

## TETRALERT – LABOUR LAW

### FRAMEWORK LEGISLATION OF 25 DECEMBER 2017 – OVERVIEW OF THE CHANGES IN EMPLOYMENT LAW

On 25 December 2017, [Framework Legislation](#) (hereinafter “the Law”) was passed by the Chamber and published in the Belgian Official Gazette on 29 December. Apart from changes in taxation, this Law also contains various measures relating to employment law and to social security law.

Among other things, the five most significant changes are as follows:

- an increase in the special social security contribution for supplementary pensions;
- the extension of flexi-jobs to the sectors of trade and to pensioners;
- the introduction of a new profit bonus for employees receiving distributed profits;
- the introduction of an activation contribution in case workers are relieved of services while remuneration is maintained;
- the introduction of an empowerment contribution as regards part-time employment of workers.

#### I. THE INCREASE IN SPECIAL SOCIAL SECURITY CONTRIBUTIONS FOR SUPPLEMENTAL PENSIONS

At the start of 2012, a special social security contribution called “Wijninckx” was introduced, amounting to 1.5% of payments made by the employer in the context of a worker’s supplemental pension plan. It was introduced to fight against “high supplemental pensions” which could sometimes conceal hidden remuneration. The so-called Wijninckx contribution, coming on top of the ordinary employer’s contribution of 8.85%, is applied when, for a salaried worker, the sum of contributions and/or employer’s premiums to set up a supplementary pension exceed the ceiling of 30,000 euros per year (indexed amount for 2017: 31,836.00 EUR). The employer must verify for each year of contribution whether the threshold has been exceeded for a given worker and, if this is the case, pay this special contribution on the part which exceeds this amount. Both the amounts paid by the employer and those paid by the worker are taken into account to determine whether the threshold of 30,000 euros has been exceeded, but the special contribution is calculated only on the part of these contributions which exceed the threshold and which is paid by the employer. A similar scheme is applied to the self-employed.

In the Law, the percentage of the special contribution is doubled: it increased from 1.5% to 3% on 1 January 2018.

In addition, by virtue of the [law of 30 September 2017 dealing with various provisions of social policy](#), the set amount of 30,000 euros will be replaced beginning on 1 January 2019 by a “pension objective” per worker. Thus, the contribution will be payable if, at 1 January of the year which precedes the contribution year the sum of the legally mandated pension and the supplemental pension of a worker exceeds the maximum amount of “the pension objective”. This pension objective equals the maximum amount of the pensions in the public sector multiplied by the career fraction. Starting on this date, the special contribution will be payable on the total amount of the employers’ contributions – and more solely on the part of the contributions which exceed 30,000 euros – if the sum of the supplemental pension and of the legally mandated pension exceed the pension objective.

## **II. THE EXTENSION OF FLEXI-JOBS TO THE SECTOR OF TRADE AND TO PENSIONED WORKERS**

At the end of November 2015, the lawmaker introduced the concept of “flexi-jobs”, which was limited initially to the sector of Horeca. This system enables those who already have a principal activity (corresponding to a minimum of 4/5 time) to work in an Horeca establishment while enjoying a non-scale net salary agreed between the parties, but subject to the legal minimum stipulated for flexi-salaries (minimum

of 9.18 euros/hour) plus a flexi-nest egg for vacations (7.67% of the flexi-salary).

The net remuneration is exonerated from tax and a special employer’s social contribution of 25% is payable. The worker gains a net income from the flex-job which is higher than what would result from a normal occupation and the employer enjoys a lower total cost.

The Government decided to extend the possibility of flexi-jobs beginning on 1 January 2018 to the sectors of trade, both for small and middle-sized companies and for major distributors, whether in the food sector, retail trade or hairdressers and beauty care (the Law sets out a detailed list of the sectors concerned).

In addition, it also decided to extend this advantageous possibility to pensioned workers (excluding those enjoying a transition allocation), since they had already greatly contributed in the past to financing the social security system.

## **III. THE INTRODUCTION OF A NEW PROFIT BONUS ON PROFITS THAT ARE DISTRIBUTED**

The Government wishes to improve purchasing power and to encourage the development of companies. In this spirit, it proposed a measure allowing employers to grant to their salaried workers a bonus on profits to be distributed coming from the accounting year, a so-called “profit bonus”, with interesting tax and social treatment: the worker pays a solidarity contribution equal to 13.07% of the amount of the bonus and a tax of 7% (tax assimilated to income taxes), while for the employer the bonus

is treated as a non-admissible expense and is therefore subject to corporate tax (29% for 2018).

Via this bonus, representing either a lump sum or a percentage of remuneration or a profit distribution, the employers can remunerate their salaried employees in a simple and flexible manner. The profit bonus can be identical for all the employees or categorised, without its being given as replacement for remuneration.

The given bonus can be granted beginning on 1 January 2018 (accounting year 2017). The total amount granted cannot exceed 30% of total gross wages paid by the employer.

#### **IV. THE INTRODUCTION OF AN ACTIVATION CONTRIBUTION IN CASE WORKERS ARE RELIEVED OF SERVICES WHILE RETAINING REMUNERATION**

The practice of companies not requiring services from older workers while maintaining all or part of their remuneration outside the unemployment mechanism has kept on growing. To fight against this tendency which entails letting these persons stay at home while continuing to pay them rather than encouraging them to find a new orientation, the Law introduces a contribution of activation payable by employers starting on 1 January 2018 for workers whose services were dispensed with after 28 September 2017.

This special activation contribution is due (i) when an employee does not provide any services to the same employer during a full quarter year,

except for legal suspensions (incapacitated, annual vacations, etc.), and (ii) in case the services are dispensed with during the notice period.

The rates of the activation contribution will be determined depending on the age of the worker at the moment when his or her services were dispensed with and will remain unchanged up to the legal pension age (according to a scale going from 20% of gross quarterly salary of a worker less than 55 years old, with a minimum of 300 euros, to 10% for those who are over 62 years old when they are relieved of serving, with a minimum of 225.60 euros).

The Law stipulates reductions and exonerations from this contribution in certain cases, for example if a training programme organised by the employer was imposed and is being followed by the worker.

#### **V. INTRODUCTION OF A NEW EMPOWERMENT CONTRIBUTION FOR EMPLOYING WORKERS PART-TIME**

The Framework Legislation of 22 December 1989 establishes a legal obligation according to which the part-time worker must get priority consideration for a full-time job or part-time job declared vacant in the company when he or she applies for it.

To reinforce compliance with this obligation, when the request to be appointed to a vacancy is introduced by the part-time employee who has the status of part time worker with maintenance of rights and who benefits from a guaranty of

income, an empowerment contribution is introduced and payable by the employer if he or she fails to honour the principle of priority. This contribution amounts to 25 euros per worker and remains payable so long as the legal obligation is not complied with.

The empowerment contribution shall be applied to contracts concluded as from 1 January 2018 and goes to the ONSS-Overall Management of Salaried Workers Establishing whether or not there are available supplemental hours will be verified on the basis of the ONSS declarations.

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