Luxembourg

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Individual employment relationships are governed by the labour legislation, in order of prevalence, comprise:

- EU regulations;
- collective bargaining and collective agreements;
- the Labour Code;
- grand-ducal regulations;
- employment agreements;
- internal regulations; and
- common practices in certain circumstances.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Labour law applies to all compensated activities executed in Luxembourg and are performed by any worker (including temporary workers, apprentices, students and interns). Employment relationships rely on the following cumulative elements:

- provision and performance of effective work;
- compensation granted for the work performance;
- subordination of the employee to the employer; and
- the employer's powers of direction and control over the employee's performance and duties.

If one of these conditions is not met, the relationship may be qualified to be a self-employed agreement (for example, a service agreement, consultant agreement, mandate, etc.).

Senior executives (i.e. having a higher remuneration, effective and real management power and significant independence in organising their work) qualify as a special type of worker, to whom different rules may apply (e.g. overtime) or other provisions do not cover (e.g. collective bargaining).

To some extent, a disabled person and/or person from an under-represented sex are also specifically protected by positive discrimination provisions.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Each employment agreement must be evidenced in writing and shall provide for the following details:

- name of the parties;
- date of commencement of the employment relationship;
- place of employment (or employer's address if there are various places of employment);
- nature of employment (e.g., a description of the tasks involved, which is recommended);
- employee's daily or weekly standard working hours;
- standard working schedule, if any;
- employee's remuneration and accessories;
- length of paid holidays or method for determining this;
- length of notice period when the contract is terminated;
- length of trial period, if any;
- any complementary provisions;
- any bargaining agreement governing the employee's work conditions; and
- any supplementary pension scheme.

In addition, fixed-term agreements must include details of:

- the reasons for the fixed term duration of the employment (as the case may be) limited by definite and non-long-lasting tasks or non-permanent activities of the employer (e.g. the names of any absent employees, or a temporary increase in the company's activity);
- the termination date or minimum employment duration; and
- any renewal clauses.

In the absence of a written document, the employment contract may be proved by any other means of evidence by the employee. The absence of a written document also triggers requalification (e.g. trial period into permanent employment).

1.4 Are any terms implied into contracts of employment?

Employment relationships must respect the Labour imperative law provisions, which are binding, even if not referred to in the employment contract. Any clause that aims at restricting the rights provided by such imperative provisions would be invalid. The general principle of good faith as well as internal regulations (which cover policies setting out disciplinary rules, instructions and guidelines for the proper performance of work) also govern the terms and conditions of employment relationships.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Yes (e.g. minimum wage which has been increased by 2.8% as of 1st January 2021). Should a provision be less favourable to an employee than imperative law provisions, such provision will be considered null and void. On the contrary, provisions that are more favourable to the employee are valid and applicable, even if they depart from imperative law provisions.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective agreements are generally binding in specific professional sectors and apply automatically to employment relationships executed within such sectors. These agreements provide for uniform employment conditions and social guarantees and may be negotiated at both company and industry level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Any person who practises a profession falling within the competence of one of the five professional chambers is mandatorily affiliated to this chamber. However, both employees and employers may be members of a trade union on a voluntary basis.

Trade unions are recognised as professional groups that are independent from the state, financially autonomous and composed of employees with an organised internal structure whose interest lies in the protection of professional interests, collective representation and the improvement of labour and general living conditions of their members.

Unions acquire recognition as a national representative body of employees through an election process at the chamber of employees, where at least 20% of the votes must be in their favour.

2.2 What rights do trade unions have?

Under certain conditions, trade unions have the right to negotiate (as party to) collective agreements, social plans prior to collective dismissals or the establishment of employment safeguard plans.

Trade unions also advise employees and represent them before national institutions, political bodies or employer organisations.

2.3 Are there any rules governing a trade union's right to take industrial action?

Trade unions must follow conciliation proceedings prior to supporting any industrial action.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Work councils have been abolished and their powers have been transferred to the staff delegation (SD), which is the only body that represents employees' interests.

The role of the SD is to express its opinion and draft proposals regarding the improvement of working and employment conditions and the social situation of employees (e.g. implementation of internal reclassifications). It will also discuss with the employer the situation, structure and probable development of employment within the company and be provided 'gender-specific statistics on recruitment, promotions, transfers, redundancies, employee salaries and training' for each six-month period.

