

NEWSLETTER

HR: 2019 NEWS

As usual, the new year is a time for legal changes related to tax and social rules. Here is an overview of the main changes concerning employers and their employees.

Continuation of the salary by the employer during the incapacity to work: increase of the reference period from 12 months to 18 months

The employee unable to work is entitled to receive his entire remuneration from his employer until the end of the month during which the 77th day of incapacity to work occurs. The month after, the National Health Office (CNS) takes over by paying sickness benefits to the employee.

Until 2018, the 77 days during which the employer must continue paying the employee on sick leave was calculated over a 12-months reference period. As from 1st January 2019, the reference period is extended to 18 months.

Right to sickness benefits: the limit of 52 weeks extended to 78 weeks

Until 2018, the right to sickness benefits was limited to 52 weeks of work incapacity (due to illness, occupational disease or industrial accident) calculated over a reference period of 104 weeks. When the limit of 52 weeks was reached, the CNS stopped to pay the sickness benefits and the employment contract was automatically terminated.

As from 1st January 2019, the right to sickness benefits is extended to 78 weeks over the same reference period of 104 weeks in order to better take care of long-term pathologies. When the limit of 78 weeks will be reached, the CNS will stop to pay the sickness benefits and the employment contract will also be automatically terminated.

New rules regarding gradual return to work for therapeutic reasons

As from 1st January 2019, new rules took effect aiming to regulate the gradual return at work for therapeutic reasons for employees on long term sickness. It replaces the former regime of therapeutic half-time work.

The purpose of the new regime is to enable employees still on sickness to return at work with adapted tasks and/or working time given their state of health.

In agreement with the employer and based on a medical certificate issued by the referring physician, the employee can submit a request to the CNS for a gradual return at work for therapeutic reasons. To be eligible, the request must be submitted by an employee who has been on sick leave for at least one month during the three months preceding the request.

The gradual return at work is granted by decision of the CNS, upon the motivated advice of the “Contrôle Médical de la Sécurité Sociale” if it will speed up the healing process.

In the former regime of therapeutic half-time work, the half-time work was paid by the employer and the half-time sickness was paid by the CNS.

In the new regime of gradual return at work for therapeutic reasons, the employee is now fully covered by the CNS since it is assimilated to work incapacity period. The employer will not pay any salary to the employee anymore during the period of partial or adapted return at work.

Occupational pension schemes

As from 1st January 2019, the main changes related to the occupational pension schemes are the following ones:

Repurchase of vested rights: the repurchase of vested rights by the leaving employee is now limited to the following cases:

- The employee undertakes a new activity and is no more subject to the Luxembourg social security;
- The vested rights at time of departure do not exceed three times the social minimum wage, i.e. €6,213.30 on 1st January 2019.

Reduction of the vesting period: for employees hired after 20 May 2018, the cumulative vesting period and possible waiting period, cannot exceed three years (compared to ten years before). Transitional provisions are foreseen for the employees hired before 21 May 2018 (the total period cannot exceed 10 years nor be over 21 May 2018).

Self-employed workers: self-employed workers and liberal professions can now set up an occupational pension scheme.

Social elections

The next social elections, organized every five years, will take place on **12 March 2019**.

Any undertaking which occupies **at least 15 employees** between 1st February 2018 and 31st January 2019 (reference period of 12 months preceding the first day of the month of the announcement of the elections) must organize social elections in order to set up or renew its staff delegation. The threshold of 15 employees must be reached continuously during the whole 12-months reference period.

Any undertaking, whatever the nature of its activities, its legal form (business or financial company, liberal professions, non-profit association, foundation...) or its sector of activity, is concerned.

The employer must complete the administrative process with the Labour and Mines Inspectorate (ITM).

The novelty of the upcoming social elections is the digitalization of the process. Indeed, undertakings will have to carry out the following administrative actions online via the secured electronic platform **www.MyGuichet.lu** :

- Communicate the notice of elections within the enterprise;
- Communicate the notice related to the claim deadline against electoral lists;
- Communicate the list of candidates;
- Declare the results of the elections;
- Declare the function of the staff delegates.

In this respect, the ITM will provide undertakings with two access codes in the course of January 2019. The first one is for the undertaking concerned and the second one is for the provider, if they request the assistance of an external provider for the organization and the follow up of the electoral process.

Information concerning the various steps to be carried out are available on **www.guichet.lu/elections_sociales**.

Married frontier workers: 2019 tax card

Married frontier workers who got a tax card in 2018 will automatically receive their 2019 tax card at home at the beginning of the year.

If they opted in 2018 for joint taxation with tax assimilation to resident taxpayers, they should receive a 2019 tax card mentioning the same tax rate as the one mentioned on their 2018 tax card.

Should the income of the household have changed compared to 2018 (e.g. increase or decrease of the professional income of the spouses in 2019), it is recommended that they request a new withholding tax rate based on the estimated income for 2019 on the online platform **www.MyGuichet.lu**. The withholding tax office will then issue a tax card based on this new estimation. They will be able to introduce such a request anytime during the year.

As a reminder, the married frontier workers must submit an income tax return in 2019 in order to declare the income received in 2018. Depending on the actual tax rate calculated by their tax office, it may well be that they receive a new tax card if there is a significant discrepancy between the tax rate calculated on the income declared in their tax return and the withholding tax rate calculated on the estimated income for the year 2018.

Interest saving related to a loan granted by the employer

For the tax year 2019, the reference rate for the calculation of the benefit in kind remains 1,5 % per year.

Belgian frontier workers: tolerance threshold increased to 48 days?

Belgian frontier workers can currently work up to a maximum of 24 days in Belgium or in third countries while remaining fully taxable in Luxembourg.

The Belgian and Luxembourg governments are negotiating an agreement in order to rise the tolerance threshold from 24 to 48 days.

This agreement aims at facilitating the homeworking of Belgian frontier workers. Indeed, the threshold of 48 days will enable them to work one day per week from home (if holidays are discounted) while remaining taxable in Luxembourg and registered with the Luxembourg social security.

New Double Tax Treaty between Luxembourg and France soon ratified

The new double tax treaty between Luxembourg and France signed on 20 March 2018 is currently on ratification process by the Parliaments of both countries.

The French government has introduced a bill in this respect on 24 October 2018, which is currently under discussion at the French Parliament. A bill was also introduced in Luxembourg on 4th December 2018.

The double tax treaty should be ratified by both country in 2019. In this case, the provisions of the treaty will apply for incomes received as from 1st January 2020.

¹ The threshold for German cross borders is 19 days. For French cross borders, it will be 29 days (see below).

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