Ius Laboris Belgium Global HR Lawyers
Claeys & Engels

Newsletter: **Dismissal 2.0**

September 2022

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Dear reader,

In 2014 several aspects of Belgian dismissal law were thoroughly overhauled.

The judgment of the Constitutional Court of 7 July 2011 marked the beginning of the devising of new – unified – dismissal rules applying to both blue-collar and white-collar employees. The Constitutional Court had ruled that the shorter notice periods applicable to blue-collar employees constituted a violation of the principle of equal treatment and were thus considered as unconstitutional. Therefore, new dismissal rules with unified notice periods for blue-collar and white-collar employees became necessary.

These new rules were finally implemented by the Act of 26 December 2013 "concerning the introduction of a unified employment status for both blue-collar employees and white-collar employees with regard to notice periods". This act also provided new provisions with regard to outplacement. The Act of 26 December 2013 entered into force on 1 January 2014.

In the past, blue-collar and white-collar employees were also treated differently in terms of justification of dismissals and in terms of the possibilities to challenge the reasons for their dismissal. Blue-collar employees could rely on the specific legal employment protection based on "unfair dismissal", whereas white-collar employees had to rely on the so-called "theory of abuse of rights" (abuse of the right to terminate employment). Therefore, Collective Bargaining Agreement (CBA) no. 109 regarding the justification of the dismissal, concluded on 12 February 2014 in the National Labour Council, introduced a new set of rules with regard to the justification of dismissals entering into force on 1 April 2014. This CBA also outlined the contours of the employer's discretionary power to terminate employment: the "manifestly unreasonable dismissal" was born.

The rules can be divided into two main sections:

1. the dismissal rules and the rules on outplacement which are applicable as of 1 January 2014;
2. the rules with regard to the justification of the dismissal and the "manifestly unreasonable dismissal", applicable as of 1 April 2014.

Even though important steps towards a unified status for blue-collar and white-collar employees have been taken, a truly unified employment status is far from being achieved. In fact, a great number of differences between blue-collar and white-collar employees remain for the time being intact: these include annual vacation, temporary unemployment, joint committees, social elections, etc.

At Claeys & Engels, as specialists in HR law, we deal with dismissal cases on a daily basis. In this *newsletter* we give you an overview of the current situation: what has happened more than eight years after the entry into force of the new rules on dismissal?

In the so-called "summer agreement" of 26 July 2017, the then Belgian federal government announced several social and economic reforms. Among these reforms was the so-called "reintroduction" of the trial period, which was abolished by the Act of 26 December 2013. Actually, the trial period was not really being reintroduced, but the statutory notice periods was now adjusted in case of dismissal during the first months of employment. The implementation of these adjusted notice periods during the first months of employment could be considered as a reaction to the abolition of the trial period. As a consequence of the abolition of the trial period, employers were less inclined to engage new employees on a permanent basis. Employers tended to rely on temporary agency work, etc.

Therefore, shortened notice periods were deemed necessary by the then federal government. These notice periods applied as of 1 May 2018 and are of course mentioned further on in this *newsletter.*

Further on, the so-called "activation contribution", another measure stemming from the summer agreement reached by the then federal government, is also discussed. As of 1 January 2018, employers are obliged to pay this activation contribution in case their employees are put on garden leave (release from the obligation to work) with full or partial payment of salary. In this way, the legislator wishes to discourage the practice of release of (mostly older) employees from the obligation to work.

Within the framework of the so-called "labour deal", the current federal government wants to provide more active support to employees whose employment contract is terminated with a notice period by introducing a "transition path". The aim of this is that the terminated employee would be able to start working for another employer (user) during the notice period with a view to a later definitive recruitment.

In addition, the current federal government also wants to work on increasing the employability of an employee who is dismissed with at least 30 weeks' notice.

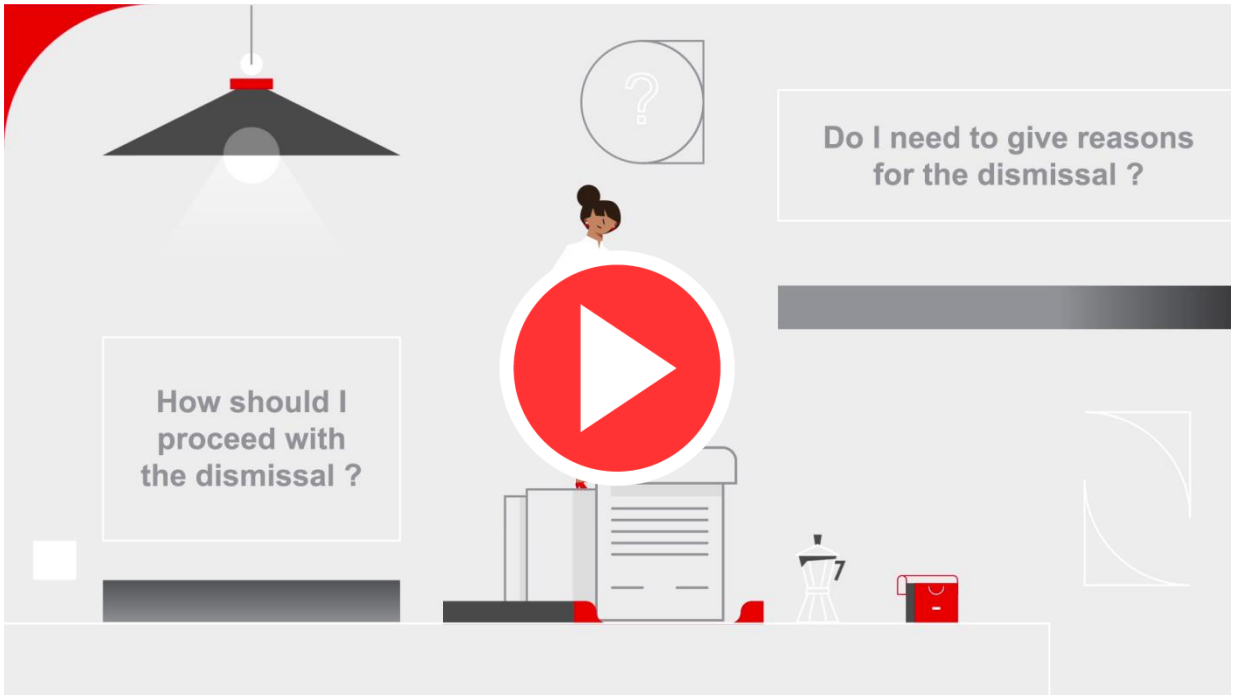
The final legislative text on these two new measures is normally expected in the autumn of 2022. Naturally, we will follow this closely.

The information in this *newsletter* reflects the situation on 1 September 2022.

Recently, Claeys & Engels conducted a survey on the topic of dismissal in collaboration with Randstad. Throughout this *newsletter* you will find graphs and charts that are based on the responses we received to our questions.

We hope that you enjoy the read!

Finally, we would like to use this opportunity to invite you to visit our website *www.dismissal.be* as well as our interactive video "Dismissal in Belgium".


Do I need to give reasons for the dismissal ?
How should I proceed with the dismissal ?

1 The current dismissal rules and notice periods

1.1 The notice periods are fixed periods expressed in a number of weeks

The unified notice periods that apply since 1 January 2014, are applicable to both blue-collar and white-collar employees. The notice periods depend only on the seniority of the employee. The notice periods are expressed in a number of weeks. The notice periods are fixed periods that are laid down by law. As soon as the employee's seniority is determined, you know the applicable notice period.

1.2 How to determine the relevant seniority

It is the seniority at the time the notice period starts that is relevant for determining the notice period. Seniority is defined as "the period during which the employee uninterruptedly remained in the service of the same undertaking".

If notice is given by the employer, the period during which the employee worked as a temporary agency worker for the employer has to be taken into account also, albeit limited to one year and provided that:

- the employee's role is identical;
- the permanent employment of the employee concerned started immediately after the period of temporary agency work or did so with an interruption of maximum 7 days; and
- the period of temporary agency work has not been interrupted for more than 7 days.

