Ius Laboris Belgium Global HR Lawyers
Claeys & Engels

Newsletter: **FAQ about the impact of Corona on your company**

March 2020

Table of contents

Dear reader,

The coronavirus COVID-19 is having an impact on our lives as never before. As of 12 noon on Wednesday 18 March 2020, stringent measures are in force in Belgium with far-reaching consequences for companies and their employees.

More than 1,000,000 Belgians are currently temporarily unemployed. Many companies are being faced with a substantial decrease of activities where others are short of hands and dealing with a high absenteeism due to illness. These are extremely complex times for company directors and HR professionals.

The Claeys & Engels team has been inundated with questions these past weeks. We wish to share our knowledge with our clients in these FAQs, which we have drafted based on the current legislation. This newsletter gives an overview of the information on **27 March at 8am**. We hope these are helpful to you and we aim to update these on a regular basis whenever there is a new HR legal topic in this matter. We are also happy to keep you updated via our newsflashes and webinars.

In the meantime we are – as always – ready to help you with any HR-related legal questions you may have!

We wish you all the best and most of all, stay safe!

The Claeys & Engels team

1 Prevention and wellbeing

1.1 Which measures have been taken by the government to prevent the coronavirus from spreading?

On 17 March 2020, the Wilmès government planned urgent measures to limit the spread of the COVID-19 coronavirus. These measures were confirmed by a Ministerial Decree of 23 March 2020:

- All shops and stores are closed with the exception of food stores, pet food stores, pharmacies, bookstores and petrol stations.
- Food stores, including night shops, can exceptionally be open from 7 am to 10 pm.
- Companies, whatever their size, are required to organise teleworking for the functions allowing it. When the company cannot organise teleworking, it must put measures in place aimed at respecting the rules of social distancing, both for practising the profession as for transport. This means that a distance of 1.5 metres must always be maintained between people. Companies that cannot follow these rules will have to close. If social distancing is not respected, the company risks a heavy fine. In the event of a repeat offence, the closure of the company may be imposed. “Essential” companies and crucial sectors are not targeted by these sanctions, but they are nevertheless required to respect social distancing “whenever possible”;
- Public transport must also guarantee social distancing.
- Deliveries of meals and take-aways remain available.
- Nurseries remain open.

Since all gatherings are prohibited and citizens are required to stay at home, except going out for essential reasons (food shopping, doctor visits, work when telework cannot be applied, bank or post office visits, pharmacy, petrol or in case of taking care of people in need), teleworking appears essential at this stage in the evolution of the coronavirus.

These measures are applicable from Wednesday 18 March 2020 at noon until 5 April 2020. They may be extended or amended after 5 April 2020.

Compliance with these measures is actively being monitored. Monitoring is done through a phone survey on the implemented measures and, sometimes, followed by an on-site visit. Non-essential companies will, in case of infringement, receive a warning. In case a follow-up inspection shows that the measures are still not being respected, closure already has been imposed in certain cases.

1.2 What obligations does the employer have to protect the health of its employees?

In addition to the measures imposed by the government (see point 1.1), the general legal obligations of the employer under welfare legislation also apply, of course. This means that every employer has a “duty of care” towards his workers, implying that appropriate preventive measures must be taken to ensure that the safety and health of workers are not compromised during the performance of their work.

In view of the aforementioned legal obligations, each employer is therefore obliged to examine in parallel with / in addition to government measures – which are the absolute minimum – what additional preventive measures must still be taken at company level, at the level of any departments, as well at the level of the respective workstations. These preventive measures must be determined based on risk

analyses, if necessary, after consulting the competent prevention service (internal or external) and information and consultation of the Committee for Prevention and Protection at Work ("CPPW"). In short, it is not enough, in these times of corona, to simply observe the imposed government measures.

The FPS Employment provides a checklist that can assist employers with the above. You will find it here: Checklist prévention COVID 19.

2 Questions about employment during the Corona crisis

2.1 Can the employee unilaterally withdraw his planned holiday?

As a rule, the normal rules regarding holidays (and taking holidays) continue to apply.

This means that leave is taken on the basis of an agreement between employer and employee. It will therefore not be possible for the employee to unilaterally "cancel" or "withdraw" his holiday leave. The employer must therefore always agree to the change of the holiday planning or the "withdrawal" of planned holidays. Moreover, the employer does not have to justify this refusal.

In this context, however, the employer may choose to contact the employee in order to find a solution by mutual agreement (e.g. the modification of the holiday planning).

We wish to point out that there is a chance that many employees will still have holidays after the crisis if all employees are allowed to "withdraw" holidays.

Note that there might be the "risk" that many employees will still have holidays after the crisis, which will have to be taken after the corona crisis and before the end of the year, if all employees are allowed to "withdraw" holidays.

The above means that employees who are not temporarily unemployed cannot, without the employer's agreement, withdraw their holidays.

Employees who are temporarily unemployed, on the other hand, will not be able to withdraw their holidays either, without the employer's agreement. In this context, please note that temporary unemployment is not possible on "planned" holidays; also, the employee cannot be obliged to take his holiday leave before he can be temporarily unemployed due to force majeure.

2.2 Could I assign alternative work to the employee?

If homeworking is technically impossible for an employee concerned, one could consider changing the employee's function. However, unilaterally changing the function of an employee is not automatically allowed.

The function executed by an employee is – in addition to wage, workplace and working time – considered as one of the essential elements of the employment contract. Making an important change to an essential element comes down to an implicit termination of the employment contract, as a result of which the employee could claim an indemnity in lieu of notice.

Parties can however deviate from this rule. If the employment contract provides that the employee's function is not an essential employment condition and can be modified based on the company's needs, you have more flexibility in this respect. It is essential therefore to carefully check your employment agreements.

In order to exclude the risk of a wrongful termination, it is advisable to determine important changes to the function in mutual agreement, e.g. by adding an addendum to the employment contract stipulating that the function is temporarily changed. If the employee refuses to agree to this, it could still be an option to invoke temporary unemployment due to force majeure.

2.3 Can I let my employees work for another employer who still has work to offer?

Aside from some strictly organised cases, it will not be possible to "hire out employees" to an employer where it is still possible to perform, due to the prohibition of lease of personnel. Indeed, it is forbidden to put employees at the disposal of a "user company" (i.e. the other employer, where there is still work) who executes some employer's authority over these employees. The employer who violates this prohibition risks both civil and criminal penalties.

There is an exception in case of intra group posting of staff. Within an economical group of companies a short-term posting of staff is permitted if a tripartite agreement is closed between the parties and on condition the labour inspectorate is informed at the latest within 24h before the posting starts.

Given the strict sanctions, we strongly advise against letting your employees work for another employer without prior legal consultation.

3 Temporary unemployment

3.1 What types of temporary unemployment are possible in relation to the coronavirus?

Two types of temporary unemployment can be considered in relation to the lack of work or the impossibility to provide work due to the coronavirus:

- temporary unemployment due to force majeure;
- temporary unemployment for economic reasons.

We explain both regimes in more detail below.

