Newsletter:

New measures for (long-term) sick workers

January 2023

Dear reader,

Absence due to long-term illness has a high price tag for the employer, social security, for society, but also for the sick worker himself. Consequently, this topic leaves no one unmoved and has led to an influx of new measures in autumn 2022.

The new legal measures clearly put full emphasis on the reintegration of (long-term) sick workers into the labour market. For instance, the existing reintegration procedure was thoroughly modified and completely separated from the situation of medical force majeure. A separate special procedure was created for this. An accountability contribution was also introduced for employers with an excessive inflow of workers in disability. Finally, the rules on guaranteed pay in case of relapse into illness during a partial resumption of work were adapted and it was decided that the employee no longer needs to submit a sick note for the first day of illness up to three times a year.

We will discuss these new rules below, focusing on what is relevant to your practice.

Enjoy the read!

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1 Reintegration process 2.0

1.1 What is the scope of application?

The reintegration process applies to any employee who is declared unfit to perform the agreed work by his/her attending physician.

If the incapacity to perform the agreed work is the result of an occupational disease or an occupational accident, the reintegration process can only be started when the temporary incapacity for work ends in accordance with the legislation on occupational accidents and diseases.

1.2 Who can initiate the reintegration process and when?

The reintegration process can only be initiated during a period of incapacity for work and this at the request of:

- The employee and/or his treating doctor from the first day of incapacity for work;
- The employer on condition that the employee is uninterruptedly unable to perform the agreed work for a period of 3 months. A return to work of less than 14 calendar days does not interrupt the period of incapacity.
- The employer immediately if it has received a certificate from the employee in which the treating doctor declares that the employee is permanently unfit to perform the agreed work.

1.3 Can the reintegration process also be started if the employee lives abroad?

Yes. The intended place of habitual employment does not change if the employee resides abroad during his/her incapacity for work. Belgian labour law, including the reintegration procedure for sick employees, therefore remains applicable during the suspension of the employment contract.

1.4 What does the reintegration examination involve?

1. When the reintegration process is started, the Prevention Advisor-occupational physician ("PAOP"), will inform the advisory doctor of the health insurance fund and invite the employee for a reintegration assessment.
2. During this assessment, the PAOP will:
    a. Check whether the employee can resume the agreed work, possibly with a workplace adjustment;
    b. Check whether resuming work is feasible given the employee's state of health and capabilities;
    c. Determine under what conditions and modalities the work and/or workplace should be adapted to the employee's current state of health and capabilities.
3. With the employee's consent, the PAOP may consult the employee's treating doctor, the advisory doctor of the health insurance fund, other prevention advisers and other persons who can contribute to the employee's reintegration. At the employee's request, the PAOP may also consult the employer itself.

4. If necessary, the PAOP will examine the employee's workplace to see what adjustments, if any, can be made.
5. The PAOP must prepare a report of the findings. This report will be added to the employee's medical record.

1.5 When should the PAOP decide and what kind of decisions can he make?

The PAOP must notify the employee and the employer of one of the following decisions within a period not exceeding 49 calendar days:

- A-decision: the employee is **temporarily unfit** for the agreed work, but other or adapted work is possible. In this case, the PAOP should describe the conditions and modalities under which the work and/or workplace should be adapted to the employee's current state of health and capabilities.
- B-decision: the employee is **permanently unfit** for the agreed work, but other or adapted work is possible. Again, the PAOP should describe the conditions and modalities under which the work and/or workplace should be adapted to the employee's current state of health and capabilities.
- C-decision: for medical reasons, it is impossible to make a reintegration assessment for the time being.

This decision should be kept in the employee's medical record.