1.3 What are the notice periods in case notice is given by the employer?

When drafting the legislation, it was assumed that providing relatively short notice periods in the early stages of employment would facilitate better mobility on the labour market. Hence, it was generally expected that these relatively short notice periods would make the trial period redundant. However, this proved to be wrong. Practice shows that since the abolition of the trial period employers are in fact less inclined to immediately engage employees on a permanent basis and are more likely to rely on temporary agency workers, etc.

It is for this reason that shorter notice periods were introduced in case the employer gives notice in the first months of employment. A more gradual increase of the notice periods was provided for during the first six months of employment. The adapted notice periods have been applicable since 1 May 2018. They are included in the table below, which gives an up-to-date overview of the notice periods the employer must respect since that date (regardless of the start date of the employment contract):

Seniority	Notice period
< 3 months	1 week
between 3 months and < 4 months	3 weeks
between 4 months and < 5 months	4 weeks
between 5 months and < 6 months	5 weeks
between 6 months and < 9 months	6 weeks
between 9 months and < 12 months	7 weeks
between 12 months and < 15 months	8 weeks
between 15 months and < 18 months	9 weeks
between 18 months and < 21 months	10 weeks
between 21 months and < 24 months	11 weeks
between 2 years and < 3 years	12 weeks
between 3 years and < 4 years	13 weeks
between 4 years and < 5 years	15 weeks
as of 5 years	+ 3 weeks per started year of seniority
between 20 years and < 21 years	+ 2 weeks per started year of seniority
as of 21 years	+ 1 week per started year of seniority

Seniority of more than 5 years gives the following result:

Sen	Weeks	Sen	Weeks	Sen	Weeks	Sen	Weeks	Sen	Weeks	Sen	Weeks
5	18	10	33	15	48	20	62	25	67	30	72
6	21	11	36	16	51	21	63	26	68	31	73
7	24	12	39	17	54	22	64	27	69	32	74
8	27	13	42	18	57	23	65	28	70	33	75
9	30	14	45	19	60	24	66	29	71	34	76

1.4 Termination of employment in case of retirement or UCA

If the employer wishes to give notice to an employee at the legal retirement age (now 65 years), the normal notice periods apply, but capped at a maximum of 26 weeks.

In case an employer is recognised as being a company in difficulty or undergoing restructuring, the notice periods can be shortened to a minimum of 26 weeks in the event of termination by the employer with the view to enabling the employee to access the scheme of unemployment with company allowance (UCA, the former bridging pension).

1.5 What are the notice periods in case notice is given by the employee?

When the employee terminates the employment contract, he must take into account a notice period that roughly corresponds to half the notice period the employer should have complied with. In any case, however, the notice period is capped at a maximum of 13 weeks.

The following notice periods must be observed when the employee terminates the employment contract:

Seniority	Notice period
< 3 months	1 week
between 3 months and < 6 months	2 weeks
between 6 months and < 12 months	3 weeks
between 12 months and < 18 months	4 weeks
between 18 months and < 24 months	5 weeks
between 2 years and < 4 years	6 weeks
between 4 years < 5 years	7 weeks
between 5 years and < 6 years	9 weeks
between 6 years and < 7 years	10 weeks
between 7 years and < 8 years	12 weeks
as of 8 years	13 weeks

1.6 Counter-notice by the employee

When the employer served a notice period, and the employee wishes to leave the employer prior to the expiry of the notice period, the employee can give counter-notice. The counter-notice period is capped at four weeks.

Seniority	Notice period
< 3 months	1 week
between 3 months and < 6 months	2 weeks
between 6 months and < 1 year	3 weeks
as of 1 year	4 weeks

1.7 Can employers and employees deviate from the notice periods that are laid down by law?

It is possible to deviate from the statutory notice periods that apply since 1 January 2014. However, the condition is that this deviation is to the benefit of the employee. In addition, the deviation must be provided for at company level (e.g., in a CBA at company level or in the work rules) or at individual level (e.g., in the individual employment contract).

A deviation via a sector-level CBA (concluded at the level of the joint (sub) committee to which the company belongs) is not possible, not even if the deviation is to the benefit of the employee.

1.8 How should notice be given? When does the notice period start?

If the employer gives notice, the notice must be served by registered letter or by bailiff's writ. The letter must refer to the start date and the duration of the notice period. The notice period always starts on the Monday following the week during which the notice period was notified. A registered notice letter takes effect on the third working day (including Saturday) after it is sent.

This means that, in a normal week without public holidays, the employer must send the registered letter at the latest on **Wednesday** if the notice period has to start the **following Monday**.

However, this will change on 1 January 2023. Indeed, due to an amendment of the Civil Code, as of 1 January 2023, Saturday will no longer be considered a "working day", at least as far as the calculation of a term expressed in working days is concerned. In this respect, the consequence will be that in a normal week without holidays, the registered letter will have to be sent on Tuesday at the latest if the notice period starts on the **following Monday**.

The employee can hand over the notice letter to the employer and have it signed for receipt. If not, the employee must also confirm the notice to the employer by registered letter or by bailiff's writ.

1.9 Who is authorised to sign the dismissal letter within the company?

In the first place, the company bylaws must be checked. In most bylaws there is a signature clause that stipulates who can represent the company. For a public limited company (SA or NV) it is often (but not always) mentioned that the company is validly represented in all deeds by two members of the board of directors, acting jointly, or for everything concerning day-to-day management, by the managing director. For a private company (SRL/BV, formerly called SPRL/BVBA), the basic rule is that each director can sign alone, but the company bylaws may deviate from this and stipulate, for example, that the signature of two directors is required. In addition to the aforementioned company officers, it may also be possible that special proxyholders were appointed who, for certain matters (e.g., for everything related to HR), can represent the company alone (and can therefore sign the documents).

It is easy to find out who those company representatives are. Their appointment must be published in the Annexes to the Belgian State Gazette. These can be consulted online in

Dutch or in French. The names can also be found in the public database of the Crossroads Bank for Enterprises (Dutch/French), but this list is not always up to date.

There is no obligation to publish the names of the special proxyholders in the Annexes to the Belgian State Gazette (although this is sometimes done, in order to be able to easily demonstrate the representation power towards third parties). It must be checked internally whether, and to whom, a special power of attorney has been given within the company to sign dismissal letters (often the HR manager). To be valid, the power of attorney must have been given by the right company body or the right person.

1.10 Can you release the employee from the obligation to work (*garden leave*)? Be aware of the activation contribution!

As an employer, you cannot unilaterally decide to release the employee from the obligation to work during the notice period. You need the (written) agreement of the employee.

In this context, the activation contribution that was introduced in 2018 must also be borne in mind. This contribution is payable by the employer for any employee who does not work at all for the same employer during a full quarter.

This may concern *garden leave* situations in the context of a restructuring, as well as any individual arrangement under which an employee is released from the obligation to work.

There are some **exceptions** provided by law, in which case no activation contribution is due, although the employee is entirely released from the obligation to work. For example, the contribution is not payable in case of release from the obligation to work during the statutory notice period. Other exceptions apply in case of release of the obligation to work based on a full suspension of employment as laid down by law, on older arrangements (individual or by way of CBA) on training attended or a release from the obligation to work combined with a new employment of at least one third of a full-time equivalent. Also, when the employee attends specific training, a reduced contribution may be applicable. In this respect, the specific conditions must always be checked.

The activation contribution varies from 10% to 20% of the gross quarterly remuneration (increased to 108% for the blue-collars) of the employee who is released from the obligation to work. The contribution is determined according to the age of the employee at the time he is entirely released from the obligation to work.

Age at the time of release	Percentage of gross quarterly remuneration	Minimum amount
< 55	20%	EUR 300
≥ 55 and < 58	18%	EUR 300
≥ 58 and < 60	16%	EUR 300
≥ 60 and < 62	15%	EUR 225.60
≥ 62	10%	EUR 225.60

Besides, when an employee is released from the obligation to work during the notice period, an additional obligation applies to the employer since 29 April 2019: the employer must inform the employee in writing of the fact that the employee must register with the regional employment service of his place of residence (VDAB, Forem, Actiris or ADG) within one month following the award of the release (*garden leave*).

