

Employment and employee benefits in Luxembourg: overview

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SCOPE OF EMPLOYMENT REGULATION

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

The parties to an employment agreement can freely choose the law applicable to their work relationship. However, Luxembourg mandatory provisions, which are applicable to all employees performing their work in the Grand-Duchy territory, will prevail over the chosen foreign law if these provisions are more favourable for the employee. Article L.010-1 of the Labour Code provides a list of such mandatory provisions (for example, minimum wage, working hours, duration of the annual leave, and so on).

Where no applicable law is chosen by the parties, the work relationship will be governed by the law of the place where the work is performed. Foreign employees performing their work in the Grand-Duchy will therefore be submitted to Luxembourg law.

Laws applicable to nationals working abroad

The parties can choose the law applicable to the work relationship (for example, Luxembourg law). Nevertheless, if the work is performed abroad, the mandatory provisions of that foreign country will be applied if they are more favourable to the employee.

In the case of a secondment of an employee of a Luxembourg company, the employment agreement will remain subject to the Luxembourg law, subject to the mandatory provisions of the host country if they are more favourable to the employee.

EMPLOYMENT STATUS

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

Self-employed and employees. To distinguish the several categories of workers, it is essential to define the elements characterising an employment agreement. Along with the fact that under an employment relationship work is performed in exchange for monetary remuneration, a relationship of subordination must exist, meaning that the employee must be placed under the authority of the employer, who will:

- Give orders.

- Control the performance of the duties of the employee.
- Control the due execution of such duties.

If one of these elements is not present, the judge will consider the relationship to be a self-employed agreement (for example, a service agreement, consultant agreement, mandate, and so on).

Executive and non-executive employees. Differences exist between regular employees (non-executive employees) and executives. The Labour Code defines executives as those employees:

- With a higher level of remuneration.
- With an effective and real management power.
- With a large degree of independence in work organisation and an absence of constraints regarding working hours.

Other categories. The Code also recognises other categories of workers, such as:

- Agency workers.
- Apprentices.
- Students.
- Trainees.

Entitlement to statutory employment rights

Unlike employees, self-employed persons are not subject to the Labour Code but are subject to the general provisions of the Civil Code and the Commercial Code.

Only certain provisions of the Labour Code apply to apprentices, students, trainees and agency workers.

Finally, executive employees will be excluded from the scope of any bargaining agreement as well as from certain provisions of the Labour Code (for example, the regulations on overtime).

Time periods

Different categories of employee can be employed for the following time periods:

- **Self-employed.** No time limit.
- **Salaried workers.** Can be employed for an indefinite period of time (permanent employee) or for a fixed-term period. In the latter case, the duration cannot exceed 24 months (two renewals included), otherwise the employee will be deemed to be a permanent employee.
- **Agency workers.** An assignment agreement for a certain position (*contrat de mission*) cannot exceed 12 months, including renewals (see *Question 15*).
- **Apprentices.** The duration of an apprenticeship varies from one to four years (depending on the sector or profession).
- **Students.** Students can:

- be hired during the holiday period for a maximum of two months per year;
 - enter into a fixed term contract for an average of ten hours per week over a period of one month; or
 - be occupied in the context of a voluntary internship, or an internship supervised by an educational institution.
- **Trainees.** No time limit is provided, but the risk of a long internship is that it may be re-qualified as a permanent employment agreement.

RECRUITMENT

3. Are any grants or incentives available for employing people? Does any information/paperwork need to be filed with the authorities or given to new employees when employing people?

Grants or incentives

Different incentives can be granted to companies employing:

- **Elderly or long-term unemployed persons.** The Employment Fund (*Fonds pour l'Emploi*) reimburses the social security contributions to the employer who employs elderly or long-term unemployed persons (both the employer and the employee's contribution) (see *Question 29*).
- **Disabled persons.** Employers may be reimbursed by the state for a part of the salary costs (between 40% and 100%, including the employer's social security contributions) as well as training costs, costs for the adaptation of the workplace, and so on, when employing disabled persons.
- **Young persons (under 30 years old).** Under certain conditions, employers may be reimbursed for a part of the wages and a part of the employer's social security contribution when employing young persons.
- **Apprentices.** Employers may be reimbursed for a part of the apprentice allowance and a part of the employer's social security contribution.

Filings

Relevant forms relating to the incentives above are available on the website of the national employment administration (*Agence pour le développement de l'emploi*) (ADEM).

BACKGROUND CHECKS

4. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

There is no specific legislation in Luxembourg regarding background checks, but some major rules concerning data protection and anti-discrimination principles provided by the Labour Code and the Law of 2 August 2002 as amended on the Protection of Persons with regard to the Processing of Personal Data must be respected.

The processing of personal data must be lawful, legitimate and proportionate to its intended purposes. The use of applicants' data processing for human resources management is exempt from the obligation to notify the National Commission for the Protection of Personal Data, but candidates must be informed about the recipients, and the existence and the modalities of such processing. Such data cannot be communicated to third parties except where a particular provision of law or regulation applies that allows for this, or where the data is essential to achieving the objectives of the processing.

An employer can request the following documents from a job applicant:

- A copy of the identity card/passport.
- A copy of diplomas.
- A copy of the social security card.

In accordance with the Law of 23 July 2016 which amends the Law of 29 March 2013, the employer can also request a criminal record extract (*Bulletin No 3*) by a written and motivated letter, which is based on the needs of the job position. The request must be indicated in the job offer. The extract must be destroyed either:

- At the latest, one month following the execution of the employment agreement if the applicant is hired.
- Without delay, if the person is not hired.

The potential employer can also request the Bulletin No 4 if the driving license is a prerequisite, and if this prerequisite is mentioned in the employment contract. The Bulletin No 5 can also be requested for missions involving contacts with minors.

PERMISSION TO WORK

5. What prior approvals do foreign nationals require to work in your country? What information/paperwork needs to be kept or filed with the authorities when they start work?

