Newsletter:
HR news in 2024

MARCH 2024

Dear reader,

One of the many challenges as an HR professional is dealing with constant changes in regulation. Also in 2024 this remains an interesting but challenging exercise. Often it may be difficult to see the forest for the trees.

Now that the first months of the year are behind us, we would like to summarise for you the new regulations. In this newsletter, we briefly go through the legislative changes and other updates, and discuss some important key messages, action points, and deadlines in this regard.

Enjoy the read!

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1 Sick during annual leave

From 2024: leave days are in principle retained in case of illness during holiday.

Until 31 December 2023, if an employee fell ill during their annual leave, the employment contract remained suspended on the ground of the annual leave. This was because of the rule that the “first ground for suspension prevails”. As a result, the employee lost the holidays during which they were sick.

However, this rule was contrary to the European Working Time Directive (2003/88/EC), which provides that all workers are entitled to annual leave – with pay – of at least four weeks. Taking this into account, the European Court of Justice previously ruled that an employee was entitled to take their holidays later if they became ill during a period of paid leave.

The Act of 17 July 2023 amending the Employment Contracts Act and the Work Rules Act brings our Belgian regulations into line with the above-mentioned European case-law and the Working Time Directive.

Indeed, from holiday year 2024 (holiday service year 2023), an employee who falls ill during their annual leave days will no longer lose these holidays and the suspension of the employment contract due to holidays will be converted into a suspension of the employment contract due to illness. However, this is on condition that the employee:

- immediately notifies the employer that they are ill;
- communicates to the employer their current residential address if it differs from the address known by the employer;
- submits a medical certificate to the employer within two working days (unless force majeure or otherwise stipulated in a collective agreement or in the work rules). The exemption not to submit a medical certificate up to three times per calendar year before the first day of illness does not apply here.
  The medical certificate must contain the following entries:
  - the incapacity for work;
  - the probable duration of the incapacity for work;
  - whether or not the employee is allowed to move around.

The Royal Decree of 22 December 2023 provides for a specific model of medical certificate for illness occurring during a period of annual leave, but the use of such a certificate is optional.

If the employee wishes to take the unused leave days contiguous to the period of illness, they must notify the employer at the latest at the time they submit the medical certificate to the employer.

2 New formulas regarding the calculation of the mobility budget as of 1 January 2024

Thanks to the mobility budget, employers can offer their employees the opportunity to exchange their company car for a mobility budget that they can spend on alternative mobility solutions spread across various pillars. Any remaining balance will be paid out in cash in a (para)fiscally attractive manner.

The amount of the mobility budget is equal to the actual annual gross costs of the company car for the employer, or the “TCO” (Total Cost of Ownership).

To streamline the determination of the mobility budget, the government has recently established formulas for calculating its amount.

Specifically, as of 1 January 2024, employers will have to choose between two methods to calculate the TCO: based either on the actual value or on fixed values.

These new formulas will be used both to calculate the amount of the mobility budget and to calculate the costs of the eco-friendly company car chosen within the framework of the first pillar.

If the employer opts for the formula based on the **actual value**, the calculation must be based on an exhaustive list of expenses (representing the average expenses over the last four years of the (reference) vehicle that employees give up). No additional expenses may be considered.

If the employer chooses the **fixed valuation**, the fixed formula consists of both a fixed and a variable component.

Regarding the fixed component, a distinction must be made depending on whether the vehicle is leased or purchased by the employer:

- For a leased car, the mobility budget takes into account the following elements: the annual cost of the leasing contract, the average annual cost of all expenses not included in the leasing contract (provided they are included in the company car policy), the non-deductible VAT, the tax on non-deductible car expenses, and the CO_2 contribution.

- For a company-owned vehicle (or a vehicle leased with a financing contract), the mobility budget takes into account the following elements: 25% of the catalogue price of the vehicle (including tax on the non-deductible part of this catalogue price) and the CO_2 contribution.