1.6 What steps should be taken after receiving the PAOP's decision?

A-decision

1. After receiving this decision, the employer must:
    a. Seriously examine the concrete possibilities for other or adapted work or for workplace adjustments, considering as far as possible (i) the conditions and modalities described by the PAOP in its reintegration assessment, (ii) the collective reintegration policy applicable within the company and (iii) (if applicable) the reasonable adjustments for persons with disabilities;
    b. Consult the employee, the PAOP and any other persons who may contribute to the employee's reintegration into the company;
    c. Prepare a reintegration plan or a motivational report.
        i. A reintegration plan should include the following aspects:
            1. Period of validity;
            2. Reasonable workplace adjustments (adaptation of machinery, equipment, tools, etc.) and/or;
            3. Adapted work (tasks, volume, schedule, etc.) and/or
            4. Other work (tasks, volume, schedule, etc.);
            5. Education and/or guidance and those responsible for it.
        ii. A motivation report must state that the possibilities of adapting the work or performing other work have been seriously investigated and that (if applicable) reasonable accommodation for persons with disabilities has also been considered, but that this serious investigation shows that it is not technically or objectively possible to draw up a reintegration plan or that it cannot be required for other valid reasons.

d. Provide the reintegration plan or motivational report to the employee and the PAOP.

The employer must take these steps within 63 calendar days of receiving the reintegration decision.

2. When a reintegration plan is provided to the employee, the employee then has 14 calendar days to approve or reject the plan. If the employee does not respond within a 14-day period, the employer must attempt to contact the employee again. If, after this new attempt, the employee still has not communicated his/her decision, the employer may assume that the employee has refused the plan. The refused plan must then be handed over to the PAOP.

B-decision

When the PAOP makes this decision, it will communicate to the employee the reasons for this decision and will also inform the employee of the possibility to appeal it. The employee will have 21 calendar days to do so.

After receiving this decision, the employer must therefore take the following steps:

1. The employer must first wait to see whether the employee will appeal the PAOP's decision;
2. Where the employee does not appeal or where the decision has been reaffirmed on appeal, the employer must seriously explore the concrete possibilities for other or adapted work or workplace adjustments. We refer to the explanation under decision A in this regard;
3. The employer must consult the employee, the PAOP and any other persons who can contribute to the employee's reintegration into the company;
4. Prepare a reintegration plan or motivation report as described under decision A;
5. Hand over the reintegration plan or motivational report to the employee and to the PAOP.

The employer must take these steps within a six-month period.

When the employer has transmitted a reintegration plan to the employee, the employee has 14 calendar days to approve or reject the plan (same as described under decision A).

C-decision

When the PAOP makes a C-decision, it informs the advisory physician of the health insurance fund of this decision and informs the parties involved that the reintegration process is terminated and can be restarted after a period of 3 months at the earliest (unless the PAOP has reasons to deviate from this deadline).

1.7 When does the reintegration process end?

The reintegration process comes to an end in the following cases:

- The PAOP made a C- decision;
- The PAOP made an A- or B-decision and a motivation report was provided to the employee and to the PAOP;
- ThePAOP made an A- or B-decision and the reintegration plan was refused by the employee. A copy of the rejected plan was provided to the PAOP;
- The PAOP made an A- or B-decision and the reintegration plan was accepted by the employee. A copy of the adopted plan was provided to the PAOP;

- The employee failed to accept the PAOP invitation on three occasions. There were at least 14 calendar days between the PAOP invitations each time.

1.8 What if the employee does not cooperate in the reintegration process?

The new legislation stipulates that both the PAOP and the employer must make the necessary efforts to ensure that the invitation reaches the employee. When an employee fails to accept the PAAA's invitation three times, then, the reintegration process comes to an end.

However, this does not mean that the employer cannot take other measures towards the employee concerned. The law still stipulates that the employer and the employee must cooperate in a constructive way throughout the reintegration process. Case law has previously ruled that when an employee repeatedly refuses – without a valid reason – to accept the PAOP's and employer invitations, this can justify dismissal (eventually for urgent reasons).

1.9 Can the employer be criminally prosecuted if the new rules on reintegration are not followed?

Failure to comply with the new reintegration process rules constitutes a breach of welfare regulations punishable through Article 127 of the Social Penal Code. This may result in a criminal fine of EUR 800 to EUR 8,000 (sanction level 3). If the infringement (in this case, non-compliance with the rules on reintegration) resulted in health damage, a prison sentence of 6 months to 3 years and/or a criminal fine of EUR 4,800 to EUR 48,000 (sanction level 4) may be imposed. In case the infringement is committed by a company, the criminal fine is EUR 24,000 to EUR 576,000.