Staff delegations may present complaints or suggestions to the employer on issues such as work safety, part-time work, and harassment.

The employer may appoint his representatives on the terms determined at his discretion, while the employees elect their representatives amongst themselves through a secret ballot and using a list system.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

In companies with more than 150 employees, the SD co-determination rights apply to decisions regarding the monitoring of employees' performance and behaviour, measures regarding their health and security, hiring and appraisal process, as well as the application of internal rules and collective agreements.

2.6 How do the rights of trade unions and works councils interact?

Trade unions and staff representatives interact in defending employees' interests. Both may, for instance, be involved in the establishment of collective agreements or social plans in case of collective dismissals.

2.7 Are employees entitled to representation at board level?

In public limited liability companies with more than 1,000 employees over the last three years or having received a specific financial contribution from the government, employees are entitled to be represented in the board of directors or the supervisory committee.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Employees are protected against discrimination by the Luxembourg Labour Code and Penal Code, based on the principle of equal treatment.

3.2 What types of discrimination are unlawful and in what circumstances?

Any direct or indirect discrimination based on origin, skin colour, sex, sexual orientation, family situation, age, state of health, disability, ways of life, political or philosophical opinions, trade union activities, membership or non-membership, true or supposed, of a particular ethnic group, nation, race or religion is prohibited.

Any discriminatory written provision shall be declared null and void. A dismissal based on discrimination will be deemed null and void and, under certain conditions, the employee is entitled to reinstatement in the company.

Any other type of discrimination (e.g., based on nationality), albeit not provided for by the labour law provisions, could be considered unlawful if not justified by the professional nature of the activity or its conditions of exercise.

3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

The Labour Code dedicates two chapters to the definition of discrimination as both harassment and sexual harassment (which is defined as gender-based discrimination).

It also apprehends the applicable conditions allowing to identify such situations, and the behaviours from both the employer and the employee's perspectives so as to either prevent such harassment from occurring or to treat them in an appropriate manner.

3.4 Are there any defences to a discrimination claim?

The defence consists either in proving that there is no breach of the principle of equality or in proving that unequal treatment is lawful since it is legitimate and proportionate with respect to the pursued purpose.

3.5 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Discrimination may lead to legal action against the tormentor who may be held liable before a Civil, a Criminal or a Labour Court.

Criminal claims may be settled only before a decision is taken by a Criminal Court. Any other claim may be settled before, during or after the trial.

3.6 What remedies are available to employees in successful discrimination claims?

The employee may terminate the employment agreement for gross misconduct of the employer and claim for damages.

The victim may also claim for damages (for any loss or harm, including moral harm) by proving the act of discrimination, the harm and a causal relation between the act and the harm.

3.7 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

The same protection against discrimination applies to "atypical" workers.

3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

There is currently no special law for whistleblowing, it is regulated on a sectorial basis (e.g. bank, insurance, etc.). However, both the Labour Code and Criminal Code provide for whistleblowers' protection against retaliatory measures (such as suspension, disciplinary measures, blacklisting, etc.) and dismissal, to the extent that they are acting in good faith.

Luxembourg's government plans to apply the forthcoming whistleblower protection directive, applicable as of 17 December 2021 (2023 under certain circumstances), to all areas of life in Luxembourg.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Maternity leave comprises a prenatal leave of eight weeks and a post-natal leave of 12 weeks.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Pregnant and nursing employees are protected against dismissal during their leave. The period of maternity leave is considered as working time in all respects (seniority, annual leave, entitlement to all advantages acquired prior to maternity leave, etc.).

During such leave, the employee is entitled to maternity allowance paid by the Social Security.

4.3 What rights does a woman have upon her return to work from maternity leave?

A woman is entitled to (i) resume her former position or a similar position, corresponding to her qualifications and a remuneration at least equal to the former remuneration, (ii) take parental leave, or (iii) not resume her position and reapply for a similar position within a period of one year.

4.4 Do fathers have the right to take paternity leave?

Fathers are entitled to 10 days of paternity leave. It is worth mentioning that compliance with deadlines is essential, since although such right is guaranteed, employers still have restriction rights.