The variable component is determined as follows: (6,000 + commuting distance x 2 x 200) x 30% of the mileage allowance granted to civil servants (currently EUR 0.4269/km).

As for determining the mobility budget to be allocated, it is still possible to determine the amount of the mobility budget based on a reference vehicle (e.g., per job category).

For completeness, it is noted that the new rules exhibit certain (fundamental) inconsistencies.

Employers are therefore encouraged to quickly adjust their mobility budget policies in view of the introduction of these new rules as of 1 January 2024.

3 Exemption from withholding tax for shifts and night work: action points for 2024

As of 1 April 2024, the shift or night premium must be provided for in a work rules, in a collective bargaining agreement, or in the employment contract.

Companies where shift or night work is performed and for which a shift premium is paid may benefit from a partial exemption from the remittance of withholding tax. Although withholding tax must be deducted from the salary paid by the employer to the employee, the employer is exempt from paying to the treasury an amount of withholding tax corresponding to 22.8% of the total taxable salary of all shift

or night workers (excluding double holiday pay, end-of-year premium, and arrears). However, the application of this exemption is currently being closely monitored.

The Law of 28 March 2022 regarding the reduction of labour costs made several changes to the scope of the partial exemption from the remittance of withholding tax for shift and night work. The intention was to end the legal uncertainty resulting from difficulties in interpreting certain conditions for the application of this exemption.

While in the past the definitions of shift work and shift premium were separate, from now on, in order to speak of shift work, a shift premium must be granted for each hour worked in a shift.

To prevent the awarding of a merely "symbolic" supplement solely for the purpose of qualifying for the exemption, the shift premium must now necessarily result in an increase of at least 2% in the salary paid to the employee for each hour worked in a shift. The night premium, meanwhile, must result in an increase of at least 12% in the salary granted to the employee for an hour worked at night.

Furthermore, the shift or night premium must be provided for in work rules, in a collective bargaining agreement, or in the employment contract as of **1 April 2024**.

To the extent that this has not yet been done, we strongly recommend addressing this matter promptly.

4 The Program Act

The federal legislator has traditionally scrutinised and amended a variety of topics towards the end of last year. Below, only the most relevant subjects for HR matters are elaborated on in more detail.

4.1 Activation contributions

As of 1 January 2024, increase in activation contributions and stricter conditions.

The Program Act of 22 December 2023 has amended and tightened the legislation regarding activation contributions.

4.1.1 Increased percentages

Starting 1 January 2024, activation contributions will be increased as follows:

Age at start of exemption	Percentage of salary in 2023	Percentage of salary in 2024	Quarterly minimum (EUR)
< 60 years	20%	**50%**	EUR 300
≥ 60 years < 62 years	15%	**45%**	EUR 225.60
≥ 62 years	10%	**40%**	EUR 225.60

4.1.2 Tightening of conditions

The requirement for an activation contribution, previously applicable when an employee has not delivered any performance for an entire quarter with the same employer, is expanded to encompass performance equivalent to less than one third of the weekly working time of full-time employees in the same category within the company.
As a result, starting 1 January 2024, if an employee is employed for less than one third of a full-time work schedule in a calendar quarter, an activation contribution will be applicable.

4.1.3 Adjusting contribution reduction

In the previous regulatory framework, a 40% reduction in contributions applied when an employee had to participate in mandatory training organised by the employer for a minimum of 15 days over four consecutive quarters.

From 1 January 2024, this mandatory training will be replaced by the requirement to undergo outplacement guidance totalling 60 hours during the initial four quarters. This guidance is equivalent to 1/12th of the annual remuneration of the calendar year preceding the garden leave, with a minimum value of EUR 1,800 and a maximum value of EUR 5,500 and meets the specified legal quality criteria for outplacement.

4.1.4 Elimination of exemption

In the previous regulatory framework, an exemption applied if the employee had started new employment accounting for at least one third of the weekly working time of a full-time equivalent, either with a new employer or in a self-employed capacity.
This exemption was removed and is no longer in effect. As a result, starting 1 January 2024, the activation contribution will be due even if the employee starts a new employment or a self-employment activity.