1.10 Have transitional rules been defined?

No. The new reintegration process has applied in full since 1 October 2022.

This has the following implications for ongoing reintegration processes (i.e., reintegration processes that had started before 1 October 2022 and where a decision was made before 1 October 2022):

- (Old) A-decision: the decision remains valid, but the employer must prepare and submit a reintegration plan or motivational report within 63 calendar days and the employee has 14 calendar days to refuse or accept the proposed plan;
- (Old) B-decision: the reintegration process is terminated and can be restarted by the employer or the employee;
- (Old) C-decision: the decision remains valid, but the employer must draw up a reintegration plan or a motivation report within 6 months and the employee has 14 calendar days to refuse or accept the proposed plan. However, this decision cannot give rise to a situation of medical force majeure since 28 November 2022;
- (Old) D-decision: the decision remains valid; the employee has 21 calendar days to appeal the decision. However, this decision cannot give rise to a situation of medical force majeure since 28 November 2022;
- (Old) E-decision: the reintegration process is terminated and can be restarted by the employer or the employee.

1.11 Can the employment contract still be terminated for medical force majeure as part of a reintegration process?

No. The legislator chose to completely separate the situation of medical force majeure from the reintegration process. A separate medical force majeure procedure was therefore created (see point 2).

2 The special procedure medical force majeure

2.1 What is the scope?

The new special procedure medical force majeure applies to every employee who has been declared unfit for work for the agreed work by his or her treating doctor. This is regardless of whether the work disability is due to an accident at work or an occupational disease.

2.2 Who can initiate the special procedure medical force majeure and when can it be initiated?

The special procedure medical force majeure can be initiated by the employee himself/herself or by the employer on condition that the employee has been uninterruptedly unfit for work for 9 months. Again, the law provides that this period is not interrupted if there has been a return to work of less than 14 calendar days.

This procedure cannot be started if a reintegration process is in progress.

2.3 How should this procedure be initiated?

The employee or the employer must notify the other party and the PAOP – by registered letter – of their intention to ascertain whether it is permanently impossible for the employee to perform the agreed work.

If it is the employer who initiates the proceedings, the employer must also inform the employee in this registered letter that he/she has the right to:

- To be assisted throughout the proceedings by someone from the union delegation;
- Ask the PAOP to explore the possibilities of performing alternative or adapted work.

2.4 How does the procedure proceed after it has started?

- The PAOP will invite the employee for an assessment by registered mail at the earliest 10 days after receiving the notification.

  If necessary, the PAOP may also conduct an examination of the employee's workplace. If the employee agrees, the PAOP may consult the employee's treating doctor, the advisory doctor of the health insurance fund or the doctor who issued the sick note (if different from the treating doctor).

On this basis, the PAOP will assess whether or not the employee is permanently unfit for the agreed work. The PAOP must communicate its final decision to the employee and the employer – by registered letter – within a maximum of 3 months of receiving the notification. If the PAOP decides that the employee is definitively unfit for the agreed work, he must also notify the mutual health insurance company's advisory doctor.

If the PAOP decides that the employee is permanently unfit to perform the agreed work, the PAOP must (i) inform the employee that he has the right to appeal this decision within a period of 21 calendar days and (ii) inform the employer whether or not he has been asked to investigate the possibilities of performing other or adapted work.

- If the employee has not asked the PAOP to find out whether other or adapted work is possible, the PAOP will inform the employee that he/she has a reflection period of 7 calendar days in which the employee can still ask.

  If, during this reflection period, the employee still requests the PAOP to examine the possibility of other or adapted work, the PAOP will, if necessary, re-invite the employee to examine the terms and modalities of the adapted/other work. In this case, the PAOP must, ultimately within a period of 30 calendar days, communicate these terms and modalities to the employee and to the employer.