4.5 Are there any other parental leave rights that employers have to observe?

Each parent is, under certain conditions, entitled to a full-time or part-time parental leave for a child under the age of six (respectively under the age of 12 in case of adoption). A recent draft bill aims at extending the circle of beneficiaries of family leave to grandparents.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Labour law does not provide for any specific flexibility for an employee caring for a dependant person. Due to the COVID-19 pandemic, the Government has set up a special family-related leave, the entitlement of which may be granted within a set time limit (this has been extended to May 2021 so far).

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

Where transfer of undertakings (TUPE) applies, employees automatically transfer to the new employer on their existing terms and conditions of employment with their existing acquired rights and liabilities intact. However, a share sale of the employer that does not affect the employment does not trigger the application of the TUPE rules.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

Employers cannot make changes to the terms and conditions of employment (and thus all employees' rights) of the transferred employees if the reason for making the changes is the transfer itself. All employment conditions are automatically transferred.

The transferee must further observe the provisions of a collective agreement signed by the transferor until its termination.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Where transfer of undertakings applies, employers must inform employees' representatives of the affected employees of the transfer (regarding the expected date of transfer, the reasons and consequences of the transfer and the contemplated measures towards the employees). Employers must consult on any proposed measures (changes or proposals for changes following the transfer).

The specified information must be communicated in an effective time (which is not defined by the law) before the realisation of the transfer and, in any case, before the employees are directly affected in their work and employment conditions. The larger the transaction and the more staff affected, the longer the timetable will need to be.

5.4 Can employees be dismissed in connection with a business sale?

Any dismissals will be automatically unfair where the sole or principal reason for the dismissal is the transfer. Indeed, under TUPE, all transferred employees must keep the same rights and same duties after the restructuring has been completed. Although not expressly provided by law, dismissals/restructuring (in particular collective redundancies) occurring further to a business sale may trigger a risk of requalification.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Terms and conditions of employment are transferred to the transferee and may be changed to the benefit of the employee. If the business sale entails a substantial change of the employment conditions at the expense of, and not accepted by, an employee, the latter is deemed to have been dismissed (by unfair dismissal).

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Notice of termination must be by registered mail (or handed over and countersigned by the employee). Where the workforce exceeds 150 employees, it may not be served until the day after the preliminary meeting and must be notified no later than eight days after the preliminary meeting. Unless the agreement is terminated with immediate effect, a notice period must be given in accordance with the length of the employee's service. The notice period is two months for five years of service, and up to six months after more than 10 years of seniority.

The statutory notice period (that applies to any dismissal) is:

- two months for a length of continued services of less than five years;
- four months for a length of continued services of more than five years but less than 10 years; and
- six months after a length of continued services of at least 10 years.

The length of the notice may be doubled by collective agreement, such as in the bank and insurance sectors.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Yes. Employees may be granted exemption from working during the notice period, their remuneration (and benefits) being maintained during such garden leave.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The decision to dismiss is the corollary to the employer's management power over his company and is subject to the existence of a serious ground to terminate the employment. Termination may be decided at any time unless a special protection applies.

Both for serious misconduct or with notice (if so requested by the employee), the employer must provide adequately detailed, true and serious grounds for dismissal by writing to the employee. Such motivation letter must allow the employee to know and verify the accuracy of the grounds for dismissal and consider the opportunity of a judicial action for unfair dismissal. If the employee challenges the reasons for dismissal, the burden of proof lies with the employer.

The dismissal becomes irrevocable once the employer has expressed, orally or in writing, the decision to dismiss the employee. The termination resulting from an employee's refusal to accept a substantial amendment to the employment contract is deemed a dismissal and may lead to an unfair dismissal claim.

Third party consent is not required prior to dismissal. However, for collective dismissals, the decision to dismiss is limited and submitted to prior negotiations with the employees' representatives.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Employees in sickness, pregnancy, maternity, paternity or parental leave cannot be dismissed (not even for gross misconduct).

In case of sickness leave, such protection remains valid for a maximum period of 26 weeks. For family leave, such protection covers the entire leave period.

Staff representatives and their alternates cannot be dismissed during their mandate and for six months following the end thereof. The same protection is granted to any official candidates to a staff delegation.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

Employees may be dismissed either for personal reasons related

to their attitude (e.g. lateness, non-performance, insubordination, absence without leave, or disrespect) or for economical, technical or organisational reasons (e.g. profitability, change in nature of production processes or restructuring).