4.1.5 Entry into force

The Program Act does not provide transitional measures, meaning that the increased rates and stricter conditions will apply to both new and pre-existing garden leave starting from 1 January 2024. This stance has also been confirmed to us by the National Social Security Office.

4.2 Flexi-jobs

As of 1 January 2024, various new sectors can rely on flexi-job employees: the automotive industry (JC 112), certain functions within the events sector, specific subsectors of the food industry, agriculture and horticulture (JC 132, 144, and 145), certain subsectors of transportation (JC 140.01 and 140.05), driving schools, the funeral sector (JC 320), and the real estate sector (JC 323). Lifeguards will also now be able to be hired as flexi-job employees. The number of sectors is thus expanded. Note that these new sectors may still decide not to introduce flexi-jobs (opt-out), and other sectors may decide to allow flexi-jobs (opt-in). The initiative is therefore left to the social partners to further develop. The regions will also be able to introduce flexi-jobs within certain sectors (childcare, education, sports, and culture sector).

At the same time, there are also some tightening measures within the regulations of flexi-jobs:

- The existing special social security contribution that employers owe on the flexi-wage will be increased from 25% to 28%.

- There will be an annual fiscal ceiling of EUR 12,000.00 on income from flexi-jobs. There is no longer a tax exemption for the portion above this amount. This ceiling does not apply to retirees working a flexi-job.

- It will no longer be possible to work in a flexi-job within a company that is connected (within the meaning of the Companies and Associations Code) to a company where the employee has an employment contract for 4/5 or more of a full-time employment.

- Similarly, it will not be possible to work in a flexi-job for an employer where the employee is already employed under another employment relationship. Flexi-job employees who are offered a permanent employment contract during the quarter can switch to regular employment.

- Employees who reduce their working time from 100% to 80% in quarter T-3 may not work a flexi-job during quarters T and T+1.

- For all sectors (except the hospitality sector, where the previously provided minimum flexi-wage is maintained), the basic flexi-wage must now be at least equal to the gross amount of the sectoral minimum wage applicable to the performed function. If no sectoral minimum wage has been set, it must be at least equal to the guaranteed average minimum monthly income.

- The flexi-wage (including allowances, premiums, and benefits) may not exceed 150% of the minimum sectoral basic wage applicable to the respective function or of the guaranteed average minimum monthly income.

4.3 Other amendments

The Program Law also provides for:

- an adjustment of the work bonus to increase net income at low wages;
- the introduction of a register of working partners and an obligation for self-employed individuals to withhold social debts in the construction and cleaning sectors;
- measures to improve the mental well-being of self-employed individuals;
- a clarification of the minimum working hours for part-time employees who would be involved in a system of collective reduction of working hours that leads to a target group reduction in social security contributions;
- an increase in the work resumption allowance for progressive return to work with the approval of the advisory physician.

5 Various Labour Provisions Act

5.1 (Internal) person of trust mandatory!

As of 1 December 2023, a person of trust must be appointed in all companies employing at least 50 workers.

Until recently, the appointment of a person of trust (PT) was in principle optional. Since 1 December 2023, the appointment of at least one person of trust is mandatory in companies employing at least 50 employees. Moreover, in order to give workers maximum access to a person of trust who is familiar with the structure, functioning and culture of the company, this must be an *internal* person of trust.

Companies employing fewer than 50 workers only have to appoint a person of trust if all members of the union delegation (UD) or – in their absence – all workers request it. In principle, this does not have to be an internal person of trust, except in companies that employ 20 or more workers and only have recourse to an external psychosocial prevention advisor (PPA).

The person of trust is given two years from the appointment to complete the required training.