2 Employment contracts already started before 1 January 2014. Which notice period must be observed in such case?

For the termination of employment contracts that started before 1 January 2014, a specific statutory transitional rule applies, the so-called “double picture rule”.

For employment contracts that started before 1 January 2014, you calculate the notice period in two steps. You have to take a “double picture” of the seniority of the employee:

- a first picture of the seniority on 31 December 2013 ("step 1"); and
- a second picture of the seniority acquired as of 1 January 2014 ("step 2").

The applicable notice period is the sum of the results of both steps.

Step 1

In step 1, the duration of the notice period is determined according to the legal, regulatory and contractual rules that were applicable to the employee on 31 December 2013. In other words, you have to calculate step 1 as if the employment contract had been terminated on 31 December 2013.

Therefore, this first step implies a picture on 31 December 2013 of:

1. the employee's status on that date: blue-collar employee or white-collar employee;
2. the employee's seniority on that date;
3. the former dismissal rules that were applicable on that date.

So, in case of termination of employment of a *blue-collar employee,* you need to check which (sector-level) notice period was applicable on 31 December 2013.

In case of termination of employment of a *white-collar employee*, you need to verify whether the employee's gross annual remuneration was lower or higher than EUR 32,254 on 31 December 2013:

- If the remuneration was not higher than EUR 32,254 gross, the notice period is 3 months per commenced period of 5 years of seniority in case of termination of employment by the employer. In case the white-collar employee terminates the employment, the notice period is 1.5 months if he has less than 5 years of seniority. As of 5 years of seniority, the notice period is 3 months.
- If the remuneration was higher than EUR 32,254 gross, the law provides for fixed notice periods:
  - If the *employer* terminates employment: 1 month per commenced year of seniority, with a minimum of 3 months;
  - If the *white-collar employee* terminates employment: 1.5 months per commenced period of 5 years of seniority, with a maximum of 4.5 months if his gross annual remuneration was not higher than EUR 64,508, or 6 months if his gross annual remuneration was higher than EUR 64,508.

Take the picture!

On our website www.dismissal.be you can find a module that makes it easy to take the picture for your **workforce on 31 December 2013** and to keep this in your personnel files. You can download this module for free in .xlsx.

You should, however, bear in mind that you should comply with the (stricter) rules regarding the processing of personal data. Please contact us if you wish more information in this regard.

Step 2:

The second part of the notice period is calculated on the basis of the seniority the employee acquired as of 1 January 2014, as if the employee had entered into service on 1 January 2014. So, in step 2 the seniority counter is set at zero on 1 January 2014. For this second part, the unified notice periods which are applicable to all employment contracts as of 1 January 2014 have to be applied (see table in chapters 1.3 or 1.5).

The law provides two specific rules that apply in case employment is terminated by a white-collar employee:

1. In the event that the applicable cap is reached for step 1, nothing more should be calculated for step 2. The total notice period to be complied with is limited to step 1. The cap is:
   - if the remuneration on 31 December 2013 was not higher than EUR 32,254 gross: 3 months;

- if the remuneration was higher than EUR 32,254 gross but not higher than EUR 64,508 gross: 4.5 months;
- if the remuneration was higher than EUR 64,508 gross: 6 months.

2. If this cap is not reached for step 1, then step 2 should also be calculated, but the sum of both steps may never exceed 13 weeks.

According to the Belgian Federal Public Service Employment, Labour and Social Dialogue (FPS Employment), there is a third rule that applies in case the white-collar employee terminates the employment contract.

If the annual remuneration of the white-collar employee was higher than EUR 64,508 gross on 31 December 2013 and the duration of the notice period for step 1 amounts to 4.5 months for this employee, then only the notice period for step 1 should be taken in into consideration, according to the FPS Employment. Step 2 should not be taken into account, so that the total notice period is equal to 4.5 months. Although this position of the FPS Employment differs from the text of the law, the question may certainly arise whether this legal provision is compatible with what the legislator had in mind and with the constitutional principle of equality.

Some examples:

Dismissal by the employer

On 1 July 2010, Virginia "Pepper" Potts starts a promising career as "personal assistant" of Tony Stark at Stark Industries. As a personal assistant she has the status of white-collar employee. After the take-over of Stark Industries by Stane International, the new CEO, Obadiah Stane, decides to dismiss Potts in September 2022. Which notice period should be observed?

As Potts' employment contract started before 1 January 2014, Stane International has to apply the "double picture rule":

- **Step 1** - As Pott's annual remuneration was higher than EUR 32,254 gross on 31 December 2013, she can claim a notice period according to the rule of 1 month per commenced year of seniority (with a minimum of 3 months). On 31 December 2013 Potts was in her 4th year of seniority. For the 1st period of seniority ("step 1") a notice period of 4 months should therefore be taken into account.
- **Step 2** - At the time the employment contract is terminated, Potts has started her 9th year of seniority, counting as of 1 January 2014. So the notice period of step 2 amounts to 27 weeks.

➢ *So Potts has a total notice period of 4 months and 27 weeks to find a new employer.*

Dismissal by the employee

Natasha Romanova entered into the service of the KGB on 16 December 2003 as a spy (white-collar employee). On 2 September 2022 she terminates her employment contract to join S.H.I.E.L.D. Natasha's annual remuneration on 31 December 2013 exceeded EUR 32,254 gross but was less than EUR 64,508 gross. Which notice period should Natasha observe? The "double picture rule" also applies here.

- **Step 1 -** As Natasha was considered as a "higher" white-collar employee on 31 December 2013, the notice period amounts to 1.5 months per commenced period of 5 years with a maximum of 4.5 months. For the period of seniority until 31 December 2013 ("step 1"), the notice period for Natasha is therefore 4.5 months. On 31 December 2013, the 3rd period of 5 years of seniority had (just) started.
- **Step 2** - As the cap for step 1 (maximum of 4.5 months) has been reached, there is no step 2.

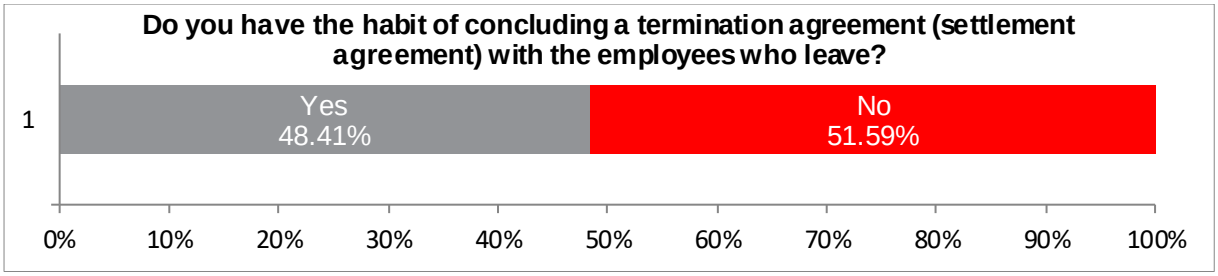
➢ *So, the total notice period Natasha should observe is 4.5 months. Before Natasha can start at S.H.I.E.L.D., she must therefore continue to work as a (double)spy for the KGB during a notice period of 4.5 months.*

What to do with a contractual notice clause that has been agreed upon before 1 January 2014

It is possible that in the employment contract which started before 1 January 2014, a notice clause was agreed upon between the employer and the employee. This means that they agreed on notice periods that could differ from the statutory notice periods which were applicable before 1 January 2014.

Before 1 January 2014 it was possible, under certain conditions, to provide for a different notice period in the employment contract of a white-collar employee with a gross annual remuneration of more than EUR 64,508. This notice period should (at least) be equal to the so-called "legal minimum" that applied at that time: 3 months per commenced period of 5 years of seniority.

