

Pinboard – July 2020

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I. End of the crisis period and its consequences

The State had put in place various exceptional measures during the crisis period in order to support companies. As the crisis officially ended on 24 June, the previous legislation is applicable once again.

A. Resumption of the trial period

By way of derogation from the Labour Code, the Grand-Ducal Regulation of 1 April 2020 had suspended the trial period for employees of a company that had to stop or slow down its activities in such a way that it was obliged to put its staff on "short-time working for force majeure due to COVID-19", following the state of crisis.



This suspension applied as of the effective date of the government's decision to cease all or part of activities or of the placement of the employee concerned on short-time working.

This suspension lasted until the end of the crisis, i.e. 24 June 2020. The remaining part of the trial period was therefore **able to resume on 25 June**.

B. End of automatic coverage by the CNS [National Health Fund]

The State had decided that the CNS would be responsible for the compensation payable to the employee in the event of incapacity for work from 1 April 2020 until the end of the calendar month in which the state of crisis ends. The employee with an incapacity for work was therefore compensated directly by the CNS during this period. The employer no longer had to keep paying employees who were unable to work.

As the state of crisis ended on 24 June, the situation returned to normal for the month of July. The employer is therefore once again required to pay its employee who is unable to work until the end of the month in which the 77 days of illness fall. The employer thus resumes the obligation to keep paying the wages.

It is now time for the employer to give the employee concerned by an incapacity for work during the crisis period an **itemized statement of the remuneration that would have been due** for the period in question under the salary continuation mechanism. If there is a **difference with the compensation transferred by the CNS**, the employer is required to **settle it**.

Developments are currently under way using our payroll software to provide our clients with a table of the wage differences to be regularized. Our Payroll Consultants will contact them as soon as it is available.

II. New rules for short-time working

In order to continue to support companies and their employees impacted by the COVID-19 crisis, special arrangements for short-time working remain in force until 31 December 2020. These arrangements, which apply to all businesses during this period of economic recovery, take into account that certain sectors or economic branches have been more severely impacted than others have and will therefore resume their pre-crisis level of activity later, or even fail to do so in the near future.

According to the arrangements in force until the end of the year, the state continues to pay the compensatory allowance of 80 % of salaries during periods of short-time working. Under certain conditions, the businesses concerned may lay off workers.

The social partners have agreed on **4 possible scenarios** for businesses to benefit from the short-time working scheme during the economic recovery period:

1) **Industrial businesses** will continue to benefit from the short-time working scheme due to economic problems in order to be able to react to disruptions on international markets (e.g. supply problems). By applying the short-time working scheme due to economic problems, industrial businesses undertake not to make people redundant for economic reasons;

2) The situation of **businesses in the HORECA, tourism and events sectors** is particularly difficult. Businesses in these vulnerable sectors benefit from simplified access to short-time work due to structural economic problems, with no limit on the number of employees concerned. Where there is a proven need, these businesses will be able to resort to redundancies for economic reasons up to a maximum limit of 25 % of their staff (in relation to the total workforce as at 30 June 2020) until 31 December 2020. It has been agreed between the social partners that, in the event of a return to better fortunes, businesses that have made redundancies will, in the event of subsequent recruitment of staff, have to re-employ their former employees who have been made redundant as a matter of priority. It should be noted that the common law provisions of the Labour Code concerning collective redundancies remain fully applicable in some cases;

3) **Businesses in other economic sectors** (i.e. those not involved in industry, HORECA, tourism, events, the financial or insurance sectors) may resort to short-time working due to structural economic problems using the simplified procedure, provided that they do **not make redundancies**. The number of employees on short-time work may not exceed 25 % of the total workforce (as at 30 June 2020) for the months of July and August, 20 % of the total workforce for the months of September and October and 15 % for the months of November and December 2020. In this context, employee means all employees that have been declared for short-time work during the current month, regardless of the number of hours of short-time working;

4) **Businesses in vulnerable sectors** (HORECA, tourism, events) making more than 25 % of their total workforce (as of 30 June 2020) redundant as well as all businesses, irrespective of the sector to which they belong, which make redundancies will have to resort to short-time working due to structural economic problems. In these cases, the short-time working scheme will only be granted if the businesses draw up restructuring plans. These plans must be drawn up in the form of a recovery plan in the case of small businesses with fewer than 15 employees, or in the form of a job protection plan in accordance with the provisions of the Labour Code in the case of businesses with more than 15 employees. The social partners have expressed their willingness to negotiate, as far as possible, sectoral job protection plans in order to be able to resort to the temporary loan of labour.

III. Update for trainees

Whereas a bill regulating student internships was initially tabled in March 2018, a law was finally enacted on June 4 and came into force on June 9. The purpose of this new legislation is to facilitate



students' access to internships in companies as well as their entry into the labour market. You will find the most important changes here.