	PT mandatory?	Internal PT required?
< 20 workers	No, unless upon request from all UD members or all workers	No
≥ 20 and < 50 workers	No, unless upon request from all UD members or all workers	=> Yes, at least 1 if only having course on external PPA
50 of more workers	Yes, at least 1	Yes, at least 1

This obligation is criminally sanctioned.

5.2 Paid educational leave: automatic indexation of the wage ceiling

The paid educational leave system allows the worker to attend accredited training while keeping his (normally capped) salary. This normal capped salary was set at EUR 3,364.00 gross and will be automatically indexed annually on 1 September from school year 2023-2024.

5.3 Rectification Amendment Single Status – notice periods

When an employer proceeds to dismiss a worker whose employment contract started before 1 January 2014, the notice period is calculated in two parts. The Various Labour Provisions Act reaffirms that part 1 of the notice period for senior white-collar workers is equal to one month for each year of seniority in the company started (unless a valid notice period clause existed on 31 December 2013), something that had been in doubt because the legislator had excessively removed a provision from the legal text in a previous legislative amendment.

5.4 Other amendments

The Various Labour Provisions Act additionally provides (among other things) for:

- the possibility for workers to unilaterally terminate a time credit or career break scheme early in certain cases (whereas previously the employer's agreement was always required);
- the right to an allowance of EUR 5 per day of temporary unemployment at the expense of the employer (or the sectoral fund) to compensate for the reduction in temporary unemployment benefits;
- a possibility for companies not subject to VAT to prove a decrease in turnover, production or orders on the basis of all accounting documents or justifications, so that they can also benefit from the system of economic unemployment for white-collar workers;
- the rule that henceforth employers' associations can only take the form of a not-for-profit company or a cooperative company;
- the creation of the Budgetary Fund for prevention concerning health and safety at work and sustainable reintegration of long-term sick individuals;
- a possibility for the Fund for Closure of Undertakings to pay employers' contributions directly to the Fund for Security of Existence;
- a clarification of the scope of application of attendance registration in the cleaning sector.

6 Federal Learning Account (FLA)

From (no later than) 1 April 2024, employers will have to record, update and verify a lot of administrative data in the FLA.

With the 'Federal Learning Account' (FLA), a new digital platform is being established to manage employees' right to education. Via the platform, information will be kept about:

- the number of training days to which employees are entitled;
- the attended training days;
- the attended training sessions and their associated basic characteristics;
- the training credit.

The introduction of this platform entails significant administrative obligations for employers:

1. Employers must mandatorily register, update, and maintain certain personal data of their employees in the FLA. Registration must be done within 60 calendar days from the employees' start date. For existing personnel, a period of 6 months is provided from the moment the FLA becomes operational.

2. Employers must quarterly register the training(s) attended by the employee, the associated basic characteristics, and the number of training days or hours connected to them in the FLA.

3. Employers must verify, and if necessary, adjust or supplement the training rights (still) available to employees as automatically calculated by the platform.

4. Employers must respond in a timely manner to requests to correct data that are not or are inaccurately represented.

5. In certain cases, the employer must inform the employee about various aspects of the FLA upon their hiring and subsequently at least once a year.

Employers who fail to comply with their obligations will be placed on a “blacklist”, which will be communicated to the National Labour Council, the joint (sub)committees, the competent official of the SPF Employment, Labour and Social Dialogue, and the social inspection services (and will be published on the SPF Employment, Labour and Social Dialogue website).

This legislation will come into effect no later than 1 April 2024 (unless an earlier date of entry into force is determined by Royal Decree).

7 Transparency within the framework of the second pension pilar

However, not as from 2024: reform of the transparency with respect to occupational pensions.