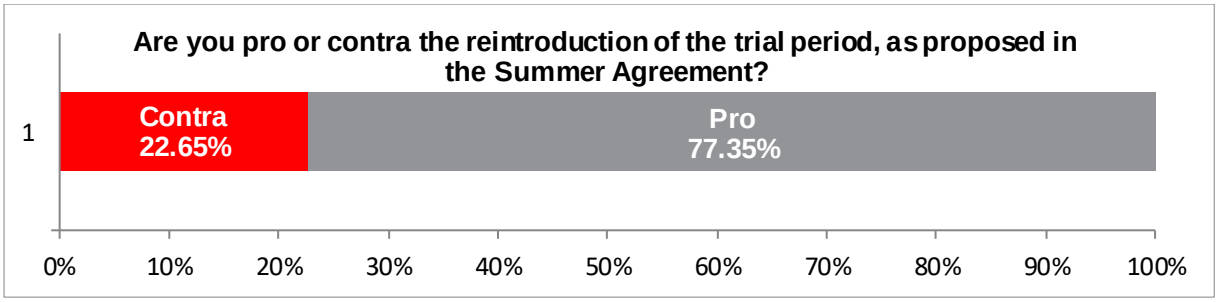
At present, there is still a lot of disagreement in case law whether and how such notice clause can be applied when a notice period should be calculated in application of the "double picture rule". However, it is important to note that the Constitutional Court has already ruled that the notice clause – and thus not the statutory notice period (see above) – should be applied for step 1.



3 The trial period was abolished, but was tacitly introduced again through the back door

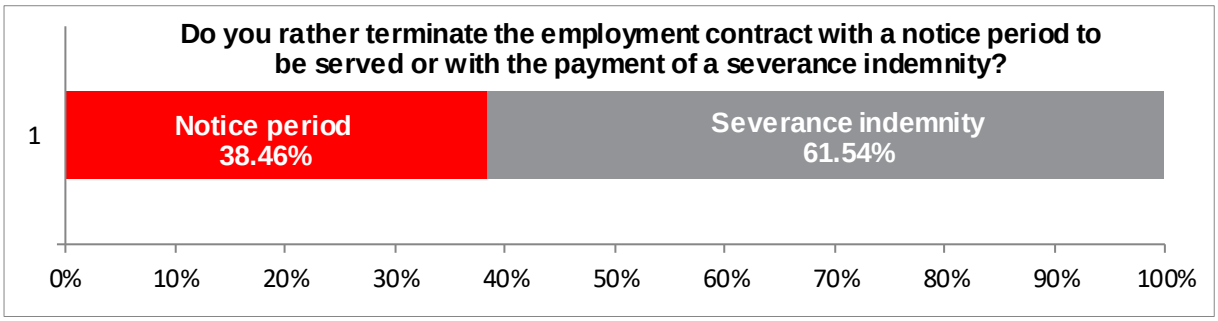
For employment contracts starting after 31 December 2013, it is not possible to include a trial period. The idea behind this was that the shorter notice periods at the start of the employment would in any case provide sufficient flexibility. As mentioned above, this idea turned out not to be in line with reality and as from 1 May 2018 new notice periods were introduced again in case of termination by the employer in the first months of employment (see table in chapter 1.3).

However, there are still specific rules applicable to the trial period for temporary agency work and temporary work and for student contracts.



4 How do you calculate severance indemnity in lieu of notice?

Both the employer and the employee always have the option of unilaterally terminating the employment contract with immediate effect and with payment of an indemnity in lieu of notice (severance payment).



The basic principles with respect to the indemnity in lieu of notice and the calculation basis consisting of the salary and the benefits remain unchanged. However, in the current rules that are applicable since 1 January 2014 it is explicitly stipulated that for calculating the variable pay, the average of the last 12 months of employment should be taken into account. This would refer to the amounts that have been actually paid (or should have been paid) during this period. Furthermore, in a recent ruling, the Belgian Supreme Court recalled the basic condition for the inclusion of a variable wage component in the calculation of the indemnity in lieu of notice: the employee must be entitled to this variable wage component at the date of dismissal in order to include this component in the calculation in the first place.

As the notice periods are expressed in a number of weeks, a conversion of the remuneration has to be made (especially for white-collar employees):

- the fixed monthly salary (including benefits) should be converted into a quarterly base salary, by multiplying it by 3;
- subsequently, the quarterly salary has to be divided by 13 (= number of weeks in a quarter).

5 Job application leave

The employee is entitled to job application leave during the notice period. This job application leave can only be used for the purpose it is legally meant for, that is to search for a new job.

During the last 26 weeks of the notice period, the job application leave amounts to 1 full day or 2 half days per week. During the (potential) prior period it amounts to half a day per week.

Employees who are entitled to outplacement assistance under the so-called “general outplacement regime” (see chapter 9) (i.e., employees who are entitled to a notice period of at least 30 weeks) are entitled to 1 day (or 2 half days) job application leave during the entire notice period. The outplacement assistance (equal to 60 hours in total) is then taken during this job application leave.

For part-time employees, the job application leave must always be prorated.

6 What about fixed-term employment contracts or employment contracts for a clearly defined work?

The option of unilaterally terminating a fixed-term employment contract (or a contract for a clearly defined work) prior to the expiry of the agreed duration still exists. In this case, the party terminating the contract must pay compensation corresponding to the remuneration that is due until the end of the agreed duration. However, this amount may not exceed double the remuneration corresponding to the notice period that should have been observed in case the employment contract had been concluded for an indefinite duration.

Moreover, for fixed-term employment contracts (or contracts for a clearly defined work) entered into as from 1 January 2014, either the employer or the employee may unilaterally terminate the employment contract at any time taking into account the normal notice periods (see chapter 1.3 and chapter 1.5). However, this is only possible in the first half of the agreed duration (capped at a maximum of six months).

For example, if a contract is agreed for a fixed duration of 18 months, the employer can terminate it with notice of 1 week during the first 3 months, notice of 3 weeks during the 4th month, notice of 4 weeks during the 5th month or notice of 5 weeks during the 6th month.

To be able to use this termination option, the effective end of the employment contract must still fall within this first period of the contract, in this example within the first 6 months.

In case of a valid succession of several fixed-term employment contracts (or employment contracts for a clearly defined work), the above-mentioned termination option is only possible during the first contract.

7 What if the employee is sick?

When the incapacitated employee has been declared *permanently and definitively* unable to carry out the work under the employment contract by the prevention advisor-work doctor, the employment contract can end due to "force majeure on medical grounds". However, this is only possible in case a so-called "re-integration process" has been started and definitively finished in accordance with the included in the Codex on Well-being at Work. If the employer establishes such medical force majeure, an outplacement offer of EUR 1,800 must be made to the employee concerned.

In case of temporary occupational disability, the employer has the possibility to terminate the employment contract during the notice period in case the employee falls sick after the employer had given notice. In such case, the employer must pay an indemnity in lieu of notice corresponding to the remaining notice period. When one calculates this indemnity, the period covered by the guaranteed salary paid since the start of the last period of incapacity to work can be deducted from the remainder of the notice period.

Furthermore, the employer can also terminate a fixed-term employment contract during a period of incapacity to work with a lower indemnity in lieu of notice.

- In case the agreed duration of the employment contract is at least 3 months and the period of incapacity to work lasts longer than 6 months, the remaining salary for the agreed duration is limited to 3 months, of which the guaranteed salary may be deducted.
- In case the duration of the employment contract is less than 3 months and the period of incapacity to work lasts more than 7 days, no indemnity need be paid. However, this is only possible after the end of the period during which giving notice is possible.

Please note: Even when these provisions are correctly applied, there is still a risk that the

incapacitated employee may submit a claim following the termination of employment, based on discrimination on grounds of health status or handicap.

8 Other special regulations

The employee can terminate the contract without notice:

- during a period of full or part-time suspension of employment due to economic reasons; or
- during suspension of employment due to bad weather lasting longer than 1 month.

