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The new year and what's new regarding labour law

The year 2017 will kick off with three major changes involving sizeable consequences for both employers and employees: wage indexation (I), an increase of the minimum social wage (II) and a reform of the organisation of working hours (III).

I. Compulsory wage increase from 1 January 2017

From 1 January 2017, the index applicable to employees' wages will climb from 775.17 to 794.54. This index increase will imply a 2.5% increase in gross salaries paid to employees with employment contracts subject to Luxembourg law.

Wage indexation is an automatic mechanism for the adjustment of salaries to keep pace with evolving living costs, as determined by the statistics and economic studies bureau, STATEC. Thus, salaries are automatically increased when the cost of living increases by at least 2.5%. The aim of this measure is to compensate for a loss of purchasing power due to inflation by increasing the salaries of employees accordingly.

Salaries have not been increased for at least three years, the last adjustment of the wage index dating back to 1 October 2013.

II. Increase of the minimum social wage on 1 January 2017

The beginning of 2017 will also introduce a 1.4% increase in the minimum social wage. Salaries earned by employees benefiting from the minimum social wage will be increased in two successive steps, one of 1.4% (linked to an increase in the minimum social wage) and the other of 2.5% (linked to the index increase mentioned above) from the month of January.

Thus, the gross minimum wage of non-qualified employees, that was 1,922.96 euros, will now be increased to 1,998.62 euros, representing a gross increase of 75.66 euros.

Qualified employees who had received a gross minimum wage of 2,307.56 euros previously will now also see their salaries reviewed in the same proportions, to receive 2,398.36 euros gross from 1 January 2017, *i.e.* a gross increase of 90.80 euros.

III. Reform of the organisation of working hours

The provisions of the law of 12 February 1999 implementing the national action plan to boost employment (hereinafter the "PAN Law") were applicable up until 31 December 2016 and a reform of the PAN Law has been eagerly awaited. Consequently, the law of 23 December 2016 on the organisation of working hours modifying the Labour Code (hereinafter the "Law") will take over from the PAN Law from 1 January 2017. The aim of the Law is principally to reform the Labour Code concerning the period of reference, the labour organisation plan (*plan d'organisation du travail*, hereinafter the "POT") and average weekly working hours.

The provisions for the maximum normal daily and weekly working hours indicated in article L. 211-5 of the Labour Code (these hours not exceeding eight hours per day and forty hours per week, or less depending on the applicable collective bargaining agreement), like the maximum working hours indicated in article L. 211-12 of the Labour Code (that cannot ordinarily exceed ten hours per day or forty-eight hours per week), remain unchanged.

In principle, the hours worked beyond the limits of the normal working hours mentioned above are considered as overtime and are subject to special remuneration in the form of extra leave or increased pay unless they are offset under a flexitime system of the work duration. Among these flexibility mechanisms, one consists of a reference period during which employees may be required to work beyond the limits indicated in article L. 211-5 of the Labour Code without benefiting from additional compensation on condition that the average weekly working hours do not exceed forty hours or do not exceed the maximum normal weekly working hours established by contract.

Before the coming into force of the Law, there were three types of reference periods: the legal reference period (lasting four weeks or one month, in the absence of a collective bargaining agreement), a ministerial reference period (lasting between one month and six months, in the absence of a provision pertaining to the applicable collective bargaining agreement and following a request made to the Ministry in charge of Labour) and a contractual reference period (within the framework of a collective bargaining agreement, the social partners being free to extend or reduce the legal reference period without, however, being able to extend it beyond twelve months maximum).

According to the Law, the ministerial reference period has been eliminated, the legal reference period of one month is increased to a maximum of four months while the provisions concerning the contractual reference period remain unchanged.