End of 2022, the Act modifying certain provisions in order to enhance the transparency within the framework of the second pension pilar, the “Transparency Act” in short, has been adopted. The Act aims to give a better sight to the employees and the self-employed on their occupational pension. The Act provides for, among others, amendments to the annual “fiche de pension”/“pensioenfiche” (with, as new official denomination “relevé des droits à retraite”/“pensioenoverzicht”, i.e., “pension benefit statement”), to the information and liquidation procedure in case of retirement or death, as well as to general information duties. Those amendments will enter into force in stages through a period from 2023 until 2026.
However, the expected reforms were postponed by 1 to 2 years, depending on the amendment, because of the complexity of the development and implementation of the Transparency Act. Regarding the main focus of the Transparency Act, i.e., the establishment of the annual pension benefit statement by Sigedis and making it available on mypension.be, one will have to wait until 2026. However, the postponement of the entry into force does not affect the intention of the legislator to increase the role of Sigedis and mypension.be. The enterprises and pension providers can already anticipate this enhanced role by already showing the way to their employees and plan members to mypension.be. By doing so, mypension.be will be more and more known as the platform where people can find personalised information about their statutory, as well as their occupational pension.

8 Preserve mobile phone number upon dismissal

As of 1 January 2024, an employee can reclaim his/her original phone number upon dismissal. Employers cannot refuse this request.

In practice, it often occurs that the employee, upon the start of employment, transfers their mobile phone number to the employer, as the employer subscribes to (and pays for) this number. The employer thus

obtained the exclusive right of use of this mobile phone number. Upon dismissal, the employee could not demand the return of his original mobile phone number. This was modified as of 1 January 2024: employees can (in writing) request to regain the right to use their mobile phone number upon dismissal (and this within one month after the termination of the employment contract). Employers cannot refuse such a request. Of course, it is required that the mobile phone number belonged to the employee prior to his employment.

9 Social elections

The moment of submission of candidate lists and the opportunity to appeal against them is coming.

In May 2024, thousands of companies will again organise social elections. Organising social elections is a process that requires numerous administrative steps from the employer. More specifically, for more than 150 days, the employer is obliged to follow a very strict procedure.

One of the next crucial turning points in this procedure is the submission of the lists of candidates and the possibility for workers, trade unions and employers to question them.

More precisely, trade union organisations must submit candidate lists by day X+35 (between 19 March and 1 April 2024 depending on the date of the elections). As of that date, employers will therefore know who effectively will be standing for election.

In this regard, they indicate that the candidate (M,F or X):

- must be linked by an employment or apprenticeship contract within the TBU where the elections are organised;
- must be at least 18 years old and not more than 65 years old (or at least 16 but younger than 25 if he/she is a candidate for the ‘young workers’ category);
- be continuously employed for at least six months in the legal entity to which the enterprise belongs or in the TBU formed by several legal entities or have been employed in a legal entity to which the enterprise belongs or in the TBU formed by several legal entities during the year 2023, for a total of at least nine months during several periods;
- must apply for the personnel category to which they belong (blue-collar workers, white-collar workers, managerial staff, young workers).

The employer must post the candidate lists no later than day X+40 (between 24 March and 6 April 2024).

Afterwards, an employee or a trade union organisation involved can file a complaint with the employer. They must do so no later than day X+47 (between 31 March 2024 and 13 April 2024). The new, possibly amended lists, will be posted no later than day X+56 (between 9 and 22 April 2024). The workers involved or their trade union organisation can then file an appeal with the labour court. This must be done no later than day X+61 (between 14 and 27 April 2024).

The employer may also – if he considers that the candidatures or lists do not comply with the legal requirements or that there is an abusive candidature – object to the candidate lists or lodge an appeal

with the labour court. He must file such an appeal no later than day X+52 (between 5 and 18 April 2024) if there are no complaints from the workers or a trade union organisation regarding the nomination of the candidates, and no later than day X+61 (between 14 and 27 April 2024) if such a complaint does exist. The labour court will in principle rule within 14 days following the receipt of the appeal.
For more information on this as well as on the other steps to be taken in the context of social elections, please refer to our extensive Social Elections Guide (Dutch – French).