9 Outplacement

Also the right to outplacement has been significantly extended eight years ago. Since 1 January 2014, all employees whose employment is terminated with a notice period or indemnity in lieu of notice of **at least 30 weeks** are entitled to outplacement support.

A few examples: for an employee who enters into service on 1 September 2020, the right to outplacement applies in case of dismissal at a seniority of at least 9 years, i.e. as from 1 September 2029. For an employee who entered into service in 2013, and who is entitled to 3 months' notice for the seniority up to and including 31 December 2013 ("step 1"), the right to outplacement applies as from 5 years of seniority under the "new system". A white-collar employee who was already employed on 31 December 2013 and who had an annual remuneration of more than EUR 32,254 gross at that time, is entitled to outplacement in case of dismissal in September 2022 as this employee is entitled to a notice of (at least) 3 months and 27 weeks, which is more than 30 weeks.

This outplacement regime, applicable as of 1 January 2014, is solely linked to the employee's seniority and applies regardless of the employee's age at the time of dismissal. This regime is called "the general outplacement regime".

Furthermore, the obligation to offer outplacement to older employees, which already existed before 1 January 2014, is still applicable to employees who do not fall under the general regime. Since 1 January 2014 this regime is called the "special outplacement regime". This regime applies to employees with at least 1 year of seniority and who are older than 45 years, in case their notice period is shorter than 30 weeks.

In the "general outplacement regime", a distinction is made between two possibilities:

1. The employment is terminated with payment of an *indemnity in lieu of notice:*

The employee is entitled to a severance package consisting of:

- indemnity in lieu of notice of at least 30 weeks' pay, of which 4 weeks *can* be deducted in compensation for the employer's outplacement offer (regardless of whether the employee accepted the offer or not); and
- 60 hours of outplacement support to the value of 1/12th of the annual remuneration of the calendar year preceding the dismissal, with a minimum value of EUR 1,800 and a maximum value of EUR 5,500 (excluding VAT).

Since 15 February 2018, an employee who is not capable of participating in the outplacement programme because of medical reasons, is no longer entitled to outplacement. In this situation the employer cannot deduct 4 weeks of remuneration from the indemnity in lieu of notice. The employee must prove, within 7 days from the day on which he is informed of his dismissal, that he is not capable of participating in the outplacement programme for medical reasons. This should be demonstrated by means of a medical certificate from his physician, as well as from a second physician, appointed by the employer, if the employer takes the initiative.

This regime should not be confused with the right to outplacement support, which entered into force on 29 April 2019, for an employee whose employment contract came to an end as a result of medical force majeure invoked by the employer at the end of the legally regulated re-integration procedure (see chapter 7). As this termination of employment cannot be considered as a dismissal, this employee cannot benefit from the existing regime of outplacement support. In this case, the employer will have to make an outplacement offer in writing with a value of EUR 1,800. The modalities are very similar to what is provided for in the general outplacement regime.

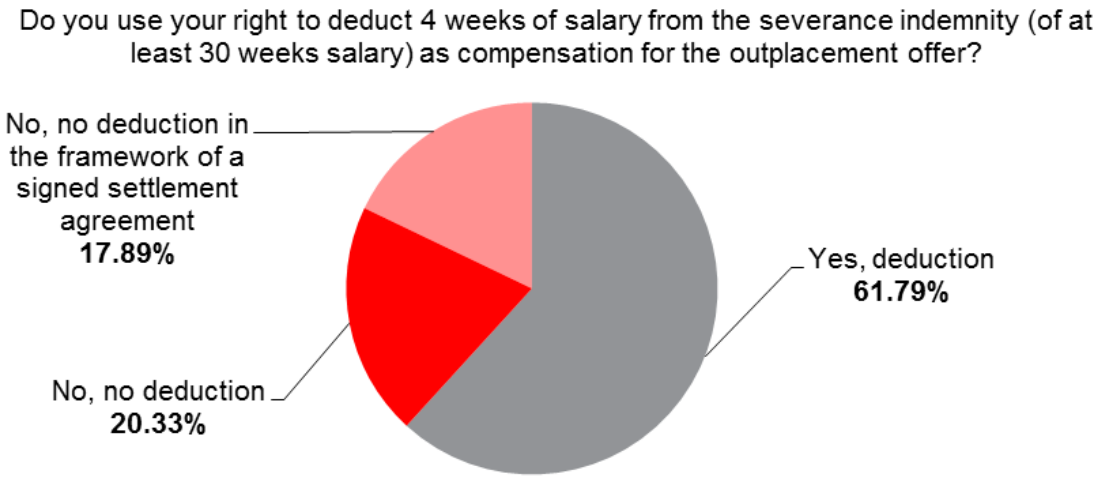
2. The employment is terminated by giving *notice:*

The employee is entitled to a severance package consisting of:

- a notice period of at least 30 weeks;
- 60 hours of outplacement support. The time spent on this is deducted from the application leave.

An employee can partly resume the outplacement programme in case he loses a new job at a new employer. There are also specific terms and conditions with regard to the way in which the employer has to make a valid outplacement offer, the way in which the employee has to accept the offer, etc.

Please note: In several joint committees, specific rules have been defined related to outplacement. This is the case, for instance, in the supplementary joint committee for white-collar employees (200), the joint committee for international trade, transport and logistics (226) and the joint committee for the insurance industry (306).



10 Temporary transitional rules for blue-collar employees in certain industry sectors

The Act of 26 December 2013 provided for *temporary* transitional rules with specific notice periods for blue-collar employees in certain industry sectors. These specific notice periods were only applicable in the event of notice being given between 1 January 2014 and 31 December 2017. This means that as of 1 January 2018 also for these industry sectors the "normal" rules apply.

11 Permanent exception for blue-collar employees who carry out specific activities on so-called temporary and mobile workplaces (construction sector)

The Act of 26 December 2013 also provided for a permanent (structural) exception for blue-collar employees who carry out specific activities at so-called temporary and mobile workplaces. The exception applied to certain blue-collar employees in the construction sector (124) and in the upholstery and woodworking sector (126).

However, the Constitutional Court ruled that this permanent (structural) exception is discriminatory. Therefore, the Constitutional Court annulled these exceptional rules, albeit only as of 1 January 2018. This means that since 1 January 2018 the "normal" rules also apply to these blue-collar employees.

12 Dismissal compensation indemnity for blue-collar employees who entered into service before 1 January 2014

The "double picture rule" implies that blue-collar employees with an employment contract that started before 1 January 2014 still have fewer dismissal rights compared to the dismissal rights under the rules which are applicable as of 1 January 2014. Therefore, the Act of 26 December 2013 provided for a compensation arrangement for blue-collar employees who are dismissed after 31 December 2013.

The National Employment Office (RVA/ONEM) pays a "dismissal compensation indemnity" to these blue-collar employees. This "dismissal compensation indemnity" corresponds to the difference between their actual net severance payment and the amount to which they would have been entitled if their total seniority had been acquired after 31 December 2013. To be entitled to this "dismissal compensation indemnity" the blue-collar employee had to meet specific seniority conditions at the time of dismissal. However, as of 1 January 2017 these seniority conditions are no longer applicable.

During the period covered by this "dismissal compensation indemnity", the blue-collar employee is not entitled to unemployment benefits.

13 Social security contributions on severance payments

Indemnities in lieu of notice are, just like the gross salary of the employee, subject to normal social security contributions. In other words, personal social security contributions are due (13.07%) which are retained by the employer, as well as the normal employer's social security contributions (as of 1 January 2018 approximately 27% for white-collar employees and approximately 33% for blue-collar employees) on top of the indemnity. These contributions are calculated on the basis of the rate that applies in the quarter during which the dismissal takes place. For blue-collar employees, the social security contributions are still calculated on 108% of the gross indemnity in lieu of notice. Indeed, the status of blue-collar and white-collar employees has not yet been unified on this point.