A. Extension of the legal reference period

The choice to opt for a reference period of up to four months remains at the employer's discretion provided that there is no applicable collective bargaining agreement or if there is one, it does not contain any provision for a reference period. If a company already currently operates with a legal four-week or one-month reference period, it will have the choice between maintaining this (former) reference period (without any new conditions to be fulfilled) or applying a longer reference period of up to four months. In this last case, the company must first observe the information and consultation procedure with the staff representatives as indicated in article L. 414-3 of the Labour Code or, if there is no staff representative body, the company must inform and consult with all of the employees concerned. The company must notify the Labour Inspectorate (*Inspection du Travail et des*

Mines, hereinafter the "ITM") of its decision to use a particular reference period or to modify the one currently in place within one month from its effective date.

Extension of the reference period will be compensated for the employees concerned by the allocation of extra days of leave (a day and a half of extra leave for any reference period of over a month and not exceeding two months, three extra days of leave for any reference period from two months to three months and three and a half days for any reference period of over three months and a maximum of four months). This compensation for the extended reference period by the granting of extra days of leave only applies (i) in companies that introduce a reference period of over one month, (ii) only for employees actually working under this new regime and (iii) only for reference periods accompanied by a POT.

The companies having set a POT in place with the obligation of granting extra days of leave will also be subject to new maximum monthly working hours beyond which the extra hours will be considered as overtime. The Law thus limits a 12.5% exceeding of normal monthly working hours (i.e. 45 hours in a weekly average of 40 hours) if a reference period lasting over one month but a maximum of three months is applied, or 10% (44 hours for a weekly average of 40 hours) if a reference period lasting over three months and up to four months maximum is applied. Any hours worked beyond these limits will be paid as overtime.

B. Adaptation of the POT

Although the Law maintains the POT, for which the legal duration remains one month (unless in the case where the reference period is less than one month), and although it does not make any major modifications on its content and its establishment, the few modifications made by the Law on this matter should nevertheless be noted. Thus, the Law eliminates the prior criterion of unpredictability by virtue of which it could be derogated to the POT in the case of an unpredicted event[1]. Determination of such an event was fundamental for determining whether the work done beyond the limits set in the POT should be considered as overtime, meaning that the employer would be obliged to pay the employee overtime. Under the Law, the criterion of unpredictability is replaced by an objective criterion, i.e. a notice period of three days. From now on, any change made with notice of less than three days before implementation will almost automatically be considered as overtime. However, the Law introduces a new method of compensating hours subject to a change of timetable, without giving rise to an increase in the total number of working hours[2].

Finally, the Law eliminates the obligation to send a copy of the POT to the director of the ITM.

[1] defined in article L. 211-7 (4) of the Labour Code as "*an event that, at the time of establishing the work organisation plan, could not be envisaged, either following a regular appearance of the phenomenon in the preceding periods, or following a prudent prevision, as a "bon père de famille", by the employer, of future events that must have, or could have, been known*".

[2] The working hours that exceed the initial timetable by more than two hours are compensated for at the rate of 1.2 hours for one hour worked instead of 1.0 for the two first ones.

C. Upholding of collective bargaining agreements currently in force

With regard to the collective bargaining agreements in force, they shall remain valid until their expiry.

The law stipulates, in article L. 211-9 of the Labour Code, that extra leave to compensate for an extension of the reference period and the limitations to the average monthly working hours shall not apply in the case of a reference period negotiated by the social partners. In fact, the social partners shall remain free to negotiate any compensation that is deemed to be in the best interests of the relevant companies or sectors and their employees.

As mentioned previously, the social partners are still able, under certain conditions, to negotiate a reference period of twelve months within the framework of a collective bargaining agreement. Within this framework, they remain free to negotiate between themselves the terms of the POT and to envisage a duration different from that normally applicable.

The Law still supports minor changes to flexible hours[3] and in case of litigation on the conformity of the POT or on the functioning of the flexible timetable.

In fine, the Law requires that an interim review of the new legal provisions be made five years after its entry into force.

[3] The Law introduces a principle according to which the institution of a flexible timetable as well as its regularity, its content and its methods is taken, in the absence of provisions in a collective bargaining agreement, upon mutual agreement between the company and the representatives or the employees concerned.

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