3.2 When can temporary unemployment due to force majeure be used?

There is "force majeure" if the lack of work is due to a sudden, unforeseeable event beyond the control of the contracting parties. In addition, it must be a temporary situation.

In principle, the important thing is that the employer can demonstrate that it has no influence on the decision to place employees in temporary unemployment due to force majeure. Thus, where the company is for example forced by the government to stop production/activities, temporary unemployment due to force majeure could be invoked. On the other hand, if the company itself decides to do so as a preventive health measure, temporary unemployment due to force majeure cannot be invoked.

However, a flexible application of the principle of force majeure is accepted with retroactive effect as of 13 March 2020 (and this for the period during which the urgent measures adopted by the government are valid – currently until 5 April 2020). This means "force majeure" will be applicable, for example, for companies which close (partially or fully) because they cannot organise telework and cannot respect

the rules of social distancing at the workplace and in transport, but also for companies facing a decrease in work due to a drop in revenue, orders, production, etc.

It is not required that the company is completely closed. In practice, this means that some workers may be temporarily unemployed and others may not. Employees may also alternate days of work and days of temporary unemployment.

Temporary unemployment always applies for a full day. It is therefore not possible to be unemployed in the morning and to work in the afternoon (or vice versa).

3.3 Can temporary unemployment be invoked for medical/health reasons?

According to the National Employment Office (hereafter "NEO", "*RVA / ONEm*"), temporary unemployment due to force majeure may also be invoked in the following cases:

- When the authorities decide to place a person in quarantine because he or she is (clearly) contaminated.
- When the occupational physician is of the opinion that an employee should be removed from the workplace.
- When the worker has a certificate from his or her attending physician clearly indicating that the employee cannot work (e.g. because there are serious indications of a contamination, or because a family member residing under the same roof as the employee is contaminated), and that there is a risk of contamination for other employees.

However, the NEO specifies that "*the worker cannot be ill*", because in this case the employer has the responsibility to pay the guaranteed salary (and then, possibly, the health insurance funds to intervene).

The NEO also specifies that "when an employer decides to send employees home "preventively" on its own initiative, without an order from the authorities, or without a decision from the occupational physician, or without a certificate from the general physician of the employee(s) in question, no force majeure can be invoked".

3.4 What are the formalities to be carried out in case of temporary unemployment due to force majeure?

In principle, an electronic declaration must be submitted via the social security portal. This is an online tool in which it is specified what needs to be completed.

At the same time, an e-mail must be sent to the NEO office explaining why you believe this is a case of force majeure. There are no standard forms/documents which can be used for this purpose. The aim is to explain to the NEO why you believe there is force majeure.

A control document C.3.2A must also in principle be given to the employees who will effectively be temporarily unemployed. This must be done at the latest on the first day of actual unemployment of the month.

Finally, the employer must make an electronic DRS declaration at the latest at the moment of the employee's first temporary unemployment.

However, during the period of validity of the emergency measures adopted by the government (currently until 5 April 2020), and with retroactive effect as of 13 March 2020, an employer must no longer submit an electronic application for temporary unemployment nor send an e-mail to the NEO. As soon as possible, you only have to make a "scenario 5 declaration" on the website socialsecurity.be (https://www.socialsecurity.be/site_fr/employer/applics/drs/onem/scen5/about.htm). In this application, you indicate that the temporary unemployment results from "force majeure", by selecting the code 5.4 "type of the day" and specify "coronavirus" as the reason. As regards the entry of salary data, you must also use the correct salary codes (which will be communicated to you by your social secretariat).

Furthermore, for the period from 1 March to 30 June 2020, you as an employer are not obliged to issue a C3.2A control form to the employees concerned.

The employees concerned must contact their payment institution (FGTB, CSC, CGSLB, CAPAC) in order to apply for an allowance. A simplified form "C3.2-WORKER-CORONA" is available on the websites of the payment institution.

3.5 When can temporary unemployment due to economic reasons be used?

When a company faces a shortage of work, employment contracts can be suspended by the introduction of temporary unemployment for economic reasons.

The regime is different for blue-collar and white-collar workers:

- In the case of blue-collar workers, it is "sufficient" to show that the normal work regime cannot be maintained due to economic reasons.
- With regard to white-collar workers, the company must in principle meet stricter pre-conditions, i.e. a 10% reduction in turnover, production or orders or an economic unemployment rate of the blue-collar workers of at least 10%.

As far as the white-collar workers are concerned, it can (currently) be very difficult to prove a reduction in turnover, production or orders with 10%, since it is necessary to look at the figures for the last quarter (in this case the last quarter of 2019) and a reduction was not necessarily yet noticeable during that quarter (as there was no coronavirus yet).

In these circumstances the company can lodge an application to the Minister of Labour in order to obtain a recognition as a company in difficulties on the basis of unforeseeable circumstances which result in the short term in a substantial reduction in turnover, production or the number of orders.

During the period of validity of the emergency measures adopted by the government (currently until 5 April 2020) however, applications to be recognised as a company in difficulties are no longer taken into consideration, because these companies can apply the simplified system of the "Corona-unemployment".

3.6 What if the company does not meet the conditions for temporary unemployment for economic reasons for white-collar workers?

During the period of validity of the emergency measures adopted by the government (currently until 5 April 2020), and this with retroactive effect from 13 March 2020, employees may simply be temporarily unemployed, as explained above.

However, we are of the opinion that the "traditional" temporary unemployment scheme for economic reasons for white collar employees will be relevant again after the expiry of the emergency measures decided by the government (currently provisionally fixed until 5 April 2020). Hereafter we describe this "traditional" scheme.

Before the company can apply temporary unemployment for economic reasons for white collar employees, it must in principle first conclude a company CBA, unless a specific CBA was concluded at the sectoral level.[1] This implies that negotiations, concerning among others the amount of the supplement that the employer will pay, the measures to maintain employment as much as possible and the maximum duration of the suspension, have taken place. If the negotiations with the trade union delegation do not lead to an agreement within two weeks or if there is no trade union delegation within the company, the company can draw up a business plan instead or a CBA. This business plan must be sent to the FPS ELSD where it will be treated by the Business Plan Commission, which will decide on the plan within two weeks.

In order to speed up this procedure, an interprofessional collective bargaining agreement was concluded at the level of the National Labour Council (CBA n° 147) on 18 March 2020. Companies that are affected by the coronavirus COVID-19 will be able to invoke this CBA to obtain temporary unemployment for economic reasons for their white-collar workers and will therefore not have to negotiate a CBA or draw up a business plan beforehand.

For now, this regime is applicable until 30 June 2020.

CBA n° 147 of 18 March 2020 provides for an information and/or consultation procedure, which implies that the company:

- must submit an application form to the Unemployment Office at least 14 days before the regime can be applied and in which it is demonstrated that the company meets the requirements;
- must on that same day notify the works council, or in the absence thereof, the trade union delegation;
- must inform the employees at least 7 days in advance of the implementation of such a regime, either by "posting" or by giving an individual written notification to each employee whose employment contract will be suspended;

[1] Currently, the following sectors have concluded such a CBA:
- JC 209 - metal industry
- JC 214 - textile industry
- JC 221 - paper industry
- JC 222 - paper and cardboard processing
- JC 315.01 - technical maintenance, assistance and training in the aviation sector
- JC 315.02 - airlines
- JC 324 - diamond industry and trade
- JC 327 - Flemish sector of sheltered workplaces, social workplaces and tailor-made companies.