Unless dismissed for gross misconduct, employees are entitled to statutory severance payment after at least five years of seniority with the employer.

The amount of severance pay is fixed in accordance with the years of uninterrupted service.

The statutory severance indemnity (that applies to any dismissal) is equal to:

- one month's salary for a length of continued services of at least five years;
- two months' salary for a length of continued services of at least 10 years;
- three months' salary for a length of continued services of at least 15 years;
- six months' salary for a length of continued services of at least 20 years;
- nine months' salary for a length of continued services of at least 25 years; and
- 12 months' salary for a length of continued services of at least 30 years.

In case of unfair dismissal, the employee is entitled to compensation to be fixed at the discretion of a Court.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Employers with more than 150 employees must conduct an interview before a termination notice, which may be notified only on the first business day following that interview and within an eight-day deadline.

The notification may be sent by registered mail or hand-delivered, both with acknowledgement of receipt. Oral dismissal is deemed an unfair dismissal.

If the employee requests the grounds for dismissal (within one month upon receipt of the dismissal letter), the employer must (within one month upon receipt of such request) provide the grounds for dismissal by registered letter to the employee. Late notification of the grounds triggers a judicial requalification as unfair dismissal.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

Violation of a substantial procedural requirement may be sanctioned by damages amounting to a maximum lump sum of one month's salary.

The employee may also claim material and moral damages based on wrongful or unfair dismissal. The proceedings must be initiated within a certain deadline after the termination.

The appraisal of the seriousness of the grounds for dismissal and the amount of compensation lies with the Court.

If the dismissal is declared unfair and the employer is sentenced to pay damages, the latter may appeal against the decision.

6.8 Can employers settle claims before or after they are initiated?

Settlement may be reached before, during or after the trial.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

The rules for collective redundancy are applicable if: (i) seven or more employees are dismissed within 30 days; or (ii) 15 or more employees are dismissed within 90 days.

In any case, a minimum of four terminated contracts qualify as collective redundancies if the contracts are terminated for reasons that are not directly related to the employees in question.

When these conditions are met, the employer must apply strict rules and negotiate a social plan.

Employers with at least 15 employees are bound by the Ministry of Labour and Employment to declare dismissals for economic grounds. This declaration duty triggers the impossibility to circumvent the rules of negotiation of a social plan.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Staff representatives will mainly enforce the protection of employees' rights. If the employer fails to comply with its legal obligation in the context of collective dismissals, employees may take legal action to claim damages either for unfair dismissal or for the dismissal to be declared null and void.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The Labour Code recognises non-competition clauses and establishes the conditions for such clauses to be valid. Together with non-competition clauses, labour legislation also recognises non-solicitation duties as enforceable restrictive covenants. Based on the duty of loyalty, along with specific criminal law provisions, employers' trade secrets are also protected.

7.2 When are restrictive covenants enforceable and for what period?

A restrictive covenant may be valid if it does not restrict freedom of establishment or the free movement of workers. It must further be (i) provided in writing, (ii) time limited (up to 12 months after termination), (iii) limited to a certain geographical area, and (iv) limited to the employer's professional activities.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Unless it aims at restricting an employment activity with a competitor of the employer, no financial compensation is required. However, recent case law shows that labour courts are more utterly likely to admit validity of restrictive covenants with financial compensation in return.

7.4 How are restrictive covenants enforced?

Courts decide on the enforceability of restrictive covenants. Failure to respect restrictive covenants may result in damages payments.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Privacy rights for employees must be balanced with an employer's general right to monitor employee performance. In general, employees must be informed of the employer's monitoring processes in order to enforce their rights under data protection rules in accordance with the law of 1st August 2018 enforcing the General Data Protection Regulation (GDPR) in Luxembourg.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Employees are entitled to access any personal data that is held by their employers. Further to the law enforcing the GDPR, the employment law provides for such right to a copy, the right to be informed, as well as the right of access to, to rectification of, to be forgotten, to restriction of processing, to data portability, and the right to object to its use.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Notwithstanding general principals resulting from the legislation on data protection, discrimination and privacy, there is no specific rules restricting background checks on applicants.