Visa

Procedure for obtaining approval. Employees from an EU member state or from the European Economic Area (EEA) are entitled to work in the Grand-Duchy of Luxembourg without any visa or permit.

Different types of visas exist for third country nationals, depending on the nature and duration of the stay.

One of the visas (visa D) is for either:

- A stay of more than three months.
- A stay of less than three months that is made in order to conduct a paid activity in Luxembourg.

Before applying for the visa, a third-country national must apply, from his home country, for a temporary authorisation to stay at the Immigration Directorate. In the 90 days following reception of the temporary authorisation, the third-country national must submit his visa application.

The visa application must be submitted to the Luxembourg diplomatic mission or consulate in his country of residence, or, failing that, at the embassy or consulate of the country representing Luxembourg in the Schengen area.

Cost. The visa usually costs between EUR50 and EUR60.

Time frame. It depends on each consulate or diplomatic mission, but this normally takes less than three months.

Sanctions. Illegal entry or stay in the Luxembourg territory is punishable by fines and/or imprisonment.

Permits

Procedure for obtaining approval. For EU/EEA national employees:

- For a stay of less than three months, the employee must hold a valid national identity card or passport.
- For a stay of more than three months, the employee must:
 - make, within eight days of their arrival, a declaration of arrival in their new municipality of residence and present a valid national identity card or passport, a family record book

or a wedding/partnership certificate and their children's birth certificate; and

- complete, within 90 days of their arrival, a registration certificate in their new municipality of residence and present a valid national identity card or passport and a copy of the employment contract or a promise of employment.

For any third country national employees:

- For a stay of less than three months:
 - before entering Luxembourg, they must hold a valid passport, a visa (if applicable), proof of a health insurance valid in Luxembourg, and documents proving the stay's purpose and sufficient personal resources for the duration of the stay, and they must send an application for a work permit to the Immigration Directorate of the Ministry of Foreign and European Affairs; and
 - after entering Luxembourg, they must make, within three days of their arrival, a declaration of arrival in their new municipality of residence and present valid travel documents.
- For a stay of more than three months:
 - before entering Luxembourg, they must submit an application to the Immigration Directorate for a temporary authorisation to stay and hold a valid passport and visa; and
 - after entering Luxembourg, they must make, within three days of their arrival, a declaration of arrival in their new municipality of residence, undergo a medical check to have a medical certificate, and submit, within three months of arrival, an application to the Immigration Directorate for a residence permit for third-country nationals.

Cost. The permit costs EUR80.

Time frame. Obtaining an answer from the Immigration Directorate of the Ministry of Foreign and European Affairs generally takes a maximum of four months. If no response is received within this time frame, the application should be considered to be rejected.

Sanctions. Illegal entry or stay in the Luxembourg territory is punishable by fines and/or imprisonment.

Under the Law of 8 March 2017, transposing the Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (Intra-corporate Transferees Directive) (published on 20 March 2017 and entered into force on 24 March 2017), specific residence permits have been implemented for seasonal workers, investors and for employees on temporary intracompany transfers.

RESTRICTIONS ON MANAGERS AND DIRECTORS

6. Are there any restrictions on who can be a manager or company director?

Age restrictions

Incapacity to act as a manager or director is set out in law. A person who has been prohibited by a judgment to exercise the function of a manager or director (for example, where they have committed fraudulent bankruptcy) cannot act as a manager or director.

Nationality restrictions

No nationality restrictions are set out. However, if a third-country national manager or company director wants to be appointed as a manager or director of a company in Luxembourg, he must obtain a residence permit for a self-employed third-country national (even if he is already holder of a residence permit for employees and employed in Luxembourg).

Other restrictions

Commercial, craft and industrial activities, as well as certain liberal professions, are subject to a business licence, which is granted by the Ministry of Small and Medium Sized Businesses after examining the professional qualifications and the professional integrity of the applicant. This procedure takes approximately three months.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

7. How is the employment relationship governed and regulated?

Written employment contract

A written employment agreement must be drawn up at the latest when the employee enters into service.

In the absence of a written contract, the employment agreement is not void, but:

- The employee must establish the existence and the content of the employment agreement.
- The employment agreement is deemed to be concluded for an unlimited period and without a trial period.
- The party who refuses to sign the employment agreement is free to terminate it without either compensation or notice.

All written employment agreements must include the following information:

- Identity of the parties.
- Effective date of commencement of work.
- Place of work.
- Functions of the employee.
- Normal working day or week.
- Normal working schedule.
- Remuneration.
- Duration of paid annual leave.
- Notice period (if any).
- Duration of the trial period (if any).
- Reference to the applicable collective bargaining agreement (if any).
- Reference to the existence and nature of a pension scheme (if any).

A fixed-term agreement must include the following additional information:

- Definition of its purpose.
- The termination date or the minimum employment duration.
- The name of the absent employee (in the case where the fixed-term employee is acting as a replacement for an existing employee).
- Any renewal clause.

Furthermore, some additional but not mandatory clauses can also be included, such as a non-competition clause and a non-solicitation clause.

Implied terms

The employee is bound by general obligations arising under Article 1134 of the Civil Code, which states that an agreement must be executed in good faith. This implies a duty of loyalty and

confidentiality from the employee towards the employer during and after the execution of the employment agreement.

Collective agreements

Under Luxembourg law, two categories of collective bargaining agreements can be identified:

- Those negotiated on the company, group or sector level by and between the employer(s) and the trade union representatives.
- Those applicable to some specific sectors (banking and insurance, building and civil engineering, social sector, and so on), which are published in the *Official Gazette* and are available on the Inspectorate of Labour and Mines' website (*Inspection du travail et des Mines*).

8. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Any unilateral amendment of an employment agreement relating to a secondary provision, or any amendment which is favourable to the employee and relates to an essential provision of the agreement, can be freely implemented.

However, any amendment of an agreement which is unfavourable to the employee and relates to an essential provision of the agreement must be notified to the employee using the dismissal procedure, with or without notice (see *Question 19*), otherwise the amendment will be considered null and void.