- must communicate electronically on that same day the notice of the "posting" or of the individual notification of the employees to the Unemployment Office;
- must, on the day of the "posting" or the written notification to each white-collar worker, inform the works council or, in absence thereof, the trade union delegation of the economic reasons that justify the implementation of such a regime.

If the company is recognised as a company in difficulties, each white-collar worker will receive an allowance from the employer amounting to EUR 5 per day of unemployment. If the company also employs blue-collar workers to whom the regime of temporary unemployment for economic reasons was already applicable and to whom a higher amount is being granted, the white-collar workers will be entitled to the same amount as the blue-collar workers.

Existing collective bargaining agreements and business plans which have already been concluded in this context will remain in force. However, companies whose business plans have been submitted but have not yet been approved can submit a new application to the FPS ELSD.

Finally, the applications no longer have to be sent by registered mail but can be submitted electronically.

3.7 What are the different regimes of economic unemployment?

A distinction is made between the regime that is applicable to the blue-collar workers and the regime that is applicable to the white-collar workers.

For blue-collar workers, there exist three different regimes:

- The regime of "complete suspension" (where they no longer work at all), which can be implemented for a maximum duration of 4 weeks. Thereafter, the blue-collar workers have to work again for at least one week.
- The regime of "large suspension" (where they work one or two days per week or less than every other week), which can be implemented for a maximum duration of 3 months. Thereafter, the blue-collar workers have to work again for at least one week.
- The regime of "small suspension" (where they work at least 3 days per week or at least every other week), which can be implemented for a maximum duration of 12 months.

For white-collar workers, there exist two different regimes:

- The regime of complete suspension (where they no longer work at all), which can be implemented for a maximum duration of 16 calendar weeks per calendar year.
- The regime of large suspension (where they work at least 2 days per week), which can be implemented for a maximum duration of 26 calendar weeks per calendar year.

For the sake of completeness we remark that if the company does not apply economical unemployment but the simplified "Corona-unemployment", these regimes are not applicable. In that case the company will be able to switch work days with unemployment days in a flexible way.

3.8 What are the formalities that must be fulfilled in the event of temporary unemployment for economic reasons?

The procedure can be summarised as follows:

- Announcing the suspension for economic reasons to the Unemployment Office electronically[2];
- Monthly communication to the Unemployment Office of the first day of actual unemployment of that month for each employee that will be temporarily unemployed due to economic reasons.
- In principle, issuance of a C3.2A control form to the employees every month; however, the Unemployment Office has stated that, as an exception, employees who are temporarily unemployed are exempted from having a C3.2A card for the months of March, April, May and June 2020.
- Lodging a "DSR scenario 2" declaration at the start of the unemployment.
- Lodging a "DSR scenario 5" declaration at the end of each calendar month.

The detailed information regarding the procedure that should be followed can be found on the website of the Unemployment Office[3].

4 Financial allowances for employees

4.1 Is the employee entitled to temporary unemployment allowance?

Every employee in temporary unemployment due to the Coronavirus receives a temporary unemployment allowance from the National Employment Office (NEO), both in a system of economic unemployment and in case of unemployment due to force majeure. This benefit was recently increased from 65% to 70% of the salary, capped to EUR 2,754.76 gross. A withholding tax of 26.75% is deducted from the benefit.

This scheme applies (for now) until 30 June 2020.

4.2 Can the employee claim a supplement of the National Employment Office?

Only if an employee is temporarily unemployed due to force majeure will the NEO grant an additional increase of EUR 5.63 per day for both blue-collar and white-collar workers. This supplement is also subject to a withholding tax of 26.75%.

The NEO specifies that the force majeure may not be the result of incapacity for work. An incapacitated worker who receives temporary unemployment benefits because he was found unfit for work by the health insurance fund and (i) contests this decision or (ii) does not contest the decision but is temporarily unfit for his position is not entitled to this supplement.

[2] In principle, the company must communicate the economic reasons to the Unemployment Office at least 7 calendar days before the first day of the envisaged unemployment. However, the Unemployment Office indicated in its FAQs regarding the coronavirus that "If you are facing a sudden reduction in employment, you can ask the director of the competent office, in the communication of the envisaged unemployment, for a derogation from the introduction period and you can mention it in the remarks section. You can then immediately implement the temporary unemployment."

[3] https://www.onem.be/fr/documentation/feuille-info/e1-0

4.3 Does a sectoral supplement exist?

Depending on the joint committee to which the company belongs, an additional supplement may be granted to workers in a temporary unemployment scheme.

Such sectoral arrangements exist, for example, for blue-collar workers in the food industry (JC 118) and for white-collar workers in the metalworking industry (JC 209).

We expect that other sectors will follow.

4.4 Is there compensation for water and energy bills (gas, electricity and heating)?

The Flemish government will cover the energy bills for one month of families living in Flanders where at least one person is temporary unemployed. The allowance amounts to EUR 202.68, based on an average household bill (EUR 30.77 for water, EUR 95.05 for heating and EUR 76.86 for electricity). This compensation applies automatically and is provided per worker in the temporary unemployment scheme.

If the situation persists for more than one month, a system of delay of payment will be introduced.

4.5 What about the calculation for annual leave?

The days of temporary unemployment due to force majeure will be assimilated to working days in terms of annual leave, both for the duration of the holiday and for the holiday pay. However, the legislation still needs to be adapted in this respect.

4.6 Can I, as an employer, pay a supplement to cover the loss of wages of the temporarily unemployed employee?

The (mandatory or voluntary) supplements granted by the employer to temporarily unemployed employees paid on top of the temporary unemployment benefit (and whether or not paid on top of a potential supplement paid by a Fund for Social Security) have their own tax and social security treatment.

1.
The supplement qualifies for tax purposes as a replacement income. In principle, the employer must withhold withholding tax on this income. The employer must mention the supplement on tax form 281.18 under code 271. The amount of the withholding tax should be mentioned under code 286.

The supplements are finally taxed (i.e. on receipt of the tax assessment) at the progressive rates along with other sources of income that are taxable at the progressive rates, such as ordinary wages and unemployment benefits etc. The supplement (and the unemployment benefits) are not subject to a lump-sum deduction for professional expenses. However, it is possible that the unemployment benefits and the supplement (both of which qualify as a replacement income for tax purposes) give rise to the application of a tax reduction. This tax reduction is calculated on the basis of the type and the amount of the other sources of income of the beneficiary of the supplement and of the legally cohabitating partner/spouse. However, if certain limits are exceeded, this tax reduction can be 0.

The beneficiary must include the amount of the received supplement in his declaration under code 1271/2271 (on the basis of the declaration form for income year 2018). The withholding tax that was deducted from the supplement must be mentioned under code 1286/2286.