During the recruitment process, an employer may request police clearance or criminal record checks based on the needs of the job advertised (for example, if a driving licence is a prerequisite for the job or in case of employment involving contact with children). Health-related checks are circumscribed by the requirement of the medical examination process to be carried out prior to any employment.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Privacy rights for employees must be balanced with an employer's general right to monitor employee performance.

In general, employees must be informed of the employer monitoring processes in order to enforce their rights under data protection rules.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

EU case law considers that employees cannot open professional accounts, use them for personal purposes and expect privacy rules to be enforced in their favour.

However, employees must be informed of the existence, nature and extent of any surveillance, which is, in any event, limited and proportionate, as per the data protection principles.

This type of surveillance must be listed in the registry of treatment held by the employer, along with details of the requirements that make such surveillance lawful.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Labour courts located in an employer's registered seat or where an employee habitually carries out his or her work have territorial jurisdiction to rule on disputes between the two parties. An employer can bring court proceedings against an employee in the jurisdiction where the employee is domiciled.

Labour courts may rule in summary proceedings when a claim cannot be obviously challenged (e.g., in the case of unpaid leave or salary) or for temporary measures (e.g., the grant of unemployment benefits after a dismissal with immediate effect). The courts can also rule in main proceedings (e.g., claims for unfair dismissal and the grant of damages).

Labour courts are composed of one judge and two assessors representing employees and employers.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Alternative dispute resolution (ADR), such as arbitration, is applicable to employment-related disputes, but is rarely used in Luxembourg labour law.

Alongside the labour courts, where the judge's main role is conciliation, an individual conciliation service also exists at the Inspectorate of Labour and Mines (ITM). Further, the ITM has an informal mediation role. The Mediation Centre of the Luxembourg Bar offers the possibility of open mediation for labour law. Finally, arbitration is determined by the New Civil Procedure Code.

ADR is not a compulsory prerequisite to legal proceedings. However, parties may be obliged to have recourse to ADR depending on the provisions of the agreement or contract which defines their legal relationship.

As labour courts are competent to hear disputes between employers and employees, they also determine the enforcement conditions. Any infringement of an agreement (which is binding for the parties thereto) may be referred to the labour courts. An oral procedure applies to employment-related complaints ruled by labour courts.

Arbitration sentences are binding and enforceable contrary to conciliation decisions and mediation agreements, which lack legal force and are not legally binding.

The employee does not have to pay a fee to submit the claim.

9.3 How long do employment-related complaints typically take to be decided?

A trial can last between six and 18 months to reach a first-instance decision in a main proceeding. Summary proceedings may last up to six months.

9.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

Decisions can be appealed within 40 days of the date on which the judgment is notified to the parties by the court secretary.

Appeals are lodged with the court of appeal and are sent to the chamber that handles labour matters.

The procedure takes place according to the written proceedings (i.e., submissions are exchanged according to timetables issued by the court). Once all arguments have been discussed, the parties may ask for the closing of the debates. The court sets a date for the hearing (i.e., oral pleadings), during which the parties will resume their grounds, claims and arguments.

After examining the case, the court of appeal will issue its judgment. Generally, but not necessarily, a judgment is rendered one or two months after the pleadings have taken place (confirming or overruling the first judgment).

Appeal decisions are subject to cassation, which is a formal procedure that is strictly limited to questions of law and an analysis of whether the court of appeal applied the law correctly.

10 Response to COVID-19

10.1 Are there any temporary special measures in place to support employees and businesses during the COVID-19 emergency?

The Government has undertaken far-reaching and temporary measures to fight the spread of COVID-19 and simultaneously to ensure business continuity.

Among these legislative measures, the short time working regime has been tailored to the crisis. Employers (that have been forced to shut down or those experiencing difficulties due to the pandemic) may apply via a dedicated online procedure, whereby they may request repayment by the Employers' Fund of the compensatory allowance paid for the inactive hours capped at a maximum of 250% of the minimum social wage for an unskilled worker (€ 5,354.97) and up to a maximum of 15% of the company's total normal monthly working hours (1.022 hours per employee and per year – 10% as of May 2021).

It is worth mentioning that the hours of short-time work used during the period from 1 January 2020 to 31 July 2020 are not counted against the maximum working time reduction of 1,022 hours.

