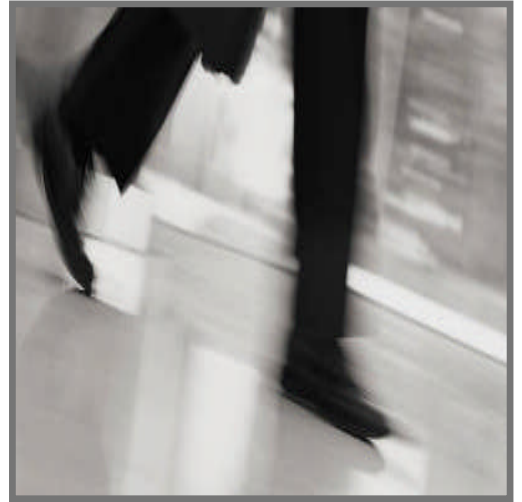


An introduction to Luxembourg Employment Law



The Luxembourg market is characterized by the major role played by the frontier workers (Belgian, French and German) who form more than 50% of the labour force working within the territory. The unemployment rate amongst Luxembourg workers amounts to approximately 4,5% (2008).

The main sources of labour law are international treaties, European law, Luxembourg employment laws and regulations and collective bargaining agreements.

In principle, Luxembourg labour law applies to all work performed on the territory of the Grand Duchy, unless the parties have chosen another law which is more favorable for the employee.

1. Institutions/regulatory bodies

Individual labour disputes are handled by the Labour Court of first instance (Justice de Paix), by the Court of Appeal at second instance and finally by the Luxembourg Supreme Court.

2. Individual employment regulation

a) Employment contracts

Contracts concluded for an indefinite duration are the rule and fixed term employment contracts are the exception. The latter are only valid when all conditions provided for by law are fulfilled. Employment contracts for a fixed duration may not exceed 24 months (including renewal).

A trial period may be provided for in both indefinite and definite duration contracts, which normally varies from two weeks to six months. In certain circumstances (depending on the wage of the employee or the level of his qualifications) the trial period may not be longer than 3 months or may be extended up to 12 months.

Particular care should be taken for corporate officers appointed in accordance with Luxembourg company law who may also have an employment contract.

b) Language legislation

There are three official languages in the Grand Duchy of Luxembourg: Luxembourgish, French and German. No rules are established regarding the use of language or languages in employment contracts. It is recommended that the language used between the employer and the employee is in any case understood by the employee.

c) Remuneration

Wages are determined by the employment contract negotiated between employer and employee or by reference to collective bargaining agreements negotiated at company or trade sector level.



However, Luxembourg social law guarantees a minimum social wage to all employees based on their level of skill (€1,609.53 per month for unskilled employees and €1,931.44 per month for skilled employees – index 685.17).

In addition, all wages are subject to a salary indexation based on the average consumer price index.

d) Working time

The general principle is a maximum of 40 hours per week and 8 hours per day (exceptions exist in certain branches).

Overtime work is permitted only in special circumstances provided for by labour law, and subject to prior ministerial authorization (or notification in case of approval by the employees' representatives). Overtime is in principle not applicable to employees holding a superior management position as defined by the law. Overtime can be either remunerated or compensated by time off. Luxembourg law has implemented a National Action Plan which, among other things, provides for certain regulations which enables the employer to introduce a greater flexibility in working hours.

Sunday work is generally prohibited, although labour law recognizes certain derogations based on the type of workers, business, firms or occupations.

e) Holidays

Besides 10 days public holidays (per calendar year) an employee, working on a full-time basis, is entitled to 25 days (business days) holiday per calendar year. Under certain circumstances, the employee is entitled to additional holiday (e.g. collective bargaining agreements, internal regulations or disabled employees).

f) Sickness

An employee who cannot work because of an accident or sickness must on the day of the accident/sickness inform the employer orally or in writing. On the third day at the latest, he/she must send a medical attest confirming his/her incapacity to work and the expected period of absence.

If these formalities are fulfilled, the employer may not dismiss the employee, even for gross misconduct, for a period of 26 weeks following the accident/illness.

During the month in which the accident occurred or illness began and the three following months, a white-collar worker keeps his/her right to full salary and all the advantages resulting from his/her employment contract. After it ends the employer has to pay the difference between the normal wage and what the employee receives as sickness allowance (equaling at most five times the minimum social wage) from the Luxembourg social security authorities for a maximum period of twelve months following the date of the accident/illness. A blue-collar worker is entitled to a sickness benefit from the Luxembourg social security authorities for a maximum period of twelve months following the date of the accident/illness.



g) Leave provisions

A pregnant employee is entitled to paid maternity leave for between 16 and 20 weeks, subject to certain conditions. This leave is paid by the Luxembourg social security authorities up to an amount equaling five times the minimum social wage, the balance, if any, being the liability of the employer.

Under certain conditions, both parents have a right to six months full time parental leave or one year part-time parental leave until the child has reached the age of five years. Parental leave is paid by the Luxembourg social security authorities on a monthly lump sum basis.

Under certain conditions, employees also have the right to leave for personal reasons (death of a relative, moving house, wedding, etc.), leave for family reasons (e.g. illness of a child) and special leave (educational leave, etc.).

h) Equality

The general principles and legislation prevent an employer discriminating on grounds of sex, nationality, race or ethnic origin, trade union membership, religion, handicap and age. In addition, the law relating to part-time work expressly states a non-discrimination principle between part-time and full-time employees.

i) Termination of the employment contract

An employer may terminate an employment contract concluded for an indefinite period of time, to the extent that the termination is based on real and serious reasons and respecting the applicable notice periods (which may vary from two to six months). The employer has to notify the dismissal by registered letter.