It should be noted that, in certain cases, the withholding tax will not be sufficient to cover the final tax bill. Upon receipt of the tax assessment, there can be a (high) balance that still must be paid. However, it can be agreed with the employee to withhold a higher withholding tax in order to avoid unpleasant surprises. In any case, we advise you to point this out to your employees.

2.
In principle, these supplements are exempt from social security contributions since they are a supplement to a social security benefit (unemployment benefit). However, this requires that the supplement does in fact constitute a real supplement. In brief, this implies that the employee must receive unemployment benefits, that there is a clear link between the supplement and the unemployment benefits and that the supplement does not compensate more than the actual loss of income. Therefore, the payment of the supplement cannot put the employee in a more beneficial financial situation in comparison to the financial situation that would have been applicable if he had continued to work. The NSSO recently clarified in this respect that with regard to the amount of the supplement, the sum of the unemployment benefit from the Unemployment Office and the supplement (granted by the employer) cannot lead to a situation in which the employee would receive a higher net income than when he would have continued to work. The NSSO has confirmed to us that an explanation will be provided within the next few days as to what exactly should be understood by “net”. We assume that “net” must include the taxable income of the employee; in other words, the taxable income of the employee (unemployment benefit + supplement) during the period of temporary unemployment may not exceed his last monthly taxable income (gross monthly salary minus personal social security contributions) while he was still working.

4.7 Are my employees eligible for an encouragement premium?

The Flemish encouragement premium that already existed for employees of companies in difficulty to encourage them to work part-time and therefore avoid redundancies was extended to companies that, as a result of the corona crisis, experience a **substantial fall of at least 20%** in turnover, production or orders in the month in which the reduction in working hours starts, compared to the same month of the previous year.

The employer must demonstrate this by drawing up a **plan** showing this reduction and what the labour redistribution measures are. This plan must be approved by the works council or in the absence thereof, by the trade union delegation or in the absence thereof, by the CPPW or, in the absence thereof, be included in the work rules.

The employee’s monthly premium amounts to between EUR 68 and EUR 172 gross and can start on 1 April 2020 at the earliest and end on 30 June 2020 at the latest.

The employee should file a request for the encouragement premium himself/herself to the Flemish government (for more information, see https://www.vlaanderen.be/aanmoedigingspremie-bij-onderneming-in-moeilijkheden-privesector (not yet available in English).

5 Illness

5.1 Do I have to pay guaranteed salary to all employees who are absent with a medical certificate?

Employees who can prove with a medical certificate that they are incapacitated for work are entitled to guaranteed salary due to illness. The medical certificate will not indicate whether the employee suffers from COVID-19. This information is subject to medical confidentiality.

Employees who have to stay at home on the advice of the occupational physician or of the attending physician because there is a suspicion of infection, or because a family member is infected with COVID-19, but for whom it has not been established that they themselves are incapacitated for work, are not entitled to guaranteed salary. These employees can, however, be placed in temporary unemployed due to force majeure.

5.2 Do I have to pay guaranteed salary to employees who are ill during the period of temporary unemployment?

Whether or not the employer has to pay guaranteed salary to an employee who is ill during a period of temporary unemployment depends in the first place on whether the temporary unemployment is:

- complete, in which case the employees are no longer working at all, or;
- partial, in which case days of unemployment alternate with working days.

In case of **complete temporary unemployment** the employee is not entitled to guaranteed salary during a period of temporary unemployment but he/she will be entitled to incapacity benefits paid by the health insurance funds.

In case of **partial temporary unemployment** the unemployment planning determines whether an employee is entitled to guaranteed salary:

- for the planned days of unemployment, the employee is entitled to incapacity benefits paid by the health insurance funds;
- for the planned working days, the employer pays the guaranteed salary.

If an employee has been incapacitated for work for more than 30 calendar days, he or she is in any case no longer entitled to guaranteed salary and receives disability benefits from the health insurance funds.

6 Allowances for the self-employed

6.1 Can freelancers/self-employed persons active in my company claim an allowance from the NISSE?

Recently, a new law came into force that considerably alters the legislation on the **bridging right**, making it easier for self-employed persons who are obliged to interrupt their activities as a result of the coronavirus, to claim this right.

The bridging right, which previously existed under stricter conditions, consists of:

- A **monthly financial allowance** corresponding to the monthly minimum pension of a self-employed person, this amount varying according to whether or not this person has family responsibilities:
  - Monthly allowance for a self-employed person without family responsibilities: EUR 1,291.69;
  - Monthly allowance for a self-employed person with family responsibilities: EUR 1,614.10.
- Retention of social entitlements to medical care and benefits for a maximum of 4 quarters.

Measures in times of Corona (March–April 2020)

First and foremost, the law introduces specific measures for self-employed persons who, as a result of the corona crisis, have to interrupt their activities in the months of March and April 2020. This period was provisionally set at these two months but can be extended if the crisis lasts longer.

Self-employed persons, helpers and assisting spouses who find themselves in one of the following 3 situations, and who are not entitled to any other replacement income, will receive the **full monthly financial allowance**:

1. if the self-employed person has to interrupt his activities **completely** according to the Ministerial Decree of 18 March 2020 and those who would follow (bars, restaurants, leisure centers,...), regardless of the duration of closure;

2. if the self-employed person has to interrupt his activities **partially** according to the Ministerial Decree of 18 March 2020 and those that would follow (shops that are obliged to close at the weekend, restaurants that only sell takeaway meals...); regardless of the duration of closure;

3. if the self-employed person interrupts his activity **completely**, not because the government has forbidden it, but because he is experiencing serious difficulties due to COVID-19, for example, a substantial drop in reservations or in occupation because employees have been placed in quarantine,...The interruption of the self-employed activity must last at least 7 consecutive calendar days.

The following adjustments to the conditions of application of bridging right were also adopted:

- It is no longer required that the self-employed person exercises his activity as his main occupation;
- Starting self-employed persons who have not yet actually paid 4 quarterly contributions are also entitled to the bridging right;
- The benefits for the months of March and April are not taken into account for the 12 or 24 months of financial allowances to which a self-employed person may be entitled throughout his career. The financial allowances that a self-employed person will receive as a result of the forced interruption due to the corona crisis are considered separately from the financial benefits already acquired;
- This specific bridging right is also granted to self-employed persons who have already benefited from the maximum amount of financial allowances within the context of bridging right during their career.

Measures after the corona crisis

When the corona crisis has passed (in theory for the time being after April 2020), the normal rules will apply again. The law also alters the legislation on the bridging right from then on. The self-employed person who is forced to interrupt his activities will be entitled to a financial allowance when this interruption lasts at least 7 consecutive calendar days (and no longer only when it lasts a full calendar month as was the case before the law came into force). The financial allowance will also be calculated pro rata per period of 7 days. In this way, the self-employed person will be able to claim:

- 25% of the financial allowance if the interruption lasts at least 7 days;
- 50% of the financial allowance if the interruption lasts at least 14 days;
- 75% of the financial allowance if the interruption lasts at least 21 days;
- 100% of the financial allowance if the interruption lasts at least 28 days.

6.2 Is there a specific application form for bridging right in the event of a forced interruption due to the coronavirus?

