TETRALERT - LABOUR LAW

LAW ON FEASIBLE AND MANAGEABLE WORK (PART II)

In our Tetralert of April 2017, we presented the measures that make up the “Base" of the Law of 5 March 2017 on Feasible and Manageable Work, which entered into force on 1 February 2017 and applies to all enterprises and workers. The measures comprising the "Menu", which are the subject of this Tetralert, offer the sector the possibility of developing tailor-made rules. Each sector can enter into negotiations to activate these opportunities at the sectoral or company level.

The menu consists of a first section on “manageable work” and a second section on “feasible work”.

I. MANAGEABLE WORK

Measures to make work more manageable include:

1. Expansion of *Plus minus conto*

The *Plus minus conto* system, initially limited to the automotive sector, is made available to all private sector companies. This system allows companies to employ workers for up to ten hours a day and forty-eight hours a week without any extra pay, provided that the average weekly working hours are met over a maximum reference period of six years. However, in order to implement it, companies must meet relatively strict cumulative conditions (namely, they must belong to a sector characterised by strong international competition, be subject to production or development cycles spanning several years, etc.), so that only a limited number of companies, in the end, will be able to implement it.

2. Temporary employment contract for an indefinite period

A temporary employment agency can now conclude an employment contract with a temporary worker for an indefinite period, setting the general conditions for successive interim assignments for which the temporary worker will be responsible (e.g., geographical territory in which the missions will be performed, setting the periods of work and rest, etc.). This contract must also describe the jobs for which the temporary worker can be sent to a service user. Prior to each assignment, a letter of assignment indicating, in particular, the duration of the contract, the work schedule and the agreed remuneration must be provided to the worker. On the one hand, the contract for an indeterminate period makes it possible for temporary employment agencies to establish a "pool" of workers whose profile is highly sought after and, on the other hand, to guarantee

temporary workers the right to a severance payment in the event of the termination of their contract by the temporary agency. Temporary workers are also entitled to a guaranteed minimum wage during the periods of intermission. In order for this system to be fully implemented, a collective labour agreement (CLA) has yet to be adopted by the Joint Committee on Temporary Work, which determines, in particular, the model of the interim contract for an indefinite period and the methods for calculating the guaranteed wage.

3. Reform of the employers' group

Several companies may constitute a group of employers (EG) which hires workers to be made available to them. This system allows the shared employment of workers between companies that either do not need or cannot afford to employ them full-time. On the one hand, the Peeters Act simplifies the ministerial authorisation procedure to operate as an EG, which can now be issued for an indefinite period and, on the other hand, sets the maximum number of workers that can be employed by the EG at fifty. This threshold may be increased by royal decree. Finally, the members of the EG will be jointly and severally liable for the EG's tax and corporate debts, so that each member may be obliged to clear all the debts of the group.

4. The simplification of part-time work

Today, the law obliges the employer to include all of the part-time schemes and part-time working hours in the company within the work regulations. This obligation will be abolished as of 1 October 2017, both for fixed and variable part-time working hours.

In the case of variable working hours (which do not specify in advance the working days and hours), the work regulations must set a general framework, including the daily range and the days of the week during which the employment services can be provided, the minimum and maximum daily times, the means and the time period to communicate the schedules to the workers concerned (at least five working days in advance, unless otherwise agreed). If, in addition to the working hours, the working conditions are also variable, the working regulations must mention the minimum and maximum weekly working hours. The employment contract may, for its part, appropriately reference the general framework and should mention only the duration of work per week. The companies have until 31 March 2018 to modify their working regulations.

In the event of a fixed schedule, the employment contract is self-sufficient, since the contract expressly mentions the agreed upon working scheme and hours. If the schedule is organised by cycle, namely, a succession of daily schedules that spans more than one week, the employment contract must detail this cycle and indicate the order in which the schedules are performed.

Finally, the obligations relating to the advertising of part-time working hours and the monitoring of

derogations from the normal working hours are simplified and adapted to current technologies.

These measures take effect on 1 October 2017.

5. E-commerce

A new express derogation from the prohibition of night work (namely, work between 8 p.m. and 6 a.m.) is foreseen for the performance of all activities related to electronic commerce in companies within the distribution sector.

II. FEASIBLE HOURS

The measures to make work more feasible include:

1. Floating hours

While until now floating hours were only tolerated by the Social Inspectorate, floating hours have now been legalised. The floating timetable system allows the workers to set the beginning and the end of their working day, as well as their breaks, in compliance with the "mobile ranges" and hours of obligatory presence, called "fixed ranges", set by the employer. It is therefore the workers who determine, to some extent, their own work schedule. The worker shall each month receive the normal remuneration for the average working week at the company. No extra pay is due, provided that the worker does not work more than nine hours a day and forty-five hours a week.

At the end of the reference period, which is normally three months, a positive or negative balance of up to maximum 12 hours may be carried over to the next reference period. If the worker is deficient by more than twelve hours, the employer may recover the undue salary beyond twelve hours on the remuneration of the following months. By contrast, if the worker has a positive balance of more than twelve hours, then such a worker shall only be entitled to the normal remuneration for these overtime hours provided that they have been worked at the request of the employer.

The company can introduce the system of floating hours, either by the conclusion of a CLA, or by the modification of the working regulations. The company must be provided with a work time measurement system, enabling the worker to consult, at any time, the positive or negative balance with respect to the duration of work at the company.

2. Leave for Palliative Care and Time Credit

The total duration of the complete interruption of a career for palliative care is increased from two to three months. In concrete terms, the worker will now be able to twice extend by a month the leave taken for palliative care, each time for a period of one month.

The social partners, at the inter-professional level, have extended the right to time credit for reasons of care or assistance from thirty-six to fifty-one months.

It should be noted that access to the credit time system is restricted to private sector workers, while the system of career breaks is available to both public and private sector workers.

3. Career savings

The law offers the worker the opportunity to save time, such as unfulfilled extra-legal leave, voluntary overtime hours or the overtime worked in the floating timetable system, which may be carried over. On the other hand, the worker will not be able to save legal holidays, the replacement days for statutory holidays or the days for the reduction of working time (RTT). The worker can then exhaust the "time saved" by taking leave later in the course of the employment period. At the end of such contract, the worker shall be entitled to the full payment of the savings.

The effective implementation of this system in the company involves the conclusion of a sectoral CLA within six months, after referral to the Chairman of the Joint Commission. In the absence of a sector-wide CLA concluded within this period, the companies may, by means of a CLA concluded at the company level, particularly determine the periods of time that can be saved and the manner in which this time can be used.

The law nevertheless allows the corporate partners to harmonise the system by concluding an inter-sectoral CLA until 1 August 2017. If this CLA is created, the sectoral CLA that may have been concluded in the interim will no longer have any relevance.

4. Gift of leave

The law allows workers to donate their days off to colleagues who have a seriously ill child under the age of twenty-one. Only leave that the worker freely disposes of may be assigned. There is no question, therefore, of giving up the four weeks of legal holidays, but only extra-legal holidays, granted by the employment contract or by a CLA concluded at the company level (e.g.: seniority leave) or RTT days. The gift of leave, which must be accepted by the employer, is anonymous and without any compensation to the donor. On the other hand, the sick child's parent must have exhausted all of their days of vacation and rest to benefit from the gift. The application may not be for more than two weeks, but is renewable.

The introduction of the gift of leave in the company involves the conclusion of a sector-wide CLA. A gift of leave may be introduced by a company's collective labour agreement only if no sector-wide CLA is adopted within six months of the referral to the Chairman of the Joint Committee, or, if there is no trade union delegation, by a work regulation.

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