A. The different types of internship The law now clearly distinguishes between two types of internships.

In concrete terms, the bill draws a distinction between two types of internships

- ***Compulsory and contractual internships provided by an educational institution***

Internships within the meaning of this section are to be considered as **an integral part of the training** in accordance with the programme of the Luxembourgish or foreign educational institution, exclusive of compulsory internships carried out under vocational training schemes, educational or career guidance or specific training geared to accessing a profession governed by legal and regulatory provisions.

This type of internship requires the signature of a **tripartite agreement** by and between the educational institution, the trainee or his or her legal representative if he or she is a minor, and the internship supervisor.

- ***Practical internships geared to acquiring professional experience***

These internships may be concluded by and between a pupil or a student and an internship supervisor. A **bipartite internship agreement** has to be signed by and between the two parties.

A person is considered to be a pupil or a student if he or she:

- Is enrolled in a Luxembourgish or foreign educational institution and attends a course of study on a regular basis;
- Holds a Luxembourgish or equivalent secondary school leaver's certificate;
- Has completed a first cycle of higher or university education successfully.

In the last two cases, the entire duration of the internship must be within **twelve months** as of the end of the last school year for which a diploma was awarded.

The duration of the practical internships may not exceed **six months over a period of twenty-four months** with the same internship supervisor.

Safeguards have been put in place in order to limit the practice of resorting to trainees and thus prevent internships from becoming undeclared work. The number of practical internships in progress in the same company is now limited to **10% of the company's workforce**, for instance. In companies with fewer than 10 employees, one internship maximum is authorized. These restrictions do not apply during the period from **1 July to 30 September inclusive**.

B. Remuneration of trainees

The remuneration **varies depending on the duration of the internship**, irrespective of the type thereof.

It is also worth noting that in the event of an internship agreement concluded on a part-time basis, the maximum duration of the internship is calculated in hours and the compensation indicated below will have to be prorated.

- **For compulsory and contracted internships:**

Duration	Minimum remuneration
Less than 4 weeks	No compulsory remuneration
As of 4 and more weeks	30% of the social minimum wage for unskilled workers (€642.60)

Conversely, the legislation provides for a **possibility to derogate from the requirement to pay compensation** if the educational institution explicitly stipulates that compensation is prohibited in the internship agreement it draws up and makes compliance with this prohibition a condition for the accreditation of the internship.

To that end, the pupil or the student concerned must submit the **internship agreement by way of attestation** to the minister responsible for labour before the start of the internship. This will exempt the internship supervisor from the requirement to pay compensation.

- **For practical internships:**

Duration	Minimum remuneration
Less than 4 weeks	No compulsory remuneration
Between 4 and 12 weeks included	40% of the social minimum wage for unskilled workers (€856.80)
Between more than 12 weeks and 26 weeks included	75% of the social minimum wage for unskilled workers (€1,606.49)

ATTENTION: For trainees who have completed a first cycle of higher or university education successfully, the reference salary is the **social minimum wage for skilled workers**.

C. Mandatory particulars in the contract

Article 152-7 of the Labour Code now provides that the tripartite or bipartite internship agreement must henceforth **include a certain number of mandatory particulars, notably** the procedures for



unilateral or mutually agreed termination of the internship agreement before the end of the internship or the procedures for authorized absence.

D. Right to annual leave

The legislation entails a real advancement in the rights of the trainee since he or she will henceforth be entitled to the same number of **days of leave** as an employee, in proportion to his or her time spent in the company.

IV. Where are we with teleworking?

Whereas many companies had been reluctant to allow their employees to telework, the COVID-19 health crisis precipitated the deployment of that arrangement. Many of you have been implementing telework in your companies these last few months. And, it seems that companies are taking a rather positive assessment of this experience and would even be ready to continue the adventure.

The Covid-19 crisis has admittedly forced Luxembourg and its neighbours to review their fiscal and social rules (affiliation to social security) regarding homeworking, which facilitated its implementation. Homeworking by cross-border workers can in fact have consequences on their affiliation to social security but also on the payment of their taxes. To offset these constraints, and in view of the exceptional situation, Luxembourg had obtained from its neighbouring countries that teleworking days linked to the health crisis would not affect the social security affiliation or taxation of non-resident employees.

On the tax front, France and Belgium authorized the continued freezing of the tolerance threshold until 31 August 2020. For its part, Germany had not set an end date. An automatic renewal is carried out at the end of each month (unless it is discontinued by one of the 2 countries). All cross-border commuters should therefore **be able to continue to telework until the end of the summer**.

On the social security front, the Belgian, German and French authorities had decided that periods of teleworking carried out on their territories by their frontier residents because of the coronavirus would not be taken into account for determining the applicable social security legislation. This agreement was officially extended until 31 August 2020 by Belgium and Germany.