Each social security fund is obliged to provide the affiliated self-employed with a specific application form for bridging right in the event of a forced interruption as a result of the corona virus. These are available on their respective websites (https://www.ucm.be/, https://www.acerta.be/nl, ...).

6.3 Within what period will the financial allowance be paid?

The social security funds will have to proceed with the payment of the financial allowance as soon as possible and at the latest at the beginning of the month following the interruption.

For example, the payment of the financial allowance for the month of March 2020 will have to take place at the latest at the beginning of April 2020.

6.4 How is the bridging right treated from a tax perspective?

The bridging right qualifies for tax purposes as replacement income.
In principle, 26.75% withholding tax is deducted from the bridging right.

The bridging right is taxed at the progressive rates, together with the other income that is taxable at the progressive rates, such as profits, income, etc. No fixed deduction for professional expenses can be applied to the bridging right.

However, it is possible that the bridging right gives rise to the application of a tax reduction. This tax relief is calculated on the basis of the type and amount of the other income of the beneficiary of the bridging right and the legally cohabiting partner/spouse. However, if certain limits are exceeded, this tax credit may be 0.

6.5 How is the bridging right treated from a social security perspective?

In principle, no social security contributions for self-employed persons are due on the bridging right.

7 Wages and working conditions

7.1 I have agreed with my employees to grant their annual bonus in the form of listed warrants or non-listed options on shares of a SICAV, but the stock exchange risk is of such a nature that my employees could lose a significant amount of money due to the operation in question. Now what?

A certain number of employers have concluded annexes to the employment contracts with their employees providing for the conversion of their (potential) yearly bonus in listed warrants (or non-listed options on shares of a SICAV), which are in principle exempted from social security contributions. Even taking into account the blockage period of a few hours for warrants (and one year for non-listed options on shares of a SICAV), the stock exchange risk during this period is of such a nature that the value of the warrants could drop significantly during the blockage period, rendering the operation financially dangerous for the employees.

If the warrants have already been the subject of a formal offer (accepted by the employees in question), unfortunately it is no longer possible to go back on this. The fact that warrants are a speculative product by nature, means that the employees in question have knowingly accepted the risk of stock exchange fluctuations. Nonetheless, to the extent that no formal offer has been made to the employees in question, or if no employees have accepted the offer of warrants, it is still possible to go back on this and either postpone the offer at warrants to a point in time at which the stock exchanges have stabilised, or grant a bonus in cash instead of in the form of warrants.

As salary, either fixed or variable, are part of the essential elements of the employment contract, it will in any case be necessary for the employees to agree with the proposed alternative, for example by signing a new annex to the employment contract, by signing a letter “for agreement”, etc.

7.2 How can I compensate my employees for the costs incurred due to their teleworking?

Many employees are obliged to telework on a structural and regular basis (at least for the duration of the corona measures imposed by the government).

From an employment law perspective, it is required that teleworking is included in an agreement regarding teleworking that contains certain mandatory provisions. Furthermore, this agreement should be concluded before the start of the telework. Given the current circumstances, this is not always possible. In the event that an inspection would take place, it is to be expected that the inspection services will be understanding in view of the current exceptional circumstances.

Teleworking results in additional costs for the employees, such as costs for their home office, the professional use of their private internet connection and/or the professional use of their private PC/laptop.

To the extent that the employer does not yet bear these costs (e.g. by already granting an allowance for the home office, providing an internet connection/PC/laptop), it is possible for the employer to reimburse these costs. In the context of telework, the employer is even obliged to reimburse the costs of the connections and communications related to telework.

Both the tax administration and the NSSO accept that costs related to telework (to the extent that these are not yet borne by the employer in some other manner) are reimbursed on a lump-sum basis if the applicable conditions are met.

In general (abstraction made of the coronavirus crisis) in the event of structural and regular working from home (which is the case for teleworking), the following lump-sum allowances are accepted, without being subject to social security contributions or taxes (withholding tax):

- EUR 126.94 per month of office costs if the employee works structurally and regularly from home. This allowance covers the costs of heating, electricity, small office equipment, etc.;
- EUR 20 per month for the professional use of the private internet connection if the employee works structurally and regularly from home;
- EUR 20 per month for the professional use of the private PC/laptop if the employee works structurally and regularly from home;

An allowance of 10% of the gross salary, limited to the part of the gross salary that corresponds to the telework, is possible provided that a telework agreement has been concluded. The NSSO accepts that this "10% rule" is combined with the lump-sum compensation for the professional use of the PC/laptop (EUR 20 per month) and the professional use of the private internet connection (EUR 20 per month as well). However, the tax administration does not accept this combination and the Fiscal Affairs Preliminary Decisions Service ('Ruling Commission') even refuses to rule on the 10%-rule entirely.

Specifically for - temporary - telework during the coronavirus crisis, the Ruling Commission has made a simplified application form available on its website in order to obtain - for the duration of the corona measures – an accelerated preliminary decision to validate the amount of EUR 126.94 (https://www.ruling.be/nl/nieuws/aanvraag-thuiswerk-covid-19). The "10% rule" is not affected by this simplified application procedure.

The NSSO has recently published new 'Instructions' in this matter, confirming that the EUR 126,94 monthly lump sum indemnity can be granted to employees who telework, even if they did not do so (on a structural and regular basis) prior to the COVID-19 measures. The NSSO specifies that this lump sum for home office expenses can be combined with the EUR 20 per month lump sum indemnity for the professional use of the private internet connections and or the private PC (to the extent these are not yet taken at charge by the employer). Although the Ruling Commission does not refer to this explicitly in the context of the 'Corona' template, the combination of this lump sum indemnity of EUR 126.94 per month and the lump sum allowances of EUR 20 per month is also possible from a tax point of view.

The NSSO also indicated that if the employee has to make other expenses (use of private phone, purchase of a monitor or a scanner, etc.), that the employer can reimburse these costs as well. The reimbursement of the aforementioned costs has to happen on the basis of the actual amount of these costs.

Regarding the "10% rule", the NSSO has confirmed that it can be continued to be applied if this was already the case prior to the coronavirus crisis for those employees in question. If applicable, the application of the "10% rule" can be adapted according to the (elevated) proportion of home working days. The NSSO indicated as well that the "10% rule" will not be accepted for those employees who temporarily work from home within the framework of the COVID-19 measures and therefore do not find themselves in a situation of telework in the 'proper' sense of the word (with the conclusion of a telework agreement containing the obligatory provisions and stipulations).

Of course, the aforementioned lump sum allowances validated by the tax and social security authorities during the coronavirus crisis cannot be cumulated with other lump sum allowances that the employees already receive, covering the same expenses (e.g. within the framework of a ruling regarding 'costs proper to the employer').

8 Occupational pension plans and risk insurances

8.1 What is the impact of temporary unemployment on the occupational pension accrual and the death cover?

Group insurances

In most group insurances, temporary unemployment is not assimilated to active service. As a result, there is in principle no pension accrual during this period. The death cover may no longer be applicable or may be reduced to the accrued pension reserves.