If the employee refuses an unfavourable amendment to an essential clause of his agreement which has been notified in due form, he must resign before the amendment enters into force and the employment agreement will terminate on the same date. This termination will be considered as a dismissal with notice, and could be considered as grounds for judicial action by the employee. A presumption of acceptance of the new work conditions exists if the employee does not resign and continues to work after those conditions take effect.

MINIMUM WAGE

9. Is there a national (or regional) minimum wage?

The gross social minimum wage is determined in accordance with the employee's qualifications:

- EUR1,998.59 per month for a non-qualified employee.
- EUR2,398.30 per month for a qualified employee.

These amounts are adjusted each year according to the evolution of the average wage level. It must be ensured that a collective bargaining agreement does not provide for higher wages.

RESTRICTIONS ON WORKING TIME

10. Are there restrictions on working hours? Can an employee opt out on either an individual or collective basis?

Working hours

The Labour Code fixes the working hours at 40 hours per week (that is, eight hours per day).

Nevertheless, flexible options are granted to the employer, who is entitled to:

- Increase the working hours to nine hours per day over a five business-day week (up to 40 hours per week): this option is

possible without any notification, formality or payment of compensation.

- Apply a reference period, which according to the Law of 23 December 2016 can be between one and four months (or 12 months depending on the terms of the collective bargaining) and implement:
 - a working hours plan (*Plan d'Organisation du Travail*) (POT), fixing the working conditions during the reference period by taking into consideration both the normal and also exceptional and unexpected activity of the business. The POT must be approved by the staff representatives; or
 - flexible working hours by which the employee organises his daily working hours considering the business needs.
- Increase the working hours up to a maximum limit of ten working hours per day and 48 working hours per week, which will require notification to the ITM and the provision of compensation.

Overtime is strictly prohibited for pregnant women. Executives are not subject to working hours limitations.

Rest breaks

For each period of 24 hours, a rest time of 11 consecutive hours must be provided. During each week (seven-day period), the employee must have a rest period of 44 hours. If the weekly rest period is not provided, the employee will be granted six additional days of leave per year (under specific conditions).

Shift workers

Shift work is organised according to a POT and overtime is paid accordingly.

Night work (between 10pm and 6am for all sectors except hotels and restaurants) is in principle limited to eight hours per 24 hours over a period of seven days. Night work will also lead to an increase in remuneration (minimum 15%) if a collective bargaining agreement is applicable or the work is conducted in the hotel/restaurant sector.

Certain categories of employees cannot be assigned to night work schedules (for example, pregnant women and children under 18 years old).

HOLIDAY ENTITLEMENT

11. Is there a minimum paid holiday entitlement?

Minimum paid holiday entitlement

Each employee is entitled to 2.083 days off for each month worked (that is, 25 days per year). For part-time employees, the calculation will be done on a pro rata basis. In principle, the employee must have been employed for a minimum of three months before taking any holidays.

In addition to the legal annual leave period, days off will be granted for special events (marriage, death of a close relative, and so on).

Public holidays

There are ten public holidays:

- New Year's Day (1 January).
- Easter Monday.
- Labour Day (1 May).
- White Monday.
- Ascension Day.
- National Day (23 June).

- Assumption (15 August).
- All Saints' Day (1 November).
- Christmas Day (25 December).
- Saint Stephen's Day (26 December).

ILLNESS AND INJURY OF EMPLOYEES

12. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to paid time off

To be entitled to receive paid time off and to be protected against dismissal, the employee must inform his employer on the first day of absence about his sickness, and submit a medical certificate at the latest on the third day. After the expiration of a 26-week period, the employer will have the right to dismiss the employee for real and serious reasons.

An employment agreement will automatically end after a sick leave of 52 weeks over a period of 104 weeks.

The employer will pay the full salary (all benefits included) to his employee from the date on which he is informed about the sickness until the end of the month during which the 77th day of sickness leave occurs (whether consecutive or not), over a reference period of 12 consecutive months. 80% of the overall remuneration paid by the employer during the sickness period will be reimbursed by the employers' mutual scheme insurance (*mutualité des employeurs*).

Recovery of sick pay from the state

As from the month following the 77th day of sickness leave, the National Health Agency (*Caisse Nationale de Santé*) (CNS) will pay, for a period of 52 weeks over a period of 104 weeks, sickness benefits to the employee.

STATUTORY RIGHTS OF PARENTS AND CARERS

13. What are the statutory rights of employees who are:

- **Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?**
- **Carers (including those of disabled children and adult dependants)?**

Maternity rights

Pregnant women are entitled to 16 weeks' maternity leave as follows:

- Eight weeks before the expected date of delivery.
- Eight weeks after the date of delivery. This leave can be extended by four weeks in the case of premature delivery, multiple births or breastfeeding. When the breastfeeding employee returns at work, breaks will be granted for breastfeeding.
- A draft Bill, which aims to **increase** the leave after the date of delivery to 12 weeks is currently under discussion.

If the woman has been registered with the sickness and maternity insurance for at least six months during the 12 months prior to her maternity leave, financial maternity benefit is paid by the social security system at the same rate as the employee's normal salary (limited to five times the minimum social wage).

The period of maternity leave is considered as an effective period of work and is taken into consideration when calculating the

employee's seniority and related rights. Furthermore, pregnant and breastfeeding women have additional rights, including:

- Protection against hazardous work.
- Protection against dismissal during the 12 weeks following delivery.
- Exemption from overtime and night work.

Paternity rights

Each father is entitled to two days of leave (financed by the employer) on the birth of a child.

A draft Bill, which aims to increase the leave to five days is currently under discussion.

Surrogacy rights

There are no provisions regarding surrogacy in the Labour Code.

Adoption rights

Employees adopting a child who has not yet reached the age of primary school education are entitled to an adoption leave of eight weeks (or 12 weeks in the case of multiple adoptions), paid by the state.

Where an employee adopts a child under 16 years of age but does not benefit from an adoption leave, the employee is entitled to two days' leave, paid by the employer.