2.5 What steps should be taken after the PAOP decides that the employee is permanently unfit for the agreed work and other or adapted work is possible (because the employee has asked for this to be investigated)?

After receiving such a decision, the employer must follow all the steps described in section 1.6.2 (i.e., the steps to be followed in case of a B-decision within the reintegration process).

2.6 When can medical force majeure be invoked?

The end of the employment contract can only be established for medical force majeure if the PAOP has decided that the employee is permanently unfit to perform the agreed work. The following hypotheses must be distinguished:

- If the employee has not asked to find out whether other or adapted work is possible, the end of the employment contract can only be determined after the 21-calendar-day appeal period has expired and thus the decision has become final or when the decision has been upheld on appeal;
- Where the employee did ask to explore the possibility of other or adapted work, the end of the employment contract can only be determined for medical force majeure if:
  - The appeal period has expired, or the decision was upheld on appeal AND a statement of reasons was provided to the employee and to the PAOP; or
  - The appeal period expired, or the decision was upheld on appeal and the proposed reintegration plan was refused by the employee. A copy of the refused reintegration plan was provided to the PAOP.

2.7 How can medical force majeure be invoked?

The employee and the employer can each unilaterally declare the end of the employment contract due to medical force majeure. When the employer unilaterally invokes medical force majeure, the employer must offer outplacement "medical force majeure".

Medical force majeure can also be invoked by both parties together by signing a comprehensive agreement. In this case, no outplacement "medical force majeure" should be offered.

Note that the Programme Law of 26 December 2022 stipulates that this outplacement scheme will be replaced by the obligation to report the termination of the employment contract due to medical force majeure to the Back to Work Fund and by the payment of a contribution of EUR 1,800.00 to that fund. The government has yet to specify the concrete modalities of this in a Royal Decree so the measure has not yet entered into force for the time being.

2.8 What if the employee does not cooperate in the medical force majeure procedure?

The Act states that when an employee has failed to accept the PAOP's invitation three times, the PAOP will notify the employer. Although here - unlike in the case of the reintegration process - the Act does not explicitly stipulate that the employer must also make the necessary efforts to ensure that the invitation reaches the employee, we recommend following it up anyway.

The law does not provide that the employment contract can be terminated for medical force majeure in this case.

However, as with the reintegration process, we believe that, in this case too, dismissal (eventually for urgent reasons) may be justified if the employee repeatedly fails to accept PAOP and employer invitations, without good reason.

3 Partial work resumption

3.1 What is partial work resumption?

Partial work resumption means that an incapacitated employee partially resumes work, temporarily performing a modified or different job, while retaining (part of) the sickness benefit paid by the mutual health insurance. This requires the agreement of the advisory doctor of the health insurance fund and the employer.

Partial work resumption allows incapacitated employees to partially resume work and get used to their normal work rhythm while they are still recovering. It is a way of gradually reintegrating employees back into the company after a prolonged absence due to illness. This can also be part of a formal reintegration process.

3.2 Is there a right for the employee to partially return to work?

Partial resumption of work is not a right for the employee as it always requires the agreement of both the advisory doctor of the health insurance fund and the employer.

The employer is not obliged to accept a proposal for partial work resumption. After all, the employee was recruited under certain conditions (position, salary, working hours) and if he/she is unable to perform this agreed employment contract, he/she is 100% incapacitated for labour law purposes (even if the advisory doctor of the health insurance fund would agree to a modified work resumption). As an employer, you can therefore refuse this question. The employer can thus make one of the following two decisions:

- Either the employer does not agree, and the employee cannot resume work: he/she then remains totally unfit for work until when he/she is again fit to perform the agreed work;
- Either the employer agrees, and the employee can partially resume work (if he/she is willing to do so, of course). An agreement must then also be obtained from the advisory doctor of the health insurance fund.

