents to take parental leave.

New types of parental leave

The legislator’s desire for greater flexibility will result, *inter alia*, in the introduction of split parental leave for each parent working under a 40 hours per week employment contract with the same employer.

At present, there are only two types of parental leave: full-time parental leave for six months or half-time parental leave for twelve months. Under the new Law, each parent will be able to choose from three options that can be further broken down into six parental leave arrangements: four or six months full-time leave, eight or twelve months half-time leave and lastly, split parental leave enabling parents to reduce their working time by allowing them one day off per week for 20 months, or four periods of one month of parental leave within a maximum of 20 months.

To benefit from one of the last two forms of split parental leave, the employee and employer must come to a joint agreement concluded in a parental leave plan prepared ahead of the leave period and signed by both parties within four weeks from the date the application was made. If the employer refuses the application for split parental leave made by the parent, the employer must inform him or her by registered letter with acknowledgement of receipt within two weeks of the application and invite the parent to an interview within two weeks of receiving this notification.

Employers that refuse to grant split parental leave must inform the parent of the reason for this decision during the interview and prepare in writing an alternative parental leave proposal or submit another parental leave plan. If a new parental leave plan is not agreed or signed within two weeks of the said interview, the parent may still opt for full-time parental leave for a period of four or six months, as he or she so wishes.

Higher compensation

One crucial change introduced by the new Law and intended to increase the number of parents taking parental leave is the introduction of a genuine replacement income instead of the current fixed allowance of EUR 1,778.31 (for full-time parental leave). This new replacement income will be determined on the basis of the applicant's income used to calculate his or her pension insurance contributions. The amount is therefore based on the applicant's average monthly earnings over the past twelve months before the start of parental leave, and ranges from EUR 1,922.96 (*i.e.* the minimum social wage for unqualified workers) to EUR 3,204.93 (*i.e.* one and two-thirds of the minimum social wage) for full-time workers. Unlike the current fixed allowance which is exempt from tax, this new income will be subject to tax and social insurance contributions and will also be adjusted in line with the salary index.

This significant increase in the amount of the allowance should result in more parents taking parental leave.

Conditions for obtaining parental leave

According to the Law, to benefit from this parental leave, the employee must have been affiliated with the Luxembourg social security system for twelve months, under one or more employment contracts amounting to at least ten hours per week (and not 20 hours per week as currently the case).

As regards the time limit for notifying the employer of parental leave, the new Law differentiates between "first parental leave" which one of the parents is obliged to take following maternity leave, otherwise they will lose the right to parental leave, and "second parental leave" which must be taken before the child's sixth birthday (whereas currently it must be taken before the child reaches five). The time limit for providing notice of first parental leave remains the same (two months before the start of maternity leave), whereas under the Law, the time limit for providing notice of second parental leave will be four months before the start of parental leave (whereas it is currently six months).

Terms for applying for parental leave

The Law also amends the terms for applying for parental leave. When it comes into effect, both parents will be able to take parental leave together if they wish.

Protection against dismissal

The protective provisions on dismissal remain unchanged. The Law thus provides that from the last day of the time limit for providing notice of parental leave (*i.e.* two months and one day before the start of maternity leave for first parental leave, or four months and one day before the start of second parental leave) and for the duration of the parental leave, the employer is not permitted to terminate the employee's employment contract. With the introduction of split leave which may be up to 20 months, the period of protection against dismissal will therefore be much longer than under the existing law (either six or twelve months depending on whether the parent takes full-time or half-time parental leave).

Transitional provisions

Lastly, the Law provides transitional provisions. Only applications submitted after the date the Law enters into force will be governed by the Law. However, parents who submit their application before the date the Law enters into force but who will start their parental leave after the said date are allowed to submit a new application, with the approval of their employer, so that they may change the type of parental leave. Parents who have opted for full-time parental leave for six months or half-time parental leave for twelve months before the date the Law enters into force and who will start their parental leave after it is effective may apply for the new allowance by registered letter with acknowledgement of receipt to the CAE. The employer's approval is in that case not necessary.

According to the report on the motives for this Law, an evaluation of the mechanism will be carried out, probably three years after it comes into force, given the much greater flexibility offered by this new scheme.

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