Will the indemnity paid in case of dismissal be subject to social security contributions? Below you can find a brief overview:

	Social security contributions	Exempt from social security contributions
Indemnity in lieu of notice	X + special contribution to the Closure Fund (see below)	
Special clientele indemnity (sales representatives)	X	
Lump-sum indemnity equal to 2 weeks of remuneration in case of violation of the rules obliging the employer to give the reasons for the dismissal (CBA no. 109)		X
Indemnity in case of "manifestly unreasonable dismissal" (CBA no. 109)		X (when established in a judicial decision or in a judicially ratified settlement agreement)
Protection indemnity (pregnancy, time credit, parental leave, educational leave)		X
Non-competition indemnity (when the non-compete clause takes effect within 12 months after the end of the employment contract)	X	
Payment in case of termination of employment by mutual agreement	X + special contribution to the Closure Fund (see below)	
Indemnity in case of violation of job security		X[1]
Compensation in case of company closure		X
Collective dismissal indemnity		X
Protection indemnity for employee representatives and candidates	X	
Protection indemnity for members of the trade union delegation	X	
Indemnity for moral damage		X (when established in a judicial decision)

[1] Has already been challenged by the Social Security authorities.

14 Special compensating contribution on the severance indemnity

As of 1 January 2014, the employer must pay a special compensating contribution on severance indemnities in cases where the gross annual remuneration of the employee is at least EUR 44,509. The proceeds of this contribution are destined for the *Compensation Fund for Redundant Employees of Closed Businesses* (*Closure Fund*). The contribution is calculated only on the part of the severance indemnity that is related to the employment period as of 1 January 2014. This concerns the severance indemnity in lieu of notice to be paid in case of dismissal by the employer and the compensation the employer would pay in case of termination of employment by mutual agreement. The amount of this contribution depends on the employee's gross annual remuneration:

Gross Annual Remuneration	Contribution to the Closure Fund
< EUR 44,509	No special contribution
≥ EUR 44,509 and < EUR 54,509	1%
≥ EUR 54,509 and < EUR 64,509	2%
Gross annual remuneration ≥ EUR 64,509	3%

15 Tax treatment of severance payments

Severance payments are taxable salary. The definition of "severance payment" is very broad: it covers all compensations that are received because of the termination of employment or on the occasion of the termination of the employment contract. Basically, all indemnities mentioned in the scheme above (see chapter 13) fall within this definition.

The total severance payment is taxable within the personal income tax. Of course, the taxable amount is the gross amount of the severance payment after deduction of the personal social security contributions. The severance payment is separately taxed at the average rate applied on the taxable income of the last year in which the employee had twelve months of taxable professional income. Taxable professional income includes not only standard and conventional remuneration, but also substitute income, such as unemployment allowances.

The employer must withhold payroll tax on the severance payment (withholding tax). For the year 2022 the following rates apply:

Reference remuneration	Applicable rate
up to EUR 9,830.00	0.00%
as of EUR 9,830.01 up to EUR 11,800.00	2.68%
as of EUR 11,800.01 up to EUR 13,110.00	6.57%
as of EUR 13,110.01 up to EUR 15,735.00	10.77%
as of EUR 15,735.01 up to EUR 17,050.00	13.55%
as of EUR 17,050.01 up to EUR 19,010.00	16.55%
as of EUR 19,010.01 up to EUR 22,290.00	19.17%
as of EUR 22,290.01 up to EUR 28,840.00	24.92%
as of EUR 28,840.01 up to EUR 35,395.00	29.93%
as of EUR 3,395.01 up to EUR 45,890.00	31.30%
as of EUR 45,890.01 up to EUR 51,785.00	36.90%
as of EUR 51,785.01 up to EUR 58,995.00	38.96%
as of EUR 58,995.01 up to EUR 68,820.00	40.93%
as of EUR 68,820.01 up to EUR 82,590.00	42.92%
as of EUR 82,590.01 up to EUR 103,565.00	44.99%
as of EUR 103,565.01 up to EUR 119,295.00	46.47%
as of EUR 119,295.01 up to EUR 140,270.00	47.48%
above EUR 140,270.00	48.00%

The reference remuneration is the annual gross remuneration which served as the basis for the calculation of the severance payment (including all benefits), after deduction of the personal social security contributions.

In rather exceptional cases, there is still a partial exemption based on the number of dependent children.

Only moral damages escape withholding taxation. However, the tax administration is strict in the application of this exemption and requires that the compensation meet the following 3 conditions:

- There has to be an error by the employer which is alien to the dismissal and there have to be damages that can be distinguished from the damage resulting from the dismissal;
- This error must have caused personal and individual moral damages;
- The compensation was awarded by a judicial decision after trial taking into account the actual moral prejudice suffered.

Also the dismissal compensation indemnity paid by the National Employment Office (RVA/ONEM) is exempt from tax (see chapter 12).

16 Dismissal and occupational pensions: some focus points

16.1 Is it possible to pay a one-off contribution into the pension plan/ group insurance?

The contributions paid by the employer to finance the occupational pension of an employee is considered remuneration and must therefore be taken into account when calculating the indemnity in lieu of notice.

It is, however, common practice to recognise the period covered by the indemnity in lieu of notice in the occupational pension plan. This is because it reduces the employer's cost and increases the net "profit" of the employee concerned. This is perfectly possible but only if it is explicitly provided for in the pension plan and insofar as it is applied to all affiliated persons.

In order to limit the risk of a double payment (recognition in the occupational pension plan, cumulated with an inclusion in the calculation basis of the indemnity in lieu of notice), it is advisable on the one hand to stipulate in the pension plan that the payment into the pension plan is the rule "unless the employee explicitly opposes this" and on the other hand to confirm this payment in the settlement agreement concluded with the employee on the occasion of the dismissal.

16.2 In case of termination of employment: do not forget the formalities linked to the exit from the pension plan / group insurance!

In case of termination of employment, the employee has to exit the occupational pension plan and has to decide – at that point – what will happen with the acquired reserves. In broad outline, the choice is limited to the following two options: leave the acquired reserves within the (old) pension institution (with or without death cover) or transfer the acquired reserves to another pension institution or the reception structure of the former employer.

As an employer, it is therefore important (i) to inform the pension institution of the exit of the employee concerned (within 30 days after the termination of employment) and (ii) to inform the employee of the various options he has as a result of his exit. This must be done as soon as you – as an employer – receive all necessary information from the pension institution, i.e., legally speaking 30 days after the notification of the exit to the pension institution. The former employee must be informed in such a way that he is in the position to make an informed decision about the fate of the acquired reserves and that he can fully understand what the consequences of his choice are/will be

(including, for example, what will be paid to his beneficiaries in the event of death).

16.3 Has the severance payment an impact on the statutory pension of the employee?

Employees over the age of 65 years and/or with a career of at least 45 years can – without restriction – cumulate their statutory pension with an income from professional activity. When the employment of such an employee is terminated, his statutory pension will not be impacted by the indemnity in lieu of notice or any other severance payment. In this case professional income can be cumulated with statutory pension without any limitation.

In case an employee does not meet the abovementioned conditions, i.e., he has not yet reached the age of 65 and/or he does not have a career of at least 45 years, and his employment is terminated with payment of an indemnity in lieu of notice, he will not be able to enjoy an unlimited combination of his professional income and his statutory pension. In such a case, the so-called "rules on admitted work" apply. It is important to bear this in mind when considering terminating the employment of employees who are close to their statutory retirement. Indemnities in lieu of notice or severance indemnities are spread over the period to which they relate and are considered as salary (see salary code 3 in the DmfA). So, if a severance payment relates to a period after the start of the statutory pension, it may be that the statutory pension of the employee concerned is reduced or suspended for a certain period (depending to what extent the limits on admitted work are exceeded). If, on the other hand, one-off severance indemnities are concerned that cannot be spread over a certain period (e.g., one-off premiums upon departure, premiums for early departure; see salary code 4 in the DmfA), the imputation takes place at the time of payment. It is advisable to communicate this clearly.

17 The rules concerning the justification of the dismissal and the "manifestly unreasonable dismissal" (CBA no. 109)

CBA no. 109 could probably be seen as a "milestone" in Belgian dismissal law. After all, before the entry into force of CBA no. 109, there was no general right for the employee to be informed of the reason(s) for his dismissal, nor a general duty for the employer to clarify why the employee's employment was terminated.