Please note: this is different if the employee's work restrictions can be considered a 'disability' in the broad sense of the word (e.g., cancer, obesity, etc.). In such a situation, the employee does have a right to reasonable adjustments, such as partial work resumption. In that case, the employer can only refuse this if the requested adjustment could be considered unreasonable (for example: for organisational reasons).

In any case, in the context of discrimination law, it is advisable to give well-founded reasons for any refusal of a request for partial work resumption (and also document this in writing). Otherwise, there is a risk that the employee may claim liquidated damages of six months' gross pay for discrimination based on health status and/or disability.

3.3 What (employment law) formalities apply to a partial work resumption?

The system of partial work resumption is governed by Article 31/1 of the Employment Contracts Act, which in summary provides the following:

- Concluding an annex to the employment contract regarding the temporary performance of the adapted or other work is not mandatory, but strongly recommended;
- The parties can agree on adjustments to working conditions (working regime, position, etc.);
- The parties can settle these issues in a 'flexible' manner (e.g., agree to provide a flexible timetable); and
- The adjusted working hours will, however, always have to be performed in accordance with the timetables provided for in the labour regulations.

Thus, in cases of partial work resumption, it is appropriate (especially in view of the legal provisions on part-time work) to conclude an annex to the employment contract containing the parties' agreement on the following elements:

- The volume of adjusted or other work;
- The timetable of adapted or other work;
- The content of the adapted or other work;
- Pay for the adapted or other work;

- The duration of the annex.

3.4 Do restrictions apply regarding the duration of partial work resumption?

In terms of employment law, there are no restrictions regarding the duration of a partial work resumption. Consequently, legally speaking, there is neither a minimum nor a maximum duration. Nevertheless, the system of partial resumption of work is in itself a temporary system and the intention is that the employee will eventually work towards his/her original employment. This is why the advisory doctor can only issue an authorisation for a maximum period of two years. This period is renewable, but then requires a new decision by the advisory doctor for another maximum of two years.

3.5 Are there any restrictions with regard to the employee's working arrangements/hours in partial work resumption?

In case of partial work resumption, derogations to the so-called 1/3 rule and 3-hour rule apply in case of part-time work.

In principle, the weekly working time for an employee employed part-time should not be less than 1/3 of the full-time working time. This no longer applies to employees in partial employment. They may therefore be employed in an employment arrangement lower than 1/3 of that of a full-time employee (e.g., 10 hours per week).

Moreover, in principle, any work must be done in blocks of at least 3 hours a day. However, there are some exceptions to this general rule. An additional exception to the 3-hour rule is provided for workers who work in the context of partial work resumption with the permission of the advisory doctor of the health insurance fund. These workers can thus have work periods of less than 3 hours (e.g., 2 hours per day).

Note that these derogations can only be used with the consent of the advisory doctor of the health insurance fund as well as the employer.

3.6 Should the employer pay guaranteed wages if the employee becomes fully incapacitated again during a period of partial work resumption?

Notwithstanding the general regulation, the employer is not obliged to pay guaranteed salary during the first 20 weeks from the start of the partial resumption of work, authorised by the advisory doctor of the health insurance fund in case of illness (other than an occupational illness) or accident (other than an accident at work or an accident on the way to or from work) occurring during this period.

After this 20-week period, the normal rules on guaranteed pay apply again and the employee in partial work resumption does have the right to guaranteed pay again in case of illness or accident.

Example 1:
Thomas partially resumes work with the approval of the health insurance fund's advisory doctor after a 3 month period of total disability. If Thomas breaks his ankle after 10 weeks of partial work resumption, the employer does not owe guaranteed pay (as this falls during the first 20 weeks in which guaranteed pay is neutralised, the mututal insurance will intervene).

Example 2:
Els resumes work half-time with the approval of the advisory doctor of the health insurance fund after a six-month period of total disability. After 25 weeks of partial work resumption, she falls ill with the flu. The employer will owe guaranteed pay (for authorized work hours) in accordance with the normal rules (since this falls after the 20-week period during which guaranteed pay is neutralised).

3.7 What salary should be taken into account if an employee's employment contract is terminated in partial work resumption with the payment of a severance payment?

