January 2016

CONTENTS

1. Reform of the social dialogue

The reform of the social dialogue will enter into force on 1 January 2016. Even though the current staff delegations will remain until the next company elections in 2018, any staff delegation elected in the meantime will have to comply with the new provisions.

We are going to list the main amendments to the Act of 23 July 2015 below.

1 Central delegations, division delegations, delegations for young workers and joint committees will be abolished and a delegation will be created at the level of the economic and social entity. As of 2018, there will only be delegations in companies with more than 15 employees and delegations at the level of the economic and social entity;

2 The procedure to follow if there are no candidates is specified: information by ITM and investigation by the ITM in the company;

3 The delegation of young workers is abolished, but the right to vote in company elections is granted as of the age of 16;

4 The constitutive meeting of the newly elected staff delegation will be convened by the delegate who received the most votes, and if no election was held, by the oldest delegate. The constitutive meeting must designate the officers of the delegation, including the equality officer and the safety officer;

5 The safety officer will henceforth be known as the health and safety officer. The management of the company and ITM will have to be informed in writing

about his or her appointment within 3 days. If s/he is not a member of the delegation, s/he may attend the meetings in an advisory capacity. His or her right to training leave is increased from 8 to 40 hours, with 10 additional hours for an initial term of office in the company;

6 The equality officer must be appointed by the delegation from its ranks. The delegation must inform the CEO and ITM in writing of said appointment within 3 days;

7 The delegation may call on internal and external consultants at all times (the threshold has been lowered from 150 to 51 employees in the company), and henceforth on expert consultants such as chartered accountants, lawyers, etc. “as and when warranted;”

8 The employer’s agreement is no longer required for travel by delegates; simple information suffices. As a delegation is to be created at the level of the economic and social entity, the employer must facilitate the travel of delegates between the company’s different entities, and where necessary placing means of transport at their disposal;

9 The time credit for delegates has been increased. A delegate is to be released as of 250 employees (500 previously), two delegates as of 501 employees, etc.

10 The right to meet is limited to once a month during working hours, subject to notice of 5 working days (instead of 48 hours);

11 The meetings must be held in a room inside the company made available by the employer. The room must have computer equipment and access to internal and external means of communication;

12 The communications of trade unions will henceforth be made via various media, and thus not only through the traditional billboards. The collection of union dues inside the company is prohibited;

13 The staff delegation, the equality officer and the health and safety officer may communicate with the company’s employees through postings on the billboards but also through “various media accessible to employees,” such as the intranet;

14 An additional training leave of 16 hours is to be granted to newly elected delegates during the first year of their term of office (8 hours for alternates);

15 The procedure for a substantial amendment of the contract of employment (Article 121-7 of the labour code) may not be applied to staff delegates, the equality officer or the health and safety officer;

16 Delegates are protected against redundancy. If, however, in spite of such protection, a delegate is dismissed, s/he may ask the president of the labour court to rule that the dismissal is null and void or to order that s/he is kept or re-integrated in the company, or to find that the contract of employment has been terminated and to ask for damages;

17 In the event of total and definitive closure of the company, the term of office of delegates ceases as of right;

18 The judicial annulment of the contract of employment for gross negligence is maintained; the delegate's walking papers must mention with precision the charges against him or her.

New responsibilities and missions of the staff delegation as of 1 January 2016:

- Ensure equality between men and women in the company;
- Be informed of the absenteeism rate in the company;
- In companies with fewer than 150 employees, receive information from management in writing at least once a year on the company's economic and financial situation and activities;
- In companies with more than 100 employees, participate in the training of apprentices;
- Participate in the prevention of harassment at work;
- Be consulted on questions relating to working time;
- Cooperate in the internal reclassification procedures;
- Be consulted on the management of the company's service activities;

As of 1 January 2018, the staff delegation in companies with more than 150 employees will be vested will all the responsibilities and missions of the joint committee, which will cease to exist.

2. The contribution rate for accident and the indexing saga

The contribution rate for accident insurance will be 1% in 2016 instead of 1.10% in 2015.

2015 is coming to a close and as in 2014, there will be no indexing of wages. There was no indexing on 1 January 2016 and it is highly unlikely that there will be one in the first quarter of 2016.

3. New developments concerning incapacity for work

The purpose of the Act of 7 August 2015 is to get a better grip on the sickness insurance costs and to reinforce the Social Security medical Inspectorate. Article L 121-6 of the labour code has been amended, with consequences for the:

1) Employer's obligation to pay the salary during the incapacity for work

2) Protection of incapacitated workers against redundancies.

This amendment entered into force on 1 September 2015.

1) The employer must continue to pay the salary of the sick employee up to the end of the calendar month that contains the 77th day of incapacity. Beyond that period, the National Health Fund shall pay the salary. The Social Security Medical Inspectorate may examine the employee during the salary continuance period.

   If the Social Security Medical Inspectorate considers that the employee is fit to work again or if the employee refuses to submit to the examination, the National Health Fund may refuse the salary continuance by the employer or the right to sickness cash benefit of the National Health Fund.

   Consequently, upon being informed by the National Health Fund that the employee is fit for work, the employer must cease paying the salary, even if the employee provides new certificates of incapacity for work. Nevertheless, the law does not specify clearly at which time the employer must discontinue paying the salary:

   - Upon receipt of the letter of information from the National Health Fund?
   - After the 40-day period within which the employee can appeal the decision of the National Health Fund?