On 1 April 2014, CBA no. 109 introduced some new regulations which essentially imply that an employee whose employment is terminated, regardless of whether he is a white- or a blue-collar employee, has the right to know the concrete reasons for the dismissal (see below: chapter 17.2).

In addition, CBA no. 109 also provides the general contours within which the employer can exercise his right of dismissal. Indeed, a new concept was born, the so-called "manifestly unreasonable dismissal" (see below: chapter 17.3).

17.1 To whom do the regulations concerning the justification of the dismissal and concerning "manifestly unreasonable dismissal" apply?

The regulations concerning the justification of the dismissal and concerning "manifestly unreasonable dismissal" apply in case of termination of employment by the employer of both blue-collar and white-collar employees with a seniority of at least 6 months. Please note that preceding and consecutive fixed-term employment contracts (or employment contracts for temporary agency work for an identical function with the same employer) are also taken into account for the calculation of this 6-month period.

However, there are a number of specific cases where these regulations do not apply:

- termination of temporary agency contracts and student contracts;
- termination of employment with a view to unemployment with company allowance ("UCA");
- when the employee has reached the statutory retirement age;
- termination of employment in the framework of a collective dismissal, closure of the company or discontinuation of the activities, as well as in case of multiple dismissal in case of restructuring as foreseen at sector level;
- termination of employment which is subject to a special procedure provided for by law (e.g., the dismissal of employees who are protected in the context of the social elections, or the dismissal of a prevention counsellor) or provided for in a CBA (e.g., when a job security procedure is foreseen in a CBA concluded at sector level or at company level).

Moreover, the rules concerning the justification of the dismissal (see below: chapter 17.2) are not applicable when an employer terminates the employment of an employee for serious cause. Indeed, in that case, a specific justification obligation is already applicable in the framework of the dismissal for serious cause. However, the rules concerning "manifestly unreasonable dismissal" do apply in such a case (see below: chapter 17.3).

To employees employed on temporary and mobile construction sites, who were subject to structurally shorter notice periods, the rules concerning justification of dismissal and concerning "manifestly unreasonable dismissal" were not applicable. Separate rules, which were similar to the rules on "unfair dismissal", were applicable to these employees. In the meantime, the Constitutional Court ruled that these structural exceptions are unconstitutional. As a result, these employees also fall under the scope of CBA no. 109 as of 1 January 2018.

17.2 Justification of the dismissal

Right for the employee whose employment is terminated

Since 1 April 2014, employees whose employment is terminated by the employer, have the right to ask their employer to be informed of the concrete reasons that have led to their dismissal. So, the dismissed employee has the possibility to ask for these reasons after the dismissal, but he is not obliged to do so.

Although the employer is free to communicate the reasons for the dismissal on his own initiative (e.g., in the dismissal letter), this is not an obligation. There is only an obligation for the employer to communicate the reasons for the dismissal in case the employee has first made a request for this to the employer.

A number of mandatory formalities apply in this respect. The employee's request must be sent to the employer by registered mail within a period of 2 months from the point at which the employment contract ends. However, if the employment contract is terminated by serving a notice period, the employee has 6 months to submit the request to the employer, from the serving of the notice. (This period starts on the 3rd working day after the date on which the registered notice letter was sent.) However, it should be noted that, in that case also, the employee must still send the request by registered mail at the latest within 2 months from the effective end of the employment.

In case the employer receives such a request, he must put the concrete reasons on paper and send this written reply to the employee by registered mail within 2 months. This 2-month period starts on the 3rd working day from the date on which the employee has sent his registered letter.

The employer's response must be sufficiently concrete. After all, the employee must be able to gain insight into the reasons that were at the basis of the dismissal. In addition, the employee must also be able to assess whether the dismissal was reasonable or not. The employee must be able to assess, on the basis of the notification of the concrete reasons for the dismissal, whether he would agree with the

dismissal decision of the employer or whether he would challenge the dismissal.

It is possible that the employer communicates, on his own initiative, the concrete dismissal reasons in writing to the employee. In that case, the employer is not obliged to still respond to the employee's request. However, it is then required that the employer's earlier communication contains the necessary elements that allow the employee to know the concrete dismissal reasons.

Penalty in case of non-compliance with these rules by the employer

In case the employee has requested the employer to communicate the dismissal grounds in accordance with the above-mentioned rules, and the employer has not responded to this, or not in accordance with these rules, the employer will have to pay the dismissed employee a lump-sum civil fine equal to 2 weeks of remuneration.

This civil fine is not subject to social security contributions.

17.3 Manifestly unreasonable dismissal

CBA no. 109 not only provides for the right for an employee to be informed of the dismissal reasons, but also offers protection against so-called "manifestly unreasonable dismissal".

When is a dismissal considered to be "manifestly unreasonable"?

There is a "manifestly unreasonable dismissal" when the employer terminates an employment contract for an indefinite period of time, whereby this dismissal also meets the following 2 conditions:

- The dismissal is based on reasons that are not related to the employee's aptitude or behaviour or on reasons that are not related to the necessities of the operation of the company, the institution or the service;
- A "normal and reasonable employer" would never have decided to proceed with this dismissal.

The dismissal of both blue- and white-collar employees can be "manifestly unreasonable" if these conditions are met.

The "manifest unreasonableness" of the dismissal does not relate to the circumstances of the dismissal. It is only assessed whether the reasons for the dismissal are related or not to aptitude or behaviour, or to the necessities of the operation of the company.

Moreover, if the employee were to take the case to court, the judge would only be able to conduct a so-called "marginal assessment". This means that to a large extent the employer remains free to decide on what is reasonable and that the employer can choose from various policy alternatives that a "normal and reasonable employer" would consider. The court will thus not decide on the expediency of the employer's policy.

Indemnity in case of "manifestly unreasonable dismissal"

If the court rules that the dismissal is "manifestly unreasonable", the employer will be ordered to pay an indemnity to the employee. This lump-sum indemnity **amounts to a minimum of 3 weeks' remuneration and a maximum of 17 weeks' remuneration**. The amount of the indemnity is determined by the court and depends on the degree of "manifest unreasonableness" of the dismissal. The "manifestly more unreasonable" the dismissal was, the higher the indemnity is.

The employee can also choose to leave this lump-sum indemnity aside and to claim instead an indemnity for the damages actually incurred. In that case, the employee must prove that he has actually incurred damages attributable to the "manifestly unreasonable dismissal" and what the extent is of these damages. This burden of proof is thus much heavier. In that case, the judge is not bound to a minimum or maximum amount.

The National Social Security Office accepts that no social security contributions are due on the indemnity for "manifestly unreasonable dismissal", on condition that this indemnity is laid down in a judicial decision or in a settlement agreement which was sanctioned by a judge.

Who has to prove whether or not the dismissal is "manifestly unreasonable"?

If the employer and the employee dispute before the court whether the dismissal is "manifestly unreasonable", it is of course important to know who has the burden of proof.

A distinction is to be made between 3 possible situations:

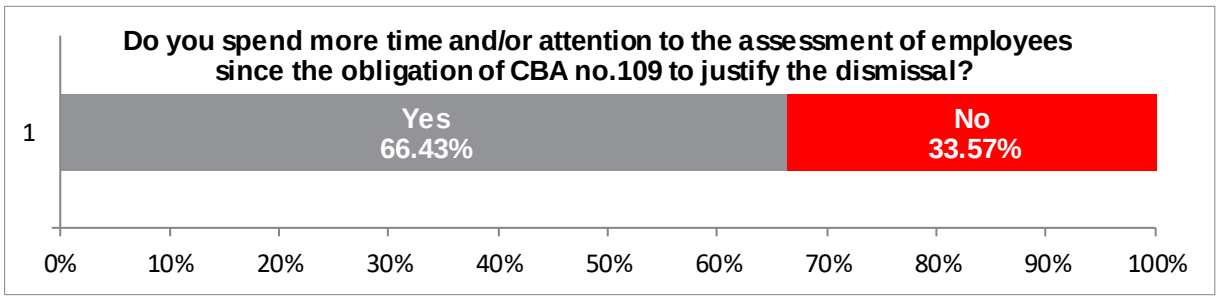
1. **The employer has, voluntarily or at the explicit request of the employee, notified the reasons for the dismissal in accordance with the applicable rules**: any party claiming something will also have to prove this.
2. **The employee has submitted a request; however, the employer has not, or not in accordance with the applicable rules, notified the reasons for the dismissal**: the employer must provide proof of the reasons invoked for the dismissal which show that the dismissal is not "manifestly unreasonable".
3. **The employee has not submitted a request in accordance with the applicable rules to be informed of the reasons for the dismissal**: it is up to the employee to prove that there are elements which indicate the "manifestly unreasonable" nature of the dismissal.