Parental rights

According to the Law of 3 November 2016 (Parental Leave Law), each parent is entitled, under certain conditions:

- For the first parental leave to take parental leave directly at the end of the maternity leave.
- For the second parental leave to take a parental leave at any time until the child reaches the age of six (or 12 years in case of adoption).
- For both the first or second parental leave, the employee can request a full time parental leave of four or six months per child.

The Parental Leave Law implements high flexibility since each parent can also split his/her leave and choose an adapted parental leave regime. For employees working standard working hours, a part-time leave of eight or 12 months during which working time will be reduced by half can be granted, or a split of the leave which will enable the employee to reduce its working time by 20% per week over a period of 20 months can be implemented, or the leave can be split into four one-month periods during a maximum period of 20 months.

The current gross monthly parental leave allowance paid by the state is fixed at:

- Between EUR1,922.96 and EUR3,204.93 for an employment contract in full-time in the case of full-time parental leave.
- Between EUR999.30 and EUR1,665.48 for an employment contract in full-time in the case of part-time parental leave.
- Between EUR399.72 and EUR666.19 for an employment contract in full-time in the case of a parental leave split.

The specific amounts can be checked on the website "*Caisse pour l'avenir des enfants*" (<http://cae.public.lu>).

The employee on parental leave is protected against dismissal from the last day of the deadline fixed for sending the application for such leave (that is, two months for the first parental leave or six months for the second parental leave) until the end of the leave.

Carers' rights

There are two additional types of leave for personal reasons:

- **Leave for family reasons.** Parents of a child under 15 who requires the presence of one of his parents in the case of serious illness, accident or other urgent health needs are entitled to two

days (or four days for a disabled child) per year. However, this kind of leave can be extended, under certain restrictive conditions, up to 52 weeks (over a period of 104 weeks) by the social security authorities. A draft Bill related to the duration of this leave is currently under discussion.

- **Family hospice leave for nursing a dying or seriously ill person.** Five working days' (40 hours) leave is allowed per case, per year.

During these two types of leave, the employee is protected against dismissal and continues to receive his wage, and the employers' mutual insurance scheme reimburses the employer the total wage costs.

CONTINUOUS PERIODS OF EMPLOYMENT

- 14. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?**
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Statutory rights created

An employee's period of continuous service (seniority) will determine the following matters:

- Duration of notice period (see *Question 19*).
- Amount of the severance pay (see *Question 19*).
- Taking of holidays (see *Question 11*).
- Right to parental leave: employees must have a seniority of 12 months with the same employer to be eligible for parental leave (although this will be adapted in the reform on parental leave (see *Question 33*)).
- Staff representative elections: employees must have a seniority of 12 months on the first day of the announcement of the social election, and only employees with a seniority of six months on the date of the election can vote.

Consequences of a transfer of employee

In the context of a transfer of undertaking within the scope of Article L.217-1 of the Labour Code (see *Question 24*), the employees' seniority will be automatically transferred to the transferee. Even if the situation falls out of the scope of the Labour Code, it is standard practice to maintain employees' seniority.

FIXED TERM, PART-TIME AND AGENCY WORKERS

- 15. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?**
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Temporary workers

Unless otherwise stipulated, the legal provisions applying to permanent employees (for example, holidays, wages, working hours, and so on) must also apply to all employees bound by a fixed-term employment agreement.

Agency workers

Agency workers are entitled to:

- Annual leave on a pro rata basis.
- Have access to the company's facilities and common area (for example, catering and transport facilities) under the same conditions as permanent staff.

The remuneration of an agency worker paid by the temporary work agency cannot be below the wage of a permanent employee with the same qualification, or with an equivalent qualification, employed by the user company.

Part-time workers

Part-time employees must benefit from the same rights regarding wages, annual leave and any other benefits as those established for permanent employees.

Rights concerning seniority are calculated as if the part-time employees worked on a full-time basis.

The departure allowance for employees who have worked full-time and part-time in the company is calculated proportionally to the employment period carried out on a full or part-time basis.

DATA PROTECTION

- 16. Are there any requirements protecting employee privacy or personal data? If so, what are an employer's obligations?**
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Employees' data protection rights

The Protection of Persons with regard to the Processing of Personal Data Act 2002 (2002 Act) gives employees the following specific rights:

- Information right: they must be informed about the processing of any data.
- Access right: they must have access to the collected data and, if applicable, can require the amendment or deletion of such data.
- Opposition right: they are entitled to refuse any collection of personal data for legitimate reasons relating to their particular situation (unless such data collection is required by law).

Employers' data protection obligations

The Labour Code and the 2002 Act set out certain obligations:

- Prior notification to, or authorisation from, the National Commission for the Protection of Personal Data.
- Respect of the data subject's (the employee's) rights and in certain cases a duty to inform the staff representatives about the processing.
- Legitimacy and lawfulness of the processing of personal data. The Labour Code provides an exhaustive list of the cases in which the employer can supervise his employees.
- Storage duration: the data should only be kept for the period of time necessary for the purposes of the processing for which it was collected.
- Data security and confidentiality measures must be taken.

Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) is the new legal reference and will enter into force on 25 May 2018.

Luxembourg has launched the Draft Bill No 7049 to specify some aspects related to the data collection and to implement the principles set out in the General Data Protection Regulation.

DISCRIMINATION AND HARASSMENT

- 17. What protection do employees have from discrimination or harassment, and on what grounds?**
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Protection from discrimination

The Labour Code prohibits discrimination based on any of the following reasons:

- Religion.
- Belief.
- Age.
- Handicap.
- Sex.
- Sexual orientation.
- Ethnic origin.

Discrimination can be direct (a person who is, in a comparative situation, treated less favourably than another person) or indirect (if neutral rules have the effect of disadvantaging certain persons).

However, the Labour Code sets out exceptions and provides that, in certain circumstances, proportionate and legitimate discrimination can be justified and will not be considered as discriminatory.