In case of termination of the employment contract during the period of partial work resumption through the payment of a termination indemnity, the latter should be calculated on the basis of the wages due under the employment contract that existed before the performance of the adapted or different work. The adjustments made during the period of partial work resumption are therefore without impact on the calculation of the termination indemnity.

For the calculation of the severance pay, the notional full-time salary (i.e unreduced) to which the employee would be entitled if he/she were not working part-time because of partial work resumption must be taken into account.

4 Abolition of the sick note for the first day of incapacity for work

4.1 What does this measure entail?

A collective labour agreement or the work rules may stipulate that an incapacitated employee must provide a medical certificate in case of absence due to illness.. If no specific time limit is specified in the collective labour agreement or work rules, the certificate must be delivered to the employer within two working days from the day of illness.

In companies where this obligation exists, since 28 November 2022, this is no longer required for the first day of illness. This exemption applies for up to 3 days per calendar year.

However, the employee is still obliged to inform the employer of his or her absence and is obliged to immediately communicate his/her place of residence if it differs from his/her home address or the address known by the employer.

4.2 Can an employer derogate from this exemption?

Only companies with fewer than 50 employees on 1 January of the calendar year in which the illness occurs can provide for a derogation and stipulate that an incapacitated employee will still have to submit a medical certificate for the first day of illness. This must then be provided for in a collective labour agreement or in the work rules.

4.3 Does this exemption apply only in case of one-day incapacity?

No. The exemption applies to the first day of incapacity, so the following situations are possible:

- Incapacity of one day;
- The first day of an extended period of incapacity for work.

So for longer periods, a medical certificate may be required from the second day onwards.

4.4 Should the employee explicitly state when he/she uses this exemption?

No. When an employee does not submit a certificate covering the first day of incapacity for work, it is clear that he/she uses this exemption. If he/she does submit a certificate that covers the first day of incapacity, he/she is not using this exemption.

4.5 Can it be inferred from the fact that an employee communicates his/her residential address on the first day of incapacity for work that he/she is using the exemption?

No. After giving this notice, the employee may still choose not to make use of the exemption by submitting a medical certificate.

4.6 Are the three days prorated in the case of part-time employment?

No. The number of days is an absolute number.

4.7 Can the exemption also be invoked in case of an incomplete working day (i.e., when the employee falls ill during the day)?

No. For incomplete working day, Article 27 of the Law on Employment Contracts of 3 July 1978 applies which assumes that the employee is fit to perform the work at the start. Article 31 of the Law on Employment Contracts of 3 July 1978, on the other hand, applies to situations where the employee is not fit at the start of the working day so that the exemption only applies to full working day.

4.8 Should the employee still notify the employer on this day of incapacity?

Yes, the employee remains obliged to notify the employer of his/her absence immediately.

4.9 Can the employer send another control doctor to the employee on this day of incapacity?

Yes, this possibility is retained. This is the reason why the employee must immediately inform the employer of his/her residence address if it differs from the address known to the employer.

5 Accountability contribution for employers with excess number of workers in disability

5.1 What is the accountability contribution?

The accountability contribution is a specific quarterly employer's contribution payable by employers with an excessive number of workers into disability and insofar as at least three employees became disabled during the reference quarters[1].

5.2 When does an employer have an above-average number of workers in disability?

An above-average influx occurs when the average of the ratios of entries into disability in quarter Q (being the quarter in which disability commences) and the three quarters preceding compared to total employment in the corresponding quarters of the previous calendar year:

- Is "X" (2) times higher than in companies belonging to the same activity sector; and
- Is "Y" (3) times higher than in the general private sector.

This means that:

- Not the total number of long-term sick employees *per se* is assessed, but rather the ratio between the number of employees who became disabled during the reference period and the total number of employees of the company during that period; and
- The situation within the company is compared with its own sector and with the situation in the private sector as a whole.

So, for example, the fact that a company had 1,000 employees in disability before 1 January 2022 is not relevant to the assessment. What matters is the average of the ratios between the number of employees reaching the "milestone" of at least one year of disability and the total number of employees in the reference period.