Besides, parents affiliated to the Luxembourg social security are enabled to benefit alternately on a shared basis from extraordinary leave for family reasons if they must look after their child(ren), either vulnerable individuals or whose school are closed (due to governmental decision) or who could not get a place in a childcare facility. This extraordinary family leave is assimilated to a period of incapacity for work due to illness, with regard to the employer and social security. Consequently, during this leave, employees are protected against dismissal apart from serious misconduct.

The partial unemployment scheme applies for employees, neither covered by a sickness leave, nor a leave for family reasons; or who can no longer be employed full time or no longer work at all. However, extraordinary leave cannot be combined with other measures permitting parents to stay at home (e.g., telework or partial unemployment) and may not to be mixed up with regular leave for family reasons.

As a result of the pandemic, the tolerance annual thresholds laid down by the tax treaties applicable between Luxembourg and the neighbouring countries (Belgium, France and Germany) to avoid double taxation, in case of cross-border employees, have been unbounded. The days spent working from home will not be taken into account in the calculation of these thresholds (24 days for Belgium, 29 for France or 19 days for Germany). Yet, this tolerance will only last until further notice.

Moreover, the short-term increase of the social security threshold of 25% of work activity in the country of residence will not be considered and correspondingly should not impact the country to which employees are affiliated for social security purposes. Thus, working days during which cross-borders employees are teleworking from their main residence may be considered as working days in the State where the activity would normally have been carried out.

The most innovative measure adopted by the Government is the "leave for family support", which enables employees in the private sector and self-employed persons (who have no other suitable option) to look after a disabled adult or an elderly person following the closure of a daycare structure or a training or employment structure.

The certificate, issued by the Ministry of Family Affairs has the value of a certificate of incapacity for work with regard to the employer and the National Health Insurance ("CNS").

Trial periods have been suspended with regard to labour contracts entered into with companies forced to shut down because of the closure governmental decisions or to employees currently on partial unemployment due to the COVID-19 crisis.

The remaining fraction of the trial period resumed as of 25 June 2020 (corresponding to the day after the end of the state of emergency).

Furthermore, the application of the rules for incapacity for work due to illness have also been suspended and the correlative protection against dismissal enhanced.

Alongside these suspensions, the normal mechanism of burden-sharing for sickness benefit was derogated from. Thus, from 1 April 2020 to 24 June 2020, the CNS directly paid the salaries.

Finally, the Government and the Joint Centre for Social Security ("CCSS") have decided on temporary suspension of:

- the computation of default interests for late payments of social security contributions;
- the recovery procedures of social security contributions;
- the enforcement procedures of social security contributions by bailiffs; and
- the penalties for late filing of the form to be made by Luxembourg employers with the CCSS.

In order to support businesses, the Government has announced € 8.8 billion total state aids, among others:

- a special anti-crisis financing, whereby the Luxembourg "Société Nationale de crédit et d'Investissement" finances 60% of loans granted by banks to eligible companies with a maximum loan of € 10 million to be reimbursed after five years with a two year-grace period on the capital reimbursement;
- advance payment of a maximum amount of € 500,000 to cover 50% of the costs of staff and rent;
- deferrals of the payment of charges and taxes for a total of € 4.5 billion;
- accelerated tax refunds;
- different (and very controversial) financial and emergency aids, whether repayable or not, ranging from € 2,500 to 12,500, for micro and very small enterprises and for the self-employed, who, depending on the type of aid, had to cease their activities as a result of the GDR or who suffered a loss of turnover of at least 50% due to the pandemic;
- an 85% state guarantee for loans and credit lines granted by the six participating Luxembourg banks, to companies facing financial difficulties as a result of the pandemic. The guarantee will apply to loans which have a six-year term maximum and will cover 85% of capital and interest being due under the loan. The banks will bear the remaining 15% risk.

To be eligible for the state guarantee, the maximum amount of the loan may represent only up to 25% of the turnover of the

company applying for the state guarantee. The benefit of the new credits is reserved for companies that were viable before 18 March 2020 (the beginning of the state of emergency). The assessment of this eligibility criteria is the sole responsibility of the banks.

10.2 What steps can employers take in response to reduced demand for services/ reduced workload as a result of the pandemic?

As mentioned above, employers facing reduced demand for services, reduced workload or those that have been forced to shut down (due to governmental decision) may apply for partial unemployment. In practice, the scheme ensures employees unable to work receive 80% of their wages. Employers pay a compensatory allowance corresponding to 80% of the normal employee's reference salary and receive a reimbursement from the Employers' Fund.