Where discrimination occurs, the employee can file a claim before the labour courts or the criminal courts.

The Law of 15 December 2016 introduced a Chapter V, "Salary equality of Women and Men", in the Labour Code.

Protection from harassment

Moral harassment. A convention dated 25 June 2009 adopted by the social partners, and the Grand-Ducal Regulation dated 15 December 2009, which was declared binding on each employer, provide a legal definition of harassment and set out preventive measures that should be taken by the employer. The Labour Code also requires that each collective bargaining agreement must include a clause on harassment. Preparation of a draft Bill on moral harassment will commence before the end of the year 2016.

Sexual harassment. This is defined as any act which has a sexual connotation or is based on any sexual behaviour which:

- Is abusive and offensive for the victim.
- Results in the fact that the victim's refusal is used in order to affect his rights as regards professional employment conditions (remuneration, promotion, and so on).
- Creates an intimidating, hostile or humiliating climate towards the victim.

The employee can address a claim to the employer, who must investigate and take all measures to stop such acts. In any case, no measures or retaliation can be taken toward the victim or the persons who have disclosed harassing behaviour, and any dismissal would be automatically declared null and void.

The victim can also refuse to further execute the employment agreement, terminate that agreement with immediate effect and request the allocation of material and moral damages before the labour courts. Further, the employee can take action in the criminal courts where such behaviour can be sanctioned by criminal convictions.

WHISTLEBLOWERS

18. Do whistleblowers have any protection?

The term "whistleblowers" is not defined in the Labour Code but is addressed in Directive (EU) 2016/943 on the protection of undisclosed know-how and business information against their unlawful acquisition, use and disclosure.

For the National Commission for Data Protection (*Commission Nationale pour la Protection des Données*), whistleblowing is increasingly frequently used by companies to stop fraudulent behaviour, behaviour seriously affecting their activity or behaviour that may render them liable. The system allows employees to

report the behaviour of their colleagues which is illegal or against the rules of the company.

An employee who reports acts such as sexual harassment, corruption, and so on to his supervisor or to the competent authorities must not be subject to reprisals.

Any dismissal will be null and void, and the employee will be in a position to request, before the labour court, within 15 days of the notification of the termination, the continuation of the employment relationship or, if applicable, reinstatement.

TERMINATION OF EMPLOYMENT

19. What rights do employees have when their employment contract is terminated?

Notice periods

Notice period due in the case of dismissal. Unless the employment agreement is terminated with immediate effect (that is, for gross misconduct), a notice period must be provided. The duration of such notice depends on the employee's seniority:

- Less than five years' service: two months' notice.
- Between five and up to ten years' service: four months' notice.
- Ten years' service or more: six months' notice.

Notice period due in the case of resignation. The notice period also depends on the employee's seniority:

- Less than five years' service: one month's notice.
- Between five and up to ten years' service: two months' notice.
- Ten years' service or more: three months' notice.

The notice period can only start on the first or the 15th day of each month, depending on the notification date of the dismissal/resignation letter.

Severance payments

Severance pay will be payable to each employee that is dismissed with a notice period (including employees that are made redundant) based on the employee's seniority, as follows:

- Between five and up to ten years' service: two months' severance pay.
- Between ten and up to 15 years' service: three months' severance pay.
- Between 15 and up to 20 years' service: four months' severance pay.
- Between 20 and up to 25 years' service: six months' severance pay.
- Between 25 and up to 30 years' service: nine months' severance pay.
- 30 years' service or more: 12 months' severance pay.

Severance pay will be paid at the end of the notice period and will be exempt from income tax and social contributions. Severance pay will be calculated on remuneration paid to the employee during the 12 months preceding the notification of the termination.

In addition to these legal requirements, the payment of higher amounts can be set out in the employment agreement or in a collective bargaining agreement.

Procedural requirements for dismissal

For dismissal with immediate effect or with a notice period, the following prerequisites must be observed:

- **Pre-dismissal interview.** An employer employing a least 150 employees must organise a pre-dismissal interview before taking any decision. The threshold of 150 employees must be duly calculated, particularly if the company is part of a group which can be considered as an economic and social entity.
- **Notification of the dismissal.** If a pre-dismissal interview is required, the dismissal can only be notified to the employee on the first business day following that interview. In the case of dismissal with immediate effect, the employer must explain the reasons for the dismissal in a notification letter. In the case of dismissal with a notice period, the reasons for the dismissal will be given on the employee's request, which must be made within one month. The employer will then have one month from the date of that request to explain the reasons for the dismissal.
- **Administrative formalities.** Following the dismissal, the employer must notify the dismissal to the Social Security Centre (*Centre Commun de la Sécurité Sociale*) by sending the form available on the following website: www.ccss.lu/formulaires/formulaires/.

20. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

Any dismissal must be based on real and serious reasons (or gross misconduct in the case of a dismissal with immediate effect).

During the pre-dismissal interview (see *Question 19*), the employee can be assisted by another employee or by a delegate of a national representative union organisation.

Protected employees

The following categories of employees are protected against dismissal:

- Pregnant women.
- Employees on maternity leave.
- Employees on parental leave.
- Employees on sick leave.
- Employees' representatives (except in the case of gross misconduct) as well as, candidates for employees' representatives and former representatives are protected during a certain period.
- Employees on internal redeployment.

REDUNDANCY/LAYOFF

21. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of redundancy/layoff

Redundancies. A redundancy situation arises where an employee is dismissed, with notice, for reasons that are not related directly to the employee, but are based on the employer's economic and operational needs, or are made in the context of a restructuring.

Redundancies can be individual or collective, and there are specific procedural requirements set out for collective redundancies.

Layoffs. To avoid redundancy, employers can also request, under certain conditions, the temporary layoff of employees. Such layoff will only be granted if:

- A significant decrease of the employer's activity can be observed (notably, compared to the three previous years).

- Such decrease of activity is cyclical and temporary.
- A favourable evolution is provided by the employer, as these measures are only temporary.