On 26 March 2020, at the initiative of Assuralia, the professional association of insurance companies, a sector agreement was reached in which it was agreed (contrary to the general conditions of most insurance contracts) to maintain the pension accrual and the death cover during periods of temporary unemployment, unless the employer would indicate that he would not want this. Employers can obtain a postponement of the payment of employer's contributions for temporarily unemployed employees until 30 September 2020.

In some cases, it may be recommended to clarify certain matters in an annex to the pension plan rules (e.g. pensionable salary) or to determine how employee contributions will be withheld. Employee contributions are indeed based on the net salary, which is no longer due in the event of temporary unemployment. In principle, a modification of the pension plan rules requires a preliminary advice of the competent consultative body (works council, committee for prevention and protection at work or the trade union delegation). In the absence of such a body the employees must be informed individually. In the current circumstances, we propose to apply this procedure in a pragmatic way and to inform/consult the competent social consultative body through skype, conference call or by e-mail. The individual employees can be informed by e-mail as well.

Pension scheme managed by a (multi-)employer pension fund

If your occupational pension scheme is managed by a pension fund, you should first check the pension plan rules. If an annex is required for the continuation of the various coverages (pension, death, disability), then, in addition to the above (pragmatic) information/consultation procedure, it should also be approved by the board of directors of the pension fund (OFP). In some pension funds, the general assembly will also need to ratify the annex. The board of directors can be organised in writing. In that event, the annex will be approved provided that all directors give their consent in writing. A skype meeting would also be possible. Taking into account the current difficult financial situation of the pension funds, the approval of the board of directors is an important step. In our opinion, the general assembly meeting can also be organised in writing in these exceptional circumstances. A skype meeting or meeting by conference call is also exceptionally possible, even if this is not explicitly provided in the bylaws. Although not ideal, things can be arranged informally and be formally ratified afterwards. Please note that a death cover managed by a pension fund is often reinsured. Maintaining this cover during periods of temporary unemployment may give rise to a revision of the reinsurance agreement or to an additional solvency margin.

Industry-wide pension schemes

Finally, if you participate in a so-called social industry-wide pension scheme, or if you are the organiser of a social industry-wide pension scheme, we recommend verifying whether or not a continued pension accrual during periods of temporary unemployment for economic reasons or based on force majeure is part of the so-called "solidarity" benefits. Also, verify if there is a death cover, and if so, in which circumstances.

8.2 What is the impact of temporary unemployment on the hospitalisation insurance?

Occupational health insurances (hospitalisation, out-patient care) generally continue to apply during periods of temporary unemployment. Pandemics are usually not excluded from coverage. This means that employees who are temporarily unemployed and are hospitalised (for COVID-19 or any other reason) are entitled to a (partial) reimbursement of medical expenses.

8.3 What is the impact of temporary unemployment on the disability cover?

Occupational disability insurances and disability covers managed by pension funds generally no longer apply when the employment agreement is suspended for a reason other than illness. The timing of the cancellation of the disability cover depends on the policy conditions/pension plan rules of the pension fund. In some cases, the cover is cancelled on the first of the month following the suspension of the employment agreement. Other policies/pension plan rules stipulate that the cover is immediately cancelled. When an insurance company manages the disability cover, the employer must inform the employee of the right of individual continuation within 30 days after the termination of the disability cover.

In the aforementioned sector agreement, it was agreed to apply the same principles as for group insurances (life and death cover). This means that with regard to disability insurances, the cover will be maintained for the temporarily unemployed employees, unless the organiser (employer) indicates that he does not want this. Here too, a postponement of payment of employer's contributions until 30 September 2020 can be obtained.

When the disability cover is managed by a pension fund, a similar approach may be adopted, but usually an annex to the plan rules will be required to do so. Pension funds that manage a disability cover are usually reinsured and therefore should better contact the reinsurer before extending the disability cover.

9 International employment

9.1 Is it still possible to travel to Belgium or be repatriated?

Upon proposal from the European Commission, the external borders are temporarily closed to third country nationals making non-essential travel. Non-essential travel to and from Belgium via the internal borders is also temporarily prohibited.

9.2 Is it still possible to travel abroad from Belgium?

Non-essential travel from Belgium are expressly prohibited until 5 April 2020 (provisional date).

9.3 What happens to visa applications?

- **New visa applications:** The Immigration Office has announced that, for the time being, visa applications can no longer be submitted and visas can no longer be issued, with the exception of visas for travellers with an essential function or need.

- **Visa applications already submitted:** The Immigration Office will further examine visa applications already submitted. However, in the event of a positive decision, the visa will not be issued immediately, except in the case of an applicant with an essential function or need.

- **Visa application already granted:** Persons who have already been granted a visa are strongly advised to postpone non-essential travel. It will be possible to apply for a new visa if the validity period of the visa issued for the postponed travel is not sufficient for the duration of the new travel.

9.4 What about frontier workers who have to cross borders to get to work?

Several official certificates have been introduced to demonstrate the need for frontier workers to cross borders to work.

With regard to employees crossing the French–Belgian borders

The following certificates must be completed:

- A French deviating travel certificate must be completed by the employee. This certificate can be found at the following website: https://static.ccm2.net/scrib-files/14384866.pdf
- A permanent French certificate must also be completed by the employer. We can provide you with a template.
- For employees who reside in France and work in Belgium, an additional certificate must also be completed and signed by the employer and the employee. This certificate can be found at the following website: https://werk.belgie.be/sites/default/files/content/news/certificat%20pour%20les%20travailleurs%20frontaliers.pdf

With regard to employees crossing the Belgian-Luxembourg borders

The following certificates must be completed:

- A Luxembourg certificate must be completed by the employer and the employee. This certificate can be found at the following website: https://gouvernement.lu/dam-assets/documents/actualites/2020/03-mars/form-be.pdf
- A Belgian certificate proving the need to cross the border must also be completed by the employer and the employee. This certificate can be found at the following website: https://emploi.belgique.be/sites/default/files/content/news/Certificateneedtocrosstheborder.pdf

With regard to employees crossing the Belgian–German borders

We are not aware of any official certificate required by the German authorities.

However, the employer and employee must prove, by means of a declaration from the employer, that they are crossing the border to work.
Such a certificate can be found at the following website:
https://emploi.belgique.be/sites/default/files/content/news/Certificateneedtocrosstheborder.pdf

With regard to employees crossing the Belgian–Dutch borders

We are not aware of any official certificate imposed by the Dutch authorities.

However, both the employer and the employee must prove, by means of a declaration from the employer, that they are crossing the border to work.

You can find such a certificate at:
https://emploi.belgique.be/sites/default/files/content/news/Certificateneedtocrosstheborder.pdf.

In addition, frontier workers “in vital sectors and crucial professions” can make use of a sticker to make it easier for them to cross the border between Belgium and the Netherlands.

This sticker can be found at the following website:
https://crisiscentrum.be/sites/default/files/20200321_vignette_bel_vital_sector_e.pdf

It must be printed and stamped with the stamp of the employer or institution that justifies the essential border crossing.

9.5 What about third-country nationals who are temporarily unable to leave Belgium and who are no longer in possession of a valid authorisation to stay in Belgium?