- If the employee lodges an appeal, after the decision of the steering committee of the National Health Fund on that appeal?

In any event, if the employee contests the decision of the National Health Fund successfully, the entitlement to continued pay is restored and the salary must be paid retroactively.

In such an eventuality and in anticipation of the final decision of the National Health Fund, the employer is strongly advised to make provisions for the salary.

2) The protection period against redundancy of 26 weeks is maintained, even if the entitlement to continued pay ceases, on condition that the employee appeals against the decision of the National Health Fund within 40 days of notification.

If the employee lodges an appeal, s/he is protected for as long as no definitive decision is handed down by the National Health Fund, the arbitration board or the high council, within a maximum limit of 26 weeks. The appeal does not prolong the protection period.

If the employee does not lodge an appeal, s/he will cease to benefit from protection against redundancy at the expiry of 40 days following the notification of the decision of the National Health Fund, even if the period of 26 weeks has not expired.

The employer may contact the National Health Fund at all times to inquire about the date of notification of the refusal of salary continuance, from which the 40-day time limit starts to run. The National Health Fund informs the employer of the appeal lodged by the employee.

It is not only on the basis of the decision of the Social Security Medical Inspectorate that the National Health Fund may decide that the employer is to cease paying the salary. The new law actually provides for the “legal continued payment of remuneration shall cease for the same reasons for refusal as for cash sickness benefit.” These reasons are as follows: refusal to

submit to a medical examination, stay abroad without the prior authorisation of the National Health Fund, imprisonment, etc.

It would be in the interest of employers for the National Health Fund to apprise them of the reason on which the decision to cease paying the salary is based, as it may actually have consequences for the employment relationship.

4. Processing of personal data and the contract of employment

Established by the Personal Data Processing Act of 2 August 2002, the National Committee for Data Protection is in charge of verifying the legality of files concerning individuals. It must make sure that privacy is respected.

Human resources management requires employers to compile many files containing information on their employees. What are their obligations to the NCDP?

First of all, there are 2 conditional exemptions to the duty to report under human resources management:

Administration of staff and management of applications (recruitments)

The processing of data relating exclusively to the management of applications and recruitments as well as the administration of employees in the department– or working for the manager -- of data processing.

The processing may not pertain to data relating to the health of the person concerned nor to sensitive or judicial data nor to data intended for an assessment of the person concerned.

Such data may not be communicated to third parties, except pursuant to a legal or regulatory provision, or when indispensable for the objectives of the processing.

Administration of payroll

This administration pertains to the processing relating exclusively to data of a personal nature necessary for payroll administration purposes, provided such data are used exclusively for the administration of the salaries concerned and are communicated only to the intended entitled parties.

As regards **company elections,** there is a single form to be transmitted to the NCDP during the procedure.

Some processing operations require the prior authorisation of the NCDP:

- Surveillance, including at the work place,
- Processing of biometric data (identity checks),
- Processing of genetic data (in certain cases),
- Data interconnection,
- Subsequent use of data for other objectives (e.g. statistics),
- Processing relating to credit and solvency of individuals;
- Specific case; transfer of data to a country outside the EU which does not provide adequate protection.

At present, there is a form for application for “video surveillance” and “transfer of data to a non-EU country.” For other requests, the request must be drawn up on plain paper. In any event, the request must contain the information stipulated in Article 14 (2) of the Data Protection Act.

The law provides for a simplified authorisation procedure for certain types of processing defined by the National Commission. These concern at present the electronic surveillance of access and schedules.

The application for authorisation is an important step to take, not only in order to comply with the legislation but also in the event of litigation involving an employee, where the proof obtained from data processing is admissible only if the NCDP had given its prior consent for such processing.

5. Update on parental leave

It had been announced that the reform would enter into force on 1 January 2016, but the bill will be brought before the lower house only in the beginning of January. The reform would consequently enter into force only on 1 January 2017.

By way of reminder, the bill provides for “making the parental leave forms more flexible,” for a birth and adoption alike. A divided leave could assume two forms: either a 20% reduction of the working time per week over a maximum period of 20 months, or four periods of leave of one month each, likewise staggered over 20

months. To this possibility is added the fact of leave of four months or eight months on a full- and part-time basis respectively, in addition to the current system which provides for a 6- or 12-month period.

The employer may not refuse full-time parental leave, but could object to part-time or divided leave. In such a case, s/he will be required to propose an alternative to the employee. If the employee refuses the alternative proposal, s/he will continue “to be entitled to full-time parental leave of four or six months according to his or her choice.”

The current flat-rate allowance – fixed at €1,778.31 per month for full-time leave or €889.15 for part-time leave – becomes a “replacement income.” The latter, paid independently from family benefits, will thus vary between €1,922.96 and €3,200. Parental leave can be taken up to the time a child turns six (compared to five, at present). For adopted children, the measure could apply up to the time they turn 12.

The Securex Luxembourg Pinboard is only meant to provide our clients with information about administrative and legal changes or news regarding areas of competence of Securex Luxembourg s.a.
It does not constitute legal advice and does not remove the need for consultation with legal counsel before any specific action.
Securex Luxembourg s.a. may under no circumstances be held liable for the outcome of the use of the information it contains.