Procedural requirements

Individual redundancy must follow the procedure outlined in *Question 19* (for dismissal with notice). In addition, the employer must:

- Consult the staff representatives.
- Inform the Economic Committee about any dismissal, if it employs more than 15 employees.
- Take into consideration any re-employment requests. Employees dismissed for economic or operational reasons can request re-employment during a period of one year following the dismissal.

Redundancy/layoff pay

Redundancies. Employees will, under certain conditions, receive severance pay, which will be paid during the notice period (see *Question 19*).

Layoffs. Each employee can be laid off for a maximum duration of 350 hours per calendar year. During the layoff period, the employer will pay an indemnity amounting to 80% of the employee's remuneration (although this indemnity cannot be higher than 250% of the minimum wage fixed for unqualified workers).

All costs related to the first 16th hours of inactivity per month will be borne by the employer. From the 17th hour of inactivity, the Employment Fund will reimburse the employer by paying 80% of the average gross remuneration per hour that was paid to the employee during the three months preceding the layoff.

Collective redundancies

Provisions concerning collective redundancies will apply if either:

- At least seven employees are dismissed within 30 days.
- At least 15 employees are dismissed within 90 days.

These thresholds are calculated by taking into consideration any dismissal made at the employer's initiative for reasons which are not directly related to the employee. However, at least four of the dismissals (of the 7 or the 15 dismissals) must be redundancies.

In the case of collective redundancies, the employer must:

- Inform the staff representatives.
- If a collective bargaining agreement is applicable, inform the trade union that signed that agreement.
- Inform the national employment administration (*Agence pour le développement de l'emploi*).
- Negotiate a redundancy plan with the staff representatives and implement that plan.
- Liaise with the Economic Committee (*Comité de Conjoncture*) to obtain the tax exemption procedure for voluntary departure and severance allowances.
- Consider the deployment of the employee to another position. Even though this obligation is not set out in the Labour Code, case law appears to have introduced this obligation over the last few years.

The length of the notice period will be extended in the case of collective redundancies as follows:

- Employees with less than five years' seniority: 75 days' notice (which can be extended to 90 days by the Ministry of Employment).
- Employees with a seniority of between five and up to ten years: four months' notice.

- Employees with ten years' seniority or more: six months' notice.

EMPLOYEE REPRESENTATION AND CONSULTATION

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

Public limited liability companies (*sociétés anonyme*) incorporated under Luxembourg law must be managed by a board of directors or supervisory board comprising at least one third of employees where either:

- They have employed 1,000 employees or more over the past three years.
- They have benefitted from a state investment (that is, those companies identified in Grand-Ducal Regulation dated 11 August 1974, as amended).

Consultation

Employees are represented by the following representatives:

- **Staff representative(s)**. Companies employing, during 12 consecutive months, at least 15 employees must have staff representatives. The representatives have a duty to protect the employees' interests and will be consulted on, or informed about:
 - working conditions and the social situation of the employees;
 - implementation/amendment of internal regulations;
 - implementation of procedures on mobbing and violence at work;
 - modification of working hours;
 - modification of employment agreements;
 - transfer of undertakings or redundancies;
 - running and development of the business.
- **Joint works council (JWC)**. Under the old law, companies employing, over a three-year period, at least 150 employees had to implement a JWC. However, the law dated 13 July 2015 on the reform of social dialogue (2015 Law) has abolished the existence of the JWC and transferred their members into staff representatives. As from 1 January 2016, no obligation to implement a JWC exists. However, if a JWC was implemented before that date, it will continue to exist until 2018 (the year of the next social elections). The JWC has decision-making powers concerning:
 - the implementation/modification of health and security measures;
 - the implementation of criteria to be considered for recruitment and career advancement;
 - the implementation/amendment of internal regulations;
 - data protection issues.
- The JWC must also be informed about, and/or consulted on:
 - the transformation or construction of the infrastructure;
 - training plans;
 - decisions having a financial and economic impact;
 - the creation of part-time jobs.

- **Representatives at the economic and social entity level**. Implemented by the 2015 Law, these representatives will create a social dialogue between the several entities that comprise a group of economic and social entities.
- **Health and safety representatives**. These are appointed by the staff representatives, either from among its members or among the employees. They must take care of health and safety issues and formulate proposals to the employer. They must assess whether the rules protecting pregnant women and young employees are duly applied.
- **Equality representatives**. These are appointed by the staff representatives from among its members, and they must ensure equality between men and women by:
 - proposing measures;
 - implementing awareness actions (such as internal training);
 - being active in the anti-harassment field.

Major transactions

See above, *Consultation*.

23. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

Any hindrance on the employer's part to the establishment, appointment or functioning of the representative bodies (see *Question 22*) can be punished by a fine of between EUR251 and EUR15,000 (a fine of EUR10,000 applies if this relates to a joint works council).

Employee action

There are no specific procedures outlined in the Labour Code, but an employee representative can alert the Inspectorate of Labour and Mines (*Inspection du Travail et des Mines*) of any failures of the employer.

CONSEQUENCES OF A BUSINESS TRANSFER

24. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees

In the context of a transfer of an undertaking (that is, a merger, split off, estate sale, share sale, and so on), all existing employment agreements, and all rights and obligations arising from those agreements, are automatically transferred to the transferee.

The transferee must also maintain all rights arising from a collective bargaining agreement until its expiration, termination or the entry into force of a new bargaining agreement. All rights arising from a pension scheme will be automatically transferred.

Protection against dismissal

Neither the transferor nor the transferee can, during a certain period following the transfer, dismiss an employee on the grounds of the transfer. Such a dismissal will be qualified as automatically unfair and result in the payment of moral and material damages.

However, a dismissal can be based on economical or reorganisational reasons, but in this context, the reasons for the dismissal must be precisely stated.

Harmonisation of employment terms

The transferee must maintain the working conditions of the transferred employees. If any harmonisation of the working

conditions is necessary, the transferee can amend the employment agreements with the consent of the employees, provided that the modifications are either non-substantial modifications, or are modifications made in the employees' favour. Where substantial modifications are required, the transferee must use the procedure outlined in *Question 8*.