If a third-country national is temporarily unable to leave Belgium for reasons of force majeure and authorisation to stay is no longer valid, it may be temporarily extended. In order to obtain an extension, the application must be submitted to the municipality or, in case of emergency, to the Immigration Office via e-mail, mentioning the applicant’s e-mail address and his provisional address in Belgium. The following documents must be attached to the application: a copy of the declaration of arrival (Annex 3), a letter explaining why the third-country national cannot leave the Schengen area on the scheduled date, the documents confirming the impediment and a travel sickness insurance valid for the duration of the desired extension.

It is important that the application is submitted as soon as possible. Not submitting such an application may lead to penalties in the event of the third-country national’s subsequent return to the Schengen area.

9.6 Can new applications for single permits/work permits still be submitted?

Yes, it is still possible to submit such applications. The three Regions took measures to allow applications to be submitted electronically, without the need to send the originals in parallel. However, the regional authorities each provide certain clarifications and recommend that the originals be kept available in case of any subsequent inspections. The Immigration Office has announced that, for the time being, visa applications can no longer be submitted and visas can no longer be issued, with the exception of visas for travellers with an essential function or need.

9.7 Is it possible for third-country nationals who are temporarily no longer able to travel from Belgium to continue working in Belgium?

The Flemish Region and the Brussels Capital Region have announced measures so that third-country nationals who are temporarily unable to leave Belgium due to force majeure can still be employed in certain situations. The Walloon Region has not yet taken a position on this matter.

Flemish Region:

A distinction is made between:

1. Temporary extension of stay and authorisation to work for persons who are unable to return to their home country (maximum 3 months): extension of stay and employment authorisation/work permit B

As regards stay, an extension of the authorisation to stay can be applied for (see above). With regard to the employment authorisation/work permit B, the employer must submit an application to obtain an employment authorisation/work permit B with the approval of the extension of stay as an annex. The Economic Migration Office ("Dienst Economische Migratie") will issue an employment authorisation/work permit B to the employer (by e-mail) via an accelerated procedure. The duration of the employment authorisation/work permit B is linked to the validity of the extended authorisation to stay and this employment authorisation/work permit B cannot be extended.

2. Extension for a longer period (more than 3 months): "single permit" application

Anyone who will stay in Belgium for more than 3 months must apply for an extension of the "single permit". This application must be submitted at the latest two months before the expiry date of the current permit. The Economic Migration Office ("Dienst Economische Migratie") sends the authorisation to work to the employee. The employee can start working based on this authorisation to work. The employee must present himself at his municipality with this authorisation. The employee will receive an Annex 49 mentioning *"authorisation to work: limited"* from his municipality pending the final decision regarding the "single permit".

Brussels Capital Region

The Brussels Capital Region has announced that if all the legal conditions are met and the conditions for employing a foreign employee are observed, the employer can apply for an employment authorisation/work permit B for a maximum period of 90 days on the basis of the employee's short stay. The duration of the employment authorisation/work permit B is linked to the validity of the extended stay, with a maximum of 90 days.

9.8 What impact does teleworking have on the applicable social security?

The periods of telework carried out on Belgian territory by frontier workers as a result of the coronavirus COVID-19 are not taken into account for the determination of the applicable social security legislation.

The neutralisation of the teleworking periods performed as a result of the coronavirus will continue to apply as long as the federal measures to combat the spread of the coronavirus COVID-19 are in force.

9.9 Should a teleworker or self-employed person be reported in Limosa?

Employed and self-employed persons who are normally subject to the social security system of another Member State, but who work from home as a result of the measures to combat the coronavirus COVID-19 in Belgium are exempt from the Limosa notification obligation.

This measure applies provisionally during the period from 13 March 2020 to 5 April 2020.

9.10 Can a frontier worker living in a neighbouring country but working in Belgium be eligible for the system of temporary unemployment?

Yes, frontier workers who work in Belgium but live in a neighbouring country are subject to Belgian social security and may be eligible for the system of temporary unemployment.

9.11 What is the tax situation for Belgian–Luxembourg frontiers workers who telework in Belgium?

From a tax point of view, Belgium and Luxembourg also agreed on a rule of tolerance under which frontier workers can telework in their residence during the COVID-19 crisis, without these teleworking days being counted in the 24-day tax rule.

10 Corona and the right to privacy and data protection

10.1 Which employees' personal data can I process for the prevention of COVID-19?

The question regularly arises whether, in the context of their prevention policies, employers can collect information about their employees in the context of COVID-19 prevention, e.g. through questionnaires on recent travel destinations or on medical symptoms have to comply with data protection legislation, in particular with the General Data Protection Regulation (GDPR).

The GDPR provides that any processing of personal data requires a legal ground (e.g. a legal obligation or the legitimate interests of the employer). In addition, if sensitive data (e.g. health data such as medical symptoms) are processed, the employer will have to rely on a specific exception as such processing is in principle prohibited.

It can be argued that an employer can invoke a valid legal ground for collecting information about recent travel destinations or about recent contacts with people at risk. Indeed, on the basis of the well-being

legislation, the employer has the obligation to analyse the risks arising from the coronavirus and, to take all necessary and adequate measures (such as a questionnaire) to ensure the health, safety and well-being of the employees. Such a legal obligation in the field of employment law could constitute an exception for the processing of health data (e.g. by asking workers if they experience COVID-19 symptoms). For the processing of ordinary data, the employer could also invoke legitimate interests (instead of a legal obligation), i.e. the interest to protect the (health of the) employees and his economic interests (preventing all employees from being ill at the same time).

In a general statement of 16 March 2020 (as further completed on 19 March 2020), the European Data Protection Board also indicated that the GDPR does not hinder the fight against COVID-19, also by employers, but that, even in these times, it is necessary to ensure that data protection legislation is respected. With respect to the processing of personal data by employers, the EDPB mainly refers however to the applicability of national laws.

However, on 20 March 2020, the Belgian Data Protection Authority (DPA) published on its website a rather strict position stating, among others, that:

- the health risk assessment should not be carried out by the employer, but by the company doctor. This position seems contestable because, although the company doctor has an advisory function, the responsibility for the welfare policy still lies with the employer;
- employers cannot oblige their employees to fill in medical questionnaires or questionnaires about recent trips. According to the DPA, it is advisable to encourage employees to spontaneously report risky trips or symptoms to the company doctor.

Nevertheless, the DPA still leaves an opening for the processing of medical data in the event employers act in implementation of explicit instructions imposed by the competent authorities in view of public health.

In addition, the DPA states in its position, among other things, that:

- in the context of preventing the further spread of the COVID-19 virus, an employer may not disclose the names of infected persons/employees. The employer may only inform the employees without mentioning the identity of the person(s) concerned;
- the mere measuring of the body temperature does not constitute any processing of personal data (and consequently the GDPR does not apply), to the extent that this measuring does not involve any additional recording or processing of personal data. In the original communication, it was explicitly stated that employers could not systematically monitor their employees or visitors by e.g. measuring their body temperature, but this is not explicitly repeated anymore. The DPA states however that the employer cannot take any measures which go beyond the regulatory framework regarding employment and that it is up to the company doctor to follow up persons suspected of showing COVID-19 symptoms;
- furthermore, all other GDPR obligations have to be respected in the processing of personal data, which means, among other things, that the employees have to receive all relevant information, only the minimum necessary amount of data has to be processed, the necessary security measures have to be taken, etc.