10 Privacy and data protection

10.1 Data transfers to the United States

The concept of data transfers covers a broad scope: both the active transmission of data and the passive awareness of it, fall under the concept. The transfer of data within the European Economic Area (EEA) (EU + Iceland, Norway and Liechtenstein) is, in principle, allowed, provided that the parties involved comply with European data protection legislation. When it involves a transfer outside the EEA, safeguards must be respected, a so-called transfer mechanism. A transfer can involve the sharing of personal data between businesses or within a group of companies, but it can also pertain to the use of software provided by a provider located, for example, in the United States (US). The adequacy decision is such a mechanism through which the European Commission indicates that a specific country provides sufficient safeguards for the protection of personal data.
As of 16 July 2020, data exports to the US had become almost impossible due to the Schrems II judgment of the Court of Justice. In that decision, the then-existing EU-US Privacy Shield, for which an adequacy decision had been issued, was invalidated, and extensive obligations were imposed on companies wishing to use American tools.

On 10 July 2023, a new adequacy decision was adopted for transfers to companies certified under the EU-US Data Privacy Framework (DPF). As a result of this new adequacy decision, it is now again much easier to use US tools from companies certified under the DPF. However, it is also easier for non-certified companies, as the European Commission clarified in a Q&A that the measures taken by the US cover all transfers to the US, regardless of the transfer mechanism.

A significant caveat to the above is that the DPF is currently being challenged again. Time will tell whether the DPF will withstand this challenge. Given Schrems' previous victories and the fact that essentially no significant changes have been made to US legislation, it is not unlikely that the DPF may face a fate similar to the Privacy Shield. Therefore, companies are still advised to explore European alternatives or take sufficient additional safeguards when using American tools.

10.2 Unauthorised access to a colleague's mailbox

When an employee is absent, whether planned or not, there is sometimes an incentive within companies to consult the mailbox of the absent employee. The same situation also frequently occurs after the departure of employees. However, in both cases, it is not simply allowed to actually access that mailbox. Every year, complaints about this come to the Data Protection Authority (DPA), and each time, it reaffirms the principles regarding this matter. The DPA did this again in its first decision of 2024.

Companies would do well to establish the relevant rules in an ICT policy.

In case of **absence**, the employee may be required to set up an out-of-office message indicating the details of the contact person providing follow-up. In the event of an unexpected absence, the out-of-office message can be set on behalf of the employee.

Alternatively, a colleague can be designated in advance to monitor the mailbox. This colleague can then make a selection between emails, indicating which ones are personal or non-urgent and which ones are professional and urgent. The latter category can be forwarded to the responsible colleague who can handle the follow-up.

Under no circumstances should an automatic forwarding function be set up. The sender of the email is not aware of it, and unintended sharing of personal data with the wrong person could occur.

A clear policy on mailboxes is also best developed for the case of **termination of employment**. The guidelines following from the decision-making practice of the DPA, as reaffirmed in early 2024, are as follows:

- The mailbox of the departing employee must be blocked at the latest upon their actual departure.
- If possible, the mailbox is reviewed in advance with the employee to forward private emails to the employee's personal email address and professional emails to the person responsible within the company for follow-up.
- An automatic message must be set up informing the recipient that the person they were trying to contact has left the organisation and providing details about the new contact person. Information about the circumstances of the departure should be avoided in any case (e.g., whether it was initiated by the employee, if it was for serious cause, etc.).
- After a reasonable period (presumably one month), the mailbox – and the automatic message – should be deleted. The DPA emphasises that – taking into account the context and the level of responsibility of the former employee – a longer period for the automatic message may be considered, but ideally not exceeding 3 months. This extension of the period should be justified and preferably done in mutual agreement with the former employee. At the very least, the former employee should be notified of the extension. Keeping the mailbox active for a limited time can be based on the legitimate interest of the company, specifically ensuring the continuity of services and proper functioning.

It is, therefore, of utmost importance to develop an internal policy in which, based on the guidelines of the DPA, formal agreements are made regarding the email account during and after the termination of the employment contract.

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