EMPLOYER AND PARENT COMPANY LIABILITY

25. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
 - A parent company can be liable for the acts of a subsidiary company's employees?
-

Employer liability

Article 1384§5 of the Civil Code provides that employers are liable for all damages caused by their employees in the course of their work.

Parent company liability

There is no legal provision that provides for the liability of the parent company for damages caused by its subsidiary.

Employer insolvency

26. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee rights on insolvency

Employment agreements will be automatically terminated where a bankruptcy judgment is issued against an employer by the commercial court.

In the case of other insolvency procedures, such as an arrangement with creditors (*concordat préventif de faillite*) or a controlled management procedure (*procédure de gestion contrôlée*), the employment agreements will remain in force until a bankruptcy procedure is opened, or until termination of those agreements is decided by the insolvency administrator.

Following the termination of the employment agreement, the employee will be entitled to obtain the following payments:

- Remuneration due for the month in which the bankruptcy decision was rendered.
- Remuneration due for the month following the bankruptcy decision.
- 50% of the remuneration due during the legal notice period which would have been applicable for a dismissal with notice (see *Question 19*).

Employees must request the payment of this remuneration by sending a claim declaration to the curator appointed in the bankruptcy judgment or to the clerk of the commercial district court. Amounts related to employees' remuneration are secured and will be paid in priority to unsecured creditors.

State guarantee fund

All amounts (remunerations, compensations and indemnities arising from the execution or termination of the agreement) equal to a maximum amount of six times the minimum wage must be paid before all other debts (even secured debts). These amounts are guaranteed by the Employment Fund if the debtor does not fulfil its obligations.

HEALTH AND SAFETY OBLIGATIONS

27. What are an employer's obligations regarding the health and safety of its employees?

Employers are responsible for their employees' health and security, and the implementation of workplace-related security measures and risk prevention procedures.

All of the requirements are set out in the Labour Code and in Grand-Ducal Regulations (for example, Grand-Ducal Regulation of 2 April 1996 on employees, premises and equipment of health services at work, and Grand-Ducal Regulation of 17 June 1997 on the periodicity of medical examinations and occupational healthcare, and so on).

Employers must:

- Appoint a safety officer (or fill this function themselves if less than 50 employees are employed).
- Subscribe, under certain conditions, to an occupational health service which will provide assistance regarding health and security matters.
- Implement risk prevention procedures.
- Implement specific technical measures (for example, safe equipment to be available on the workplace, and so on).
- Implement information measures (for example, ensure the visibility of adequate safety signs, and so on) and provide training.
- Follow up on medical examinations.
- Register all work accidents with the Association of Insurance for Accidents.

TAXATION OF EMPLOYMENT INCOME

28. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
 - Nationals of your jurisdiction working abroad?
-

Foreign nationals

A foreign national will be qualified as a Luxembourg tax resident if he has a residence in Luxembourg and stays for more than six consecutive months there during a year. If the foreign national is considered as tax resident in several countries, the application of any applicable tax treaties will resolve the issue of taxation and avoid double taxation.

However, a non-resident deriving more than 90% of its professional income from Luxembourg (or more than 50%, for Belgian nationals) will, on the taxpayer's request, be taxed under the same conditions as tax residents, and their entire income (Luxembourg and foreign income) will be taxed at the same rate as is applicable for tax residents.

Nationals working abroad

If a Luxembourg national works abroad but maintains a normal residence in Luxembourg (see above, *Foreign nationals*), he will be taxable in Luxembourg on his worldwide income. If he works and maintains a residence in another foreign country, he will in principle be subject to tax in that country, subject to the provisions of any applicable double tax treaty.

29. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of taxation on employment income

Employment income from residents and non-residents will be taxed at progressive rates of between 0% and 40%. The exact rate is determined by the income bracket and the personal situation of the taxpayer (for example, whether the taxpayer is married or not, number of children of the taxpayer, and so on). An Employment Fund surcharge is applied at two separate rates, depending on the employee's income and marital status:

- A 7% rate will be applied for either:
 - all income below EUR150,000 (for single taxpayers); or
 - all income below EUR300,000 (for couples taxed jointly).
- A 9% rate will be applied for either:
 - all income higher than EUR150,000 (for single taxpayers);
 - all income higher than EUR300,000 (for couples taxed jointly).

Each employee must request a tax card, which will detail his marital status and applicable tax class. The tax card must be provided to the employer, as it allows for the calculation of the monthly amount of taxes to be withheld.

Social security contributions

Employers, employees and the self-employed are subject to the payment of social contributions.

Each employer must register its company and each of its employees (within eight days following entry into service) with the Social Security Common Centre (*Centre Commun de la Sécurité Sociale*) (CCSS). The self-employed must also make this registration themselves.

Each month, the employer withholds a contribution on the employee's remuneration and pays the total contributions (that is, the employee's and employer's part) to the CCSS.

For 2017, these contributions are as follows:

- Health insurance: 3.05% of the employee's remuneration, to be paid by both the employer and employee.
- Pension insurance: 8% of the employee's remuneration, to be paid by both the employer and employee.
- Dependency insurance: 1.40% of the employee's remuneration, to be paid by the employee.
- Health at work contribution: 0.11% of the employee's remuneration, to be paid by the employer.
- Accident insurance: 1% of the employee's remuneration, to be paid by the employer.
- Employer's mutuality: between 0.51% and 2.92% of the employee's remuneration, to be paid by the employer. The rate is determined based on the absenteeism rate within the company for the preceding year.

BONUSES

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded, whether generally or in particular sectors?

A bonus will be mandatory if:

- It has been fixed in the employment agreement.
- It has been fixed in a collective bargaining agreement.
- It results from a practice which can be qualified as constant. Such bonuses must therefore be general (that is, granted to all employees or to specific categories of employees), regular and fixed (that is, the amount must be determined or at least determinable).