10.3 What are employees' rights to sick pay?

Under normal circumstances, employers continue to pay the full net salary (i.e., the basic salary, supplements and accessories) to employees who are unable to work until until the end of the month of the 77th day of absence, during a reference period of 18 successive months. Following that date, the CNS takes over the payment of the sickness benefits.

The right to financial compensation is limited to a total of 78 weeks for a reference period of 104 weeks. Financial benefit is no longer payable as from the day on which the total of incapacity periods exceeded a total of 78 weeks.

Due to the COVID-19 crisis, the CNS has covered the financial compensation due to sick employees during the periods between 1 April 2020 and 24 June 2020. Employers were no longer required to continue to pay, during the first 77 days of sickness leave, any employees who were unable to work.

It is worth mentioning that the mechanism for calculating the 78 weeks of incapacity for work due to illness was temporarily suspended during the period of the state of emergency.

10.4 Do employees have a right to work from home if this is possible or can they be required to return physically to the workplace?

On 19 April 2020, a petition was submitted to the Chamber of Deputies (Petition n°1556) in favour of the introduction of a right to telework. The author asked to allow employees to work from home for half of the daily or weekly working time determined by their employment contract. The place of work would then have been considered to be the employee's home.

This petition has reached 5,842 signatures, which guaranteed that it has been debated in the Chamber of Deputies.

On 20 October 2020, a new convention on the legal regime of telework was signed. This convention has been declared generally applicable through a Grand-Ducal regulation entered into force on 2 February 2020 and is valid for three years from its entry into force.

Despite the success of the Petition, an entitlement to teleworking has been denied.

Telework may only be voluntary based and is subject to a mutual agreement between the employer and the employee.

Although employees are entitled to use their withdrawal right in the event of serious, immediate, and unavoidable danger, which are justified, employers may require employees to return physically to the workplace.

10.5 How has employment-related litigation been affected by the pandemic?

The activity report of the Ministry of Justice for the year 2020 has not yet been published. However, one can expect to read that 2020 was a year marked by the pandemic and that the state of employment-related litigation (initiated, pending and ruled) has been strongly impacted.

Since the first lockdown, the Judicial Administration has been operating in reduced service and the movement of the public on the courts sites has been restricted to the absolute minimum.

From a practical perspective, one may expect some side-effects triggered by certain COVID-19 measures on employment-related litigation (e.g., suspension of the trial period and of sickness leaves, reimbursement of aids or advances overpaid).

On a positive note, the pandemic has accelerated the development of digital communication with judicial institutions. The courts, in cooperation with the Bar Association, have developed the process of electronic communications and facilitated exchanges between lawyers and the courts.

Besides, many procedural rules have been relaxed since the state of emergency. In particular, the various stakeholders in the proceedings (i.e., court registrars, lawyers and judges and magistrates) may communicate by digital means.

Before Labour Courts ordinary hearings are held according to time schedules which are communicated by the court registrars and attendance to the court hearings are restricted to the absolute minimum, which reduces physical travel.

Jackye Elombo has been qualified as a Luxembourg lawyer since 2003 and specialises in Employment law and Business Litigation.
She possesses a strong experience in complex and cross-border litigation, as well as a deep knowledge of the judicial procedures and system. More than the ability to solve problems, she shares her resolution and determination to anticipate, avoid and resolve.
Jackye has distinguished herself by helping clients rethink their dispute cases and providing responsive, cost-effective and efficient solutions over the past 17 years.
In her previous career, as a Partner, she led the Employment Practice at an established Luxembourg corporate-oriented law firm. In the year 2017, she was awarded together with her team a prize as Best Social and Legal Partner.

What do others say?

The "*committed*" Jackye Elombo (*The Legal 500 – 2015*) "*provides non-contentious and contentious employment advice*" (*The Legal 500 – 2016*), "*particularly on TUPE concerns and unfair competition from former employees*" (*The Legal 500 – 2017*), and is "*efficient and responsive*" (*The Legal 500 – 2018*).

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This firm advises and assists its Clients in all areas relating to the Company and its stakeholders, aiming at pertaining their practices and processes and making sure that they are working within all legal limits.
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