

Pinboard October 2009

New European social security regulation

Enforcement planned for May 2010

The employment retention plan prior to the social plan

How to find alternative solutions to avoid dismissals

Loans at a reduced interest rate

2009 and 2010 reference rate

Employment of students

Reminder of applicable conditions and tax free hourly rate

Tax cards for the employees

New delivery procedures in 2010

Missing tax card

Not requesting it can lead to serious consequences

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New European social security regulation

Enforcement planned for May 2010

Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons has been amended and updated on numerous occasions. As a result, it has become necessary to simplify these coordination rules.

The new Regulation (EC) nr 883/2004 was drawn up to this end. It will be applicable when the regulation laying down the procedure for its implementation will come into force, which is planned for May 2010.

The most important changes will have an impact on:

- the rules relating to the secondment that can be immediately granted for 24 months instead of 12 currently,
- the determination of the social security scheme in case of simultaneous employment in several states: the country where the employee performs his/her substantial activity could prevail on the criteria of the residence country in many cases,
- the aggregation of the vested rights,
- the simplification of the procedures by using online forms.

This could have a significant impact on the social security status of your migrant employees.

In the coming weeks, Securex Luxembourg will organise a training session about these important innovations for all your cross-border, seconded and expatriated employees.

The employment retention plan prior to the social plan

How to find alternative solutions to avoid dismissals

The employment retention plan (« plan de maintien dans l'emploi ») is a step prior to the collective dismissal in the aim of finding alternative solutions to dismissal for economic reasons.

As a reminder, we speak of collective dismissal for economic reasons when the number of employees who are dismissed for reasons other than individual motives (including for instance minimum 4 breaches of contract by mutual agreement initiated by the employer) is higher than 7 over a period of 30 days or higher than 15 over a period of 90 days. Once one of these thresholds is reached, the social plan negotiation must be initiated.

However, it is possible to resort to an employment retention plan in order to avoid a social plan negotiation. This employment retention plan is intended for companies which are currently experiencing economic difficulties, or in a near future.

The initiative to begin the discussions about setting up an employment retention plan can have two sources: either the social partners who anticipate economic or financial problems that could have negative consequences on the employment; or the "Comité de Conjoncture" (CdC) when 5

dismissals for reasons other than individual motives are registered over a period of 3 months or 8 over a period of 6 months, or when it anticipates economic or financial difficulties.

Indeed, each company with more than 15 employees should notify to the CdC each dismissal for reasons other than individual motives, at the latest the day when the notice period is notified.

For companies with less than 15 employees, which are not obliged to notify dismissals for reasons other than individual motives, they also can ask for an employment retention plan. The CdC can request an in-depth examination of the economic, financial and social situation of the company in order to decide whether an employment retention plan is appropriate or not.

The discussions about the employment retention plan take place between the social partners within the company. The discussions focus on the measures that can avoid the social plan (part-time unemployment, early retirement adjustment ("préretraite"), voluntary departures, etc). Once the plan is settled, the social partners sign an agreement and forward it to the CdC secretary to request the Employment Minister's approval. Afterwards, the CdC secretary will follow the implementation of the approved plan.

Even though these measures can be applied without an employment retention plan, the company implementing an approved plan can benefit from more favourable conditions (subsidies for employees requalification training, refund of expenses related to early retirement, financial assistance for a temporary loan of work force, etc).

Interest subsidies and loans at a reduced interest rate

2009 and 2010 reference rate

When an employer offers to its employees a loan with an interest rate lower than the reference rate defined in the tax law (reflecting the average rate of the market), this saving constitutes a fringe benefit for the employees (« Règlement grand-ducal » dated December 28, 1990 referring to the article 104.3. of the income tax law (LIR)). Any loan with a higher rate does not constitute a benefit in kind.

This rate had been brought back to 3.75% for the fiscal years 2007 and 2008.

For the fiscal years 2009 and 2010, the « Règlement grand-ducal » dated May 19th, 2009 has set this rate at **2%**.

The benefit in kind is not subject to social contributions and is tax exempted up to certain limits depending on the purpose of the loan and on the concerned employee's family situation.

Employment of students during holidays

Reminder of applicable conditions and tax free hourly rate

According to the law, a student must be full-time registered in an educational institution (in Luxembourg or abroad), or must have been deregistered for less than four months.

Over a civil year, student employment contract(s) can not exceed a total period of two months per student.

From 2008 on, the age limit is 27 to be considered as a student

Moreover, the employer has to reward the students with a minimum salary equivalent to 80% of the minimum social salary for non qualified people. At the current index, the minima are the following:

- 1.346,21 € per month (7,7816 € per hour) from 18 years old,
- 1.076,96 € per month (6,2252 € per hour) between 17 and 18,
- 1.009,65 € per month (5,8361 € per hour) between 15 and 17.

At last, the Tax Authorities grant a tax exemption on the salaries up to a rate of 14.00 € / hour.

Tax cards for the employees

New delivery procedures in 2010

1. A new card will be issued for each amendment made to a card.
2. In the event of double issue of a card by the local administration and by the tax office, only the card which was drawn up by the tax authorities is valid.
3. A new card will be delivered for each employment change. The taxpayer is not obliged to get his card back from his former employer and to give it to his new employer anymore.
4. Retired citizens who will receive a tax card mentioning that an electronic copy has been sent to their pension fund will have to keep this card at home. Otherwise, they will have to send their card to their pension fund as usual.

Special features for Luxembourg City:

For taxpayers who have lived in Luxembourg City since September 30th, 2009, tax cards will no longer be issued by the local administration, but by the tax office instead.

The concerned people will soon receive a "validation letter", which mentions the data that the tax office will use to issue the cards. This document will have to be returned to the tax office for amendment, but only in case of discrepancies with the actual situation.

The tax card will be delivered during the month of January 2010.

As a matter of fact, this procedure is already being used for the non-resident taxpayers.

A new "Règlement grand-ducal", covering these changes, is currently under preparation.

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Missing tax card

Not requesting it can lead to serious consequences

We hereby inform you that the tax authorities apply more and more systematically the maximum taxation rate of 30% when tax cards are missing during salary tax audit. As a reminder, any employer has the obligation to tax the concerned employees in tax class I with a minimum of 30% and this is the employer's liability.

Therefore, in order to avoid any further recovery, it is strongly recommended to the employer to obtain the tax cards from its employees.

In the past, some employees who have not given their tax card to their employer during the year asked the tax authorities to adjust their withholding tax through their personal tax return (if they fulfilled the conditions to do so) or just through an annual tax adjustment ("décompte annuel").

However, please note that a new practice of the tax authorities tends not to accept anymore to refund the excess tax via the personal tax return or "décompte annuel". The salary tax would then remain fixed at the minimum rate of 30% as well.

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