In any case, a prudent employer should already during the employment of the employee collect sufficient evidence of the reasons which could potentially lead to the dismissal of the employee at a later stage. In doing so, the employer will be better prepared to successfully contest a claim for "manifestly unreasonable dismissal" after the dismissal (or, even better, to prevent such a claim). For example, evaluation reports drafted during the employment could certainly be of importance for the employer when the employee is later on dismissed because of his aptitude or behaviour.

Some trends in case law with regard to "manifestly unreasonable dismissal"

Existing case law shows that in approximately 25% of the cases brought before a court in which the employee claimed an indemnity for manifestly unreasonable dismissal, it was indeed decided that the dismissal was manifestly unreasonable. In the first place, this concerned cases in which the employer was not able to prove the reasons for the dismissal. This highlights the importance for the employer to collect sufficient evidence of the potential dismissal reasons during the employment.

Existing case law also shows that only in the most extreme cases was the employer ordered to pay the maximum indemnity of 17 weeks of remuneration. In most cases, a "manifestly unreasonable dismissal" will not result in the payment of the maximum indemnity of 17 weeks of remuneration. On average, the indemnity awarded by the court because of manifestly unreasonable dismissal amounts to approximately 10 or 11 weeks of remuneration.



18 The e-mail account of the former employee

In decisions of September 2020 and 19 November 2021, the Data Protection Authority (DPA) gave the following guidelines for employers to follow in case the employment contract comes to an end:

- the controller should block the e-mail accounts of any former employee at the latest at the time of the employee's actual departure from the company;
- the employee should be informed of this before the e-mail box is blocked, enabling the employee to sort his private e-mails and to forward these private e-mails to his private e-mail account, prior to his departure from the company;
- an automatic message should be set informing the addressee that the person he tried to contact has left the organisation. In this automatic message, you can also include the contact details of the person who can be contacted instead of the former employee (or a general e-mail address of the company);
- after a reasonable period of time (say, one month, possibly to be extended to 3 months maximum if the company can justify this) the e-mail box and the automatic message must be removed and deleted;
- to prevent the company still needing to have access to the e-mail account of the former employee after his departure, the e-mails that are essential to ensure the proper functioning of the company must be recovered before the employee's departure from the company and in the employee's presence.

The DPA emphasises the importance of a properly detailed procedure that is applied when an employment contract comes to an end. This procedure must be included in the company's ICT policy.

In its decision, the DPA clearly assumes that the former employee's e-mail box could also be used for private correspondence. However, it is possible to prohibit the private use of the professional e-mail box, provided that the employee is given the possibility to consult a private e-mail box (e.g., Gmail, Hotmail) online during the working day. We believe that a less strict departure policy can be defended when separate e-mail accounts are used.

19 Checklist for the employer before proceeding with dismissal

As an employer, before you proceed with the termination of an employment contract, you should go through this checklist.

- Is the employment contract governed by Belgian employment law? For the termination of "normal" Belgian employment contracts this is, of course, obvious. In case of international employment relations (expats, secondments, etc) it is advisable to check this.
- Will several employees be dismissed? If so, what about the thresholds for collective dismissal (Renault Act), or other thresholds which may exist at sector level or at company level?
- Is the employee afforded any dismissal protection? If so, it is best to verify if a dismissal procedure must be followed (e.g., members of the works council, etc), or if the dismissal decision must be justified in particular (e.g., protection due to time credit, maternity leave, etc).
- Are there any specific dismissal procedures in your industry sector or company (job security obligations, etc)?

- Is it a dismissal for serious cause? Caution: strict formalities and deadlines apply.

  Due to an amendment of the Civil Code, Saturday will no longer be considered a "working day" as of 1 January 2023, at least as far as the calculation of a term defined in working days is concerned. As of 1 January 2023, this may have an impact on the calculation of the (double) term of three working days that applies in the event of dismissal for serious cause.

- Does the employee request to be informed of the reasons for the dismissal in writing? If so, you will have to inform the employee of the reasons for the dismissal in writing (see chapter 17.2).

- Did the employment contract you intend to terminate start before 1 January 2014? If so, you should apply the "double picture rule" (see chapter 2).

- Is the employee full-time or part-time? This could have an impact on the calculation of the indemnity in lieu of notice.

- Has the employee worked for your company as a temporary agency worker before his actual entry into service (see chapter 1.2)?

- Is it a fixed-term employment contract? If so, different rules apply depending on whether you terminate the contract during the first half of the contract (but limited to the first 6 months) or afterwards (see chapter 6).

- Does the employment contract contain a non-compete clause? If so, you should decide in time whether you wish to pay the compensation or waive the application of the clause.

- Check who is authorised to sign the dismissal documents on behalf of the company (see chapter 1.9).

- Be sure to conform with the applicable language rules.

- If you want to release the employee from his obligation to work, you need his consent and an activation contribution might be due, unless in case of release during the statutory notice period. In addition to this, you will have to inform the employee in writing of the fact that he should register with the regional employment service of his place of residence within one month following the award of the release.

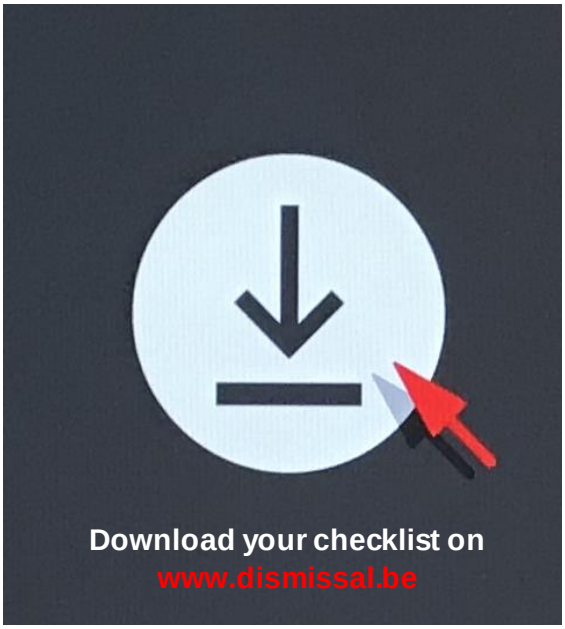
- Block the employee's e-mail account(s) and set an automatic message. After a reasonable period of time, the e-mail box and the automatic message must be deleted and removed (see chapter 18).

- Do not forget the employee's additional rights in case of dismissal:

  - Entitlement to outplacement assistance (obligation for the employer to make an offer in time, etc) (see chapter 9)
  - Obligation to inform in the framework of the end of the occupational sickness insurance and possibility for individual continuation
  - Exit from occupational pension plan / group insurance, implying the right to decide with regard to the acquired reserves (see chapter 16.2)
  - Entitlement to "UCA" ("bridging pension") and potential replacement requirement
  - Is the employee an actual sales representative? Then he can be entitled to a special "clientele indemnity" for the clients he brought to the company
  - Entitlement to vacation pay upon departure for white-collar employees
  - Entitlement to remuneration for public holidays after the end of employment
  - Drafting of social documents upon termination

- Can the employee continue to use the company car, smartphone, etc after the end of employment?

- ...



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