Generalized telework will not become the norm, of course, but the pressure is growing on public authorities to relax the tax rules that hamper its development so that it can be offered more widely to employees.

In this respect, and following the success of teleworking during the lockdown, a petition has been filed to recognize the employee's "right to telework". After collecting 5,933 signatures (whereas only 4,500 signatures are needed), this issue will be debated in the Chamber of Deputies in the coming months. However, the extension of telework for cross-border commuters still comes up against negotiations



with neighbouring capitals, as no tax changes can be made without the approval of Berlin, Brussels and Paris.

While the Belgian government is in favour of extending the number of teleworking days, France seems to have put a stop to any new negotiations on this matter with Luxembourg at the beginning of the month.

V. Extension of leave for family support

As part of the measures taken by the government to limit the spread of COVID-19, the government has introduced "leave for family support" to enable employees and self-employed workers to provide care for an adult person who is disabled or elderly, following the closure of a day-care centre, or training or work facility.

Bearing in mind that some structures will not be able to resume all their activities immediately after the end of the crisis and that not all places will be available, this leave has been extended until 25 November 2020.

An employee or self-employed person is eligible for family support leave when the following cumulative conditions are met:

- the approved structure that would normally take care of the disabled adult or elderly person must have notified the Minister that it **has ceased all or part of its activities** in the context of the state of crisis;
- the private-sector employee or self-employed person must **look after the disabled adult or elderly person in the home where they both live.**

If necessary, where several people live in the same home as the adult disabled or elderly person, they may **alternate taking leave for family support**. In this case, each person wishing to take the leave must **submit a duly completed form**. So, the leave may be **divided** among the members of a household, but they may **not take the leave at the same time**.

It is worth noting, however, that the leave ends if the approved service notifies the Minister that its activities or part thereof have been resumed and that a place is available for the user in this service.

A person who needs to take leave for family support **must inform his employer**, either orally or in writing. Then, she must apply to the Minister to certify the need for leave for family support.

For more information : <https://guichet.public.lu/en/citoyens/travail-emploi/conges-jours-feries/situation-personnelle/covid-certificat-conge-soutien-familial.html>

VI. Simplification of change of address for non-residents

Initially only residents could update their personal data on the National Natural Persons' Register. Non-residents were required to send a letter with supporting documentation to the various administrations in case of a change of address. Now the same procedure applies to non-residents.

Non-residents who carry out a professional activity in Luxembourg and who **change their private address** can now make a request to **update** their data directly via **MyGuichet.lu**, without needing a Luxtrust product.

They will thus update their personal data online on the National Natural Persons' Register.

VII. Specific aspects for third-country nationals

In order to facilitate the procedures for these people, several temporary measures were put in place by the Ministry of Foreign and European Affairs after the end of the state of crisis.

The following temporary measures have been adopted:

- for third-country nationals who made their declaration of arrival between 1 January and 31 July 2020: the time limit within which they must apply for a residence permit has been extended from 3 months to 6 months;
- residence permits issued by Luxembourg that expired after 1 March 2020 have their **validity period extended until 31 August 2020**;
- the stay of third-country nationals holding a short-stay visa, and of those not subject to a visa requirement and whose stay has just exceeded 90 days after 1 March 2020: the stay is regularized until 31 July 2020.

VIII. New: transmit your student contracts to the ITM via MyGuichet

If you wish to hire students during the school holidays to replace staff on holiday, certain formalities have to be fulfilled. In particular, a copy of the employment contract must be sent to the ITM (Inspectorate of Labour and Mines) without fail. From now on, this procedure can be done online.

To hire a student, you must sign a **contract of engagement** with him/her **without fail**. This is a specific contract that is different from the employment contract.

This contract must be drawn up **in writing**, at the latest **at the time of the student's entry into service** and **signed in three original counterparts**:

- One for the employer;



- One for the student;
- And one to be sent to the ITM. You can send this electronically via MyGuichet.lu.

IX. Franco-Luxembourgish tax treaty: signing of 2 amicable agreements

Further to the tax treaty for the avoidance of double taxation signed on 20 March 2018 by and between the Government of the Grand Duchy of Luxembourg and the Government of the French Republic, two amicable agreements were just signed on 16 July.

The first agreement sets out the implementing rules for the taxation of income from salaried activities. In particular, it provides details on the 29-day countdown. Any fraction of a day outside Luxembourg will count as a full day. In the case of part-time employees, the 29 days will have to be prorated.

The second agreement concerns the tax treatment of frontier workers in the context of the COVID-19 crisis. It accordingly specifies that cases of force majeure beyond the control of the employer and the employee will not be taken into account in the calculation of the 29 days. The COVID-19 epidemic is considered as such for the period from 14 March to 31 August.

More details are available on our website: https://www.securex.lu/sites/default/files/2020-07/amicable_agreement_FR_LU.pdf

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