Please note that the views of national authorities on the processing of personal data for the prevention of COVID-19 are particularly divergent. Therefore, the above position of the Belgian DPA cannot automatically be applied to other countries.

11 What is the impact of Corona on the social elections?

11.1 What is the impact of the Covd-19 crisis on the organisation of the social elections of 2020?

COVID-19 also threatens to jeopardise the smooth running of the social elections procedure. Therefore, the social partners have reached an agreement to **suspend the social elections procedure as from day X+36**. The National Labour Council (NLC) has also provided an advice on the issues that should be regulated by law to manage the suspension and future resumption of the election procedure.

The elections procedure will have to be resumed on the new day X+36. This date will be determined depending on the new election date (day Y). The NLC proposes that the elections take place in the period that runs from 16 up to and including 29 November 2020. The new day Y cannot be freely determined, but would be the transposition of the originally chosen day Y. The established timetable is also maintained. The consultative bodies may, however, make other agreements.

11.2 What about the steps of the current procedural calendar?

All steps of the procedural calendar are provisionally postponed as from day X+36 until after the summer of 2020. This means that the current day X+35 (the final date for the submission of candidate lists) is maintained according to the current procedural calendar (i.e. in the period from 17 up to and including 30 March 2020, or later for the companies that started the election procedure later or when the election procedure has been delayed by a procedure before the labour tribunal).

Consequently, you do not yet have to proceed with, for instance, the posting of the candidate lists, the composition of the polling stations, updating the voters' list, etc.

These steps will be postponed to a later date.

The NLC states that the agreements and decisions already made up to and including day X+35 should be definitively acquired (e.g. decision on electronic voting), unless it concerns an agreement that has become devoid of purpose and explicitly indicates the corona virus as reason for the agreement (e.g. agreements concluded over the past few weeks to organise postal voting).

11.3 What if I have not received a single candidate list on day X+35?

Only if you have not received a single candidate list (and this for any personnel category) may you already stop the current election procedure. You will have to complete the formalities in this respect (posting of the message regarding termination and uploading this on the web application of FPS Employment).

If you have received at least one candidate list (even if there is only one candidate), you must suspend the procedure as from day X+36. You will have to resume the procedure as from the new day X+36.

11.4 What about the protection of the candidates and the currently protected employees?

Existing bodies and currently protected employees

According to the NLC, the existing WC and the CPPW will continue to function until the newly elected bodies are installed. The current employees' representatives will continue, of course, to benefit from their protection until that date. This also applies to the candidates nominated in 2016 but not elected (with the exception of the non-elected candidates who were not elected at the previous elections, since their protection normally ended in May 2018).

If the existing bodies do not have to be renewed (mostly because the legal thresholds of 50 or 100 employees have not been reached during the statutory reference period), the candidates elected in 2016 will continue to benefit from their protection until six months from the first new day Y. This also applies if you do not have to organise new elections in 2020 because of the lack of required candidates.

Protection for the candidates of the social elections of 2020

The candidate on the candidate list on day X+35 benefits from protection against dismissal since day X-30 until the date of the first meeting of the WC or the CPPW of the social elections of 2024. Therefore, nothing would change to the legislation in this respect.

As regards the hidden protection period, this period is not extended, but is rather deferred.

The NLC proposes that a new hidden protection period starts on your new "fictional" day X, i.e. 36 days prior to the new day X+36, until your new day X+76. A candidate nominated at the latest on the new day X+76 to replace a candidate nominated on day X+35, benefits from the protection against dismissal as from the new day X.

In concrete terms, this would mean that employees dismissed in the period from your current day X+36 until before your new day X (between 18 and 31 August 2020 according to the proposed new election calendar) cannot be designated as a replacement. Consequently, these employees will not benefit from protection.

Protection of the employee who was a candidate in 2016 but no longer in 2020 and calculation of the indemnity

This employee benefits from protection until the newly elected bodies are installed. This also applies to the candidate not elected in 2016 (with the exception of the non-elected candidate whose protection already ended in May 2018 - hypothesis of successive unsuccessful applications).

In the event of dismissal during the protection period, the employee will be entitled to a protection indemnity, consisting of a fixed part depending on seniority on the dismissal date. In this respect, the legislation would not be changed.

In addition to this, the employee is also entitled to the "variable" part of the protection indemnity, when his request for reinstatement is not (validly) accepted by the employer. For the calculation of the variable part, the NLC proposes to make a distinction depending on the dismissal date:

- in the event of dismissal before 18 March 2020: the variable part must be calculated based on the remuneration from the dismissal date up to and including the date of the first meeting of the newly elected WC or CPPW if the election procedure had not been suspended.

- in the event of dismissal as from 18 March 2020: the variable part must be calculated based on the remuneration from the dismissal date up to and including the date of the first meeting of the newly elected WC or CPPW according to the resumed election procedure.

12 Boards of Directors and shareholders' meetings

12.1 You have to convene your company's Board of Directors (BoD) and/or General Assembly (GA) - how can this be reconciled with confinement measures?

Since 18 March 2020, only the activities in "intimate or family circle" are allowed. Therefore, the physical meetings of the bodies of companies established in Belgium should, even in restricted committee, at least be postponed.

If you do not wish to postpone or if the situation requires decisions to be adopted without delay, meetings of the Board of Directors and the General Meeting can be held:

Via electronic media of communication (video/audio conferencing)

- if allowed by the Articles of Association;
- if not expressly provided for in the Articles of Association, this should nevertheless be possible provided that the minutes indicate the exceptional circumstances related to coronavirus justifying the holding of a video/audio conference meeting;
- if prohibited by the Articles of Association, this should nevertheless be possible provided that the minutes indicate the exceptional circumstances relating to the coronavirus and that compelling and exceptional reasons which make a decision directly in the interest of the company immediately recommended, are invoked.
    - In this case, we recommend that the resolution be ratified during the next meeting of the concerned body, which will be convened in accordance with the provisions of the Articles of Association in force.

In practice, if you use this method, the company must be able to control, through the electronic means of communication used, the quality and identity of the person participating in the meeting.

The medium of electronic communication must at least enable the participants to be acquainted, in a direct, simultaneous and continuous manner, with the discussions at the meeting and to exercise their right to vote on all the agenda items on which the meeting is called to decide. The medium of electronic communication must enable participants to take part in the deliberations and to ask questions.

By unanimous decision in writing

Such a method requires that all shareholder representatives or directors be able to sign (possibly electronically) the proposed written decision.

Absent members?

It also appears permissible that decisions to be taken in the interest of the company may be adopted without the legally or statutorily required majority being reached if certain persons (affected by the disease or unavailable due to the pandemic) are unable to take part in the deliberations.

However, if an urgent decision in the company's social interest, must be adopted without the majority normally required, the resolutions adopted must be ratified during the next meeting of the relevant body composed in accordance with the provisions of the Articles of Association in force.

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