5.3 Which employees should be taken into account when assessing the excess influx as well as the number of disabled employees?

Account must be taken of employees aged 18 and over who have not yet reached the age of 55 on the date of commencement of the primary incapacity for work (i.e. roughly the 18-54 age group) and who have at least three years' seniority in the company at that time.

Only disability periods that started from 1 January 2022 are also taken into account.

Employees who, on the date of the onset of disability, have an authorisation from the advisory doctor of the mutual society to partially resume work while retaining sickness benefits are not included.

[1] This number can still be increased or decreased by royal decree.

5.4 How is the total employment with the employer determined?

In determining total employment with the employer during the quarters corresponding to the reference quarters of the previous year, the number of full-time equivalent employees employed with the employer during these quarters who have been employed with the employer for at least three consecutive years without interruption on the last day of quarter Q-4 shall be taken into account.

One full-time equivalent employee corresponds to the full-time employment of one employee during the relevant quarters, taking into account the days of normal actual work declared to the NSSO, the days of statutory holiday, the days of additional holiday, the days of holiday by virtue of a generally binding collective labour agreement and the days of temporary unemployment.

5.5 How is the comparison with the same activity sector (factor "X") concretised?

This is determined concretely on the basis of the NACE classification of the employer's main activity and according to a cascade system. More concretely, we first check whether, on the basis of the first four digits of the NACE classification, 10 employers can be retained for comparison. If this is not the case, the same exercise will be carried out using the first three digits of the NACE classification. If no 10 employers can be selected on this basis either, the exercise will be carried out using the first two digits of the NACE classification. If this also does not lead to a sufficient (being 10) comparators, the excess influx will be determined relative to the general private sector only (i.e., factor Y).

5.6 Which employers in the general private sector (factor "Y") are taken into account?

All employers falling within the scope of the Act of 5 December 1968 on collective labour agreements and joint committees (the "Collective Labour Agreement Act") are taken into account.

5.7 Are there any exceptions?

Yes, there is an exemption from this contribution:

1. For sheltered workshops and customised workshops belonging to the Joint Committee for sheltered workshops, social workshops and customised workshops (JC No. 327);
2. Who employed an average of less than 50 workers in the year of the quarter preceding the quarter in which the disability starts (Q-1);

This calculation is done on the basis of the following formula:

$$\frac{\text{Total employees declared at the end of each quarter of the reference period}^{2}}{\text{Number of quarters for which the employer declared employees to the NSSO}}$$

[2] The reference period is the fourth quarter of the penultimate year (n-2) and the first, second and third quarters of the previous
year (n-1).

5.8 How is the accountability contribution calculated?

The accountability contribution is 0.625% calculated on the contributory wages of the previous quarter.

For blue-collar workers, the wage at 108% is taken as a base.

For the calculation of the accountability contribution, the amounts due independently of the number of days actually worked (e.g., annual premiums) are not taken into account. However, amounts relating to the termination of the employment contract are included.

5.9 When will it be possible to collect the accountability contribution for the first time?

The Act came into force retroactively on 1 January 2022, which meant that the reference period could not start until then.

As a result, the accountability contribution will be calculated and collected for the first time in the second quarter of 2023 at the earliest, and that on the basis of disability entries in 2022.

5.10 Are employers given prior notice?

Yes, the NSSO will proactively inform employers about their disability ratio so that they can take steps to avoid the accountability contribution if necessary.

Specifically, in the second quarter following quarter Q (Q+2), the NSSO will inform subsequent employers that their average employee influx into disability is evolving unfavourably:

- The employers for whom at least three employees became disabled during the reference quarters and who would be liable for the accountability contribution if the factors X and Y were 1.5 and 2.5 respectively;
- The employers for whom at least two employees became disabled in the reference quarters and who risk having to pay the accountability contribution if an additional employee becomes disabled in the following quarter.

This information is provided by the NSSO, if applicable, via the eBox on a quarterly basis.

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