For dismissals in a company employing over 150 people, a preliminary interview with the employee must take place prior to sending the registered letter notifying the dismissal.

A severance payment is legally due to a dismissed employee who has completed at least five years of service. The severance payment due is based on the seniority within the company, and may vary from one to three months for a blue-collar worker and from one to 12 months for a white-collar worker.

Certain categories of employees are protected against dismissal, notably pregnant women, employees on parental leave, employees absent due to illness and employees' representatives.

In the case of resignation, the employee has to give notice, which is half the length the employer would have to give. The employee has then no right to a severance payment and no right to unemployment benefits.

The employer (or the employee) may terminate the contract without notice in case of gross misconduct by the other. The grounds for dismissal will be examined on a case by case basis by the judge who will ultimately determine whether or not the facts justify a dismissal for gross misconduct.



3. Collective employment regulations

a) Social partners

The national representation of employees and employers is organized on the basis of elected bodies on each side (three professional chambers for employees and three professional chambers for employers).

Luxembourg employees are free to join trade unions, whose principal task is to negotiate collective bargaining agreements. Employers are similarly organized into a number of professional federations.

The Economic and Social Council (composed of Government experts and employees' and employers' representatives) is an advisory body for economic, financial and social issues.

It may submit proposals to the Government.

b) Collective bargaining agreements

Collective bargaining agreements are negotiated in some industries and sectors. They cover reciprocal relationships and general conditions of employment concluded between one or more trade union organization on the one side, and one or more employers' organizations, or a single enterprise or group of enterprises in the same line of business, or all the enterprises in the same trade or industry, on the other.

A collective bargaining agreement may be declared generally applicable for a particular group of employers and employees by means of a Luxembourg regulation.

c) Employee representatives

An employer employing 15 or more employees must implement an employee representative body. The main role of the employees' representatives is protecting the interests of the employees in matters of working conditions, job security and social regulations, insofar as these questions do not fall within the competence of the joint works council, if any.

In addition, an employer employing 150 employees or more during a three-year reference period must establish a joint works council. The joint works council is an advisory body entitled to receive various economic and financial information of the employer. Information and consultation of the joint works council prior to important decisions being taken by the employer is required.

General elections are organized for both employees' representatives and joint works council every five years.

d) Collective dismissals

An employer, which terminates the employment of at least seven employees in a period of 30 days, or of at least 15 employees in a period of 90 days, has to follow a special procedure.



It must inform 'in due time' the labour authorities, the employees' representatives and the joint works council of the project of collective dismissals and has to negotiate a social plan with them.

Notice in redundancy situations is subject to a minimum of 75 days, unless the usual notice periods, which apply, are longer. The minimum notice period may be increased by the Ministry of Labour and Employment. Employees are entitled to a severance pay, the amount of which depends on the employee's seniority within the company.

4. Business transfers

In the case of a conventional transfer of undertaking, business or part of business, and subject to the condition that the transferred entity remains a "stable economical unit" (to be determined on a case-by-case basis), all rights and obligations resulting from the existing employment contracts between the transferor and the employees at the date of the transaction are transferred to the transferee, discharging the old employer from any legal obligations.

Any modification of the working conditions by the new employer after the transfer is completed is subject to legal protection for the employees.

Neither the old nor the new employer may use the transaction as a reason for dismissing an employee. However, dismissals due to economic, technical or organizational reasons are always possible, subject to compliance with the general rules concerning dismissals.

5. Social security

The Luxembourg social security scheme covers risks of sickness, maternity, disability, hospitalization, accident, retirement and unemployment. The social security system also provides for family allowance, widow's pension, dependants' insurance and guaranteed minimum income.

The employees' gross income is subject to mandatory social security contributions. The basis of contribution for employees (both white- and blue-collar workers) and employers is capped (with the exception of the dependence contribution) at five times the minimum social wage. The rate of contribution amounts to 10.80% for white-collar workers and to 13.05% for blue-collar workers. In addition, a dependence contribution of 1.40% is due by the employees. The employers' rate of contribution varies from 11.32% to 19.05% depending upon the type of workers (white- or blue-collar) and upon the activity performed.

The employer is responsible for the calculation and the deduction of the social security contributions as well as of the withholding of taxes.

In addition, many employers organize a complementary pension plan in favor of the employees, which may bring some fiscal advantages under certain circumstances.



6. Foreign workers

Non-Luxembourg nationals who wish to stay for more than three months in Luxembourg have to apply for a residence permit (EEA nationals) or a foreign identity card (others) and to register in the municipality where they intend to live within three days of their arrival in Luxembourg.

Non-EEA nationals must obtain a work permit prior to the start of their employment activity in Luxembourg. An individual work permit is granted by the Ministry of Foreign Affairs on recommendations of the Department of Employment, taking into account the situation, tendency and pattern of the labour market. Priority is given to Luxembourg nationals and EU-nationals. Various types of individual work permits exist. In principle, for the first application, a work permit valid for one year and renewable will be granted.

Exceptionally, in case of a group of workers seconded temporarily to Luxembourg, a collective permit can be delivered on behalf of the foreign company for a duration of maximum eight months.

The information contained in this summary is up to date as at March 2008.

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