Even where bonuses are written into the employment agreement or are fixed in practice, in Luxembourg it is common to mention in the employment agreement that any and all gratuities, bonuses or advantages are granted on a discretionary basis and can therefore be revoked at any time by the employer.

The bonuses of certain categories of employees working in the insurance, banking and funds industry (that is, risk-taking employees) may be subject to specific provisions as their allocation can be strictly capped and regulated.

INTELLECTUAL PROPERTY (IP)

31. If employees create IP rights in the course of their employment, who owns the rights?

Industrial property

Patents. An invention created by an employee under an employment agreement which details the creative duties and tasks of the employee, where that invention is created during the performance of the employee's function within the company's sector of activity, will be owned by the employer. Employment agreements usually include an assignment to the employer of all inventions created in relation to the employee's functions.

Designs. Designs developed by an employee during the execution of his employment agreement are owned by the employer.

Trade marks. The exclusive right to a trade mark is owned by the holder mentioned in the trade mark registration.

Copyright

Copyright is owned by the employee. The employment agreement, or any other written agreement, must therefore expressly authorise the assignment of this right (all or part of moral and/or patrimonial rights to the employer).

As an exception to this rule, the employer may own the rights if it was a directed work (the work was created by several employees at the employer's initiative, who publishes or produces and discloses it under his name, under the modified Law of 18 April 2001 on copyright, related rights and databases).

RESTRAINT OF TRADE

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

During their employment relationship, employees are bound by a duty of loyalty which prohibits them from performing any other activity, whether remunerated or not (unless the employer expressly consents to the performance of such activity). It is therefore standard to include an exclusivity clause in the employment agreement to formalise this obligation, but in any case employees will be bound by the duty of loyalty even if provisions concerning loyalty are not included in the agreement.

Post-employment restrictive covenants

The employment agreement can include:

- **A non-competition clause.** The Labour Code provides that a non-compete obligation:
 - can only apply to a similar activity to that carried out by the former employer;
 - can only restrict the carrying out of a similar activity as a self-employed person: the employee can therefore occupy salaried functions by a competitor of the former employer;
 - will only be valid if the employee's annual remuneration exceeds EUR54,164.35 (index 794,54) on the termination date;
 - must be stated in writing;
 - must be limited to 12 months after the termination of the employment agreement; and
 - must be geographically limited to the Grand-Duchy's territory. However, recent case law has acknowledged the extension of such obligations to border regions.
- **A non-solicitation clause.** This clause will prohibit the former employee from soliciting the employer's employees or clients. There are no specific provisions regulating non-solicitation clauses, but they should be limited both geographically and in duration.

RELOCATION OF EMPLOYEES

33. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

A mobility clause can be included in an employment contract to allow the employer to change the employee's place of work.

In application of such mobility clause, the employee expressly recognises that the place of work does not constitute an essential clause of his employment contract (*Article L.121-7, Labour code*).

Such a clause is in the employer's interest since it to modify the employee's place of work without implementing the proceeding applicable to a modification of an essential clause.

The mobility clause usually concerns the national territory and bordering countries.

Secondment in foreign countries are also possible under certain conditions (12 months' time limit). In such case, the employer can grant a relocation allowance to the Employee which will be considered as a benefit in kind.

Under specific conditions (that is, *Circulaire du directeur des contributions No 95/2 du 27 janvier 2014*), a highly qualified employee who usually works abroad and is posted in Luxembourg for a period of time can receive an allowance for the relocation, accommodation and travel expenses.

The employer can then declare these expenses as an operating expense for the company.

The employer can also provide any other assistance to an employee that is relocating (for example, to obtain housing, or applicable visas or work permits).

PROPOSALS FOR REFORM

34. Are there any proposals to reform employment law in your jurisdiction?

The following Bills of law are currently under discussion:

- Draft Law 6844 on early retirement.
- Draft Law 6678 on the introduction of measures for an age policy into the Labour Code.
- Draft Law 7049 amending the Law of 2 August 2002 concerning data protection which implements the principles and rules adopted by the Directive 95/46/CE. Draft law 7060 amending special leaves.
- Draft Law 7102 implementing Directive 2014/54 of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

ONLINE RESOURCES

Agency for the Development of Employment (Agence pour le Développement de l'Emploi) (ADEM)

W www.adem.public.lu

Description. The official website of the ADEM.

National Health Agency (Caisse Nationale de Santé)

W www.cns.lu

Description. The official website the National Health Agency.

Social Security Common Centre (Centre Commun de la Sécurité Sociale)

W www.ccss.lu

Description. The official website of the Luxembourg social security institutions in charge of affiliation and contributions.

Chamber of Deputies of the Grand Duchy of Luxembourg (Chambre des Députés du Grand-Duché de Luxembourg)

W www.chd.lu

Description. The official website of the Chamber of Deputies of the Grand Duchy of Luxembourg, which provides access to the Bills under discussion.

House of Employees of Luxembourg (Chambre des Salariés du Luxembourg)

W www.csl.lu

Description. The official website of the institution that defends the interests of the salaried employees.

Inspectorate of Labour and Mines (Inspection du Travail et des Mines) (ITM)

W www.itm.lu

Description. The official website of ITM, which provides information regarding Luxembourg employment law.

Social Security Institutions (Institutions de Sécurité Sociale)

W www.secu.lu

Description. The official website which provides for the links to the various Luxembourg social security institutions.

Legilux

W www.legilux.lu

Description. The official legal portal of the Government of the Grand Duchy of Luxembourg, which provides free access to the codes, laws and regulations.

Ministry of Foreign Affairs (Ministère des Affaires Etrangères)

W www.mae.lu

Description. The official website of the Ministry of Foreign Affairs, which provides information regarding notably the immigration process and visas.

Administrative Portal of Luxembourg (Portail Administratif du Luxembourg)

W www.guichet.public.lu/home/fr/index.html

Description. The official website of the Grand-Duchy of Luxembourg regarding administrative formalities.

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