

Luxembourg: major modifications in labour law

On 1 January 2017, three significant changes in the Grand Duchy's labour law came into effect: (i) an increase of the wage index, (ii) a rise in the minimum social wage, and (iii) a reform of the organisation of working hours. The new rules have a considerable impact on both employers and employees.

Compulsory increase of the wage index The wage index having risen from 775.17 to 794.54, employees with employment contracts subject to Luxembourg law benefited from a 2.5% increase in gross salaries at the beginning of this year. Wage indexation allows for the adjustment of salaries in line with evolving living costs as specified by STATEC, the Grand Duchy's national statistics office. The last adjustment of the wage index had occurred in October 2013.

Rise in the minimum social wage The Luxembourg legislator also raised the minimum social wage by 1.4%. In addition, employees on minimum social wage benefited from the aforementioned rise in salary of 2.5% due to the wage index increase. As a result, the gross minimum wage of non-qualified employees rose by EUR 75.66 EUR to EUR 1,998.62, while that of qualified employees increased by EUR 90.80 to EUR 2,398.36.

Reform of the organisation of working hours Consistent with the general trend of enhancing working time flexibility that prevails in many European jurisdictions, the Law of 23 December 2016 on the organisation of working hours modifying the Labour Code ('Law of 2016') has introduced new rules concerning (a) the reference period, (b) the labour organisation plan (*plan d'organisation du travail*, 'POT'), and (c) the average weekly working hours.

Changes to the reference period Article L. 211-5 of the Labour Code provides for a maximum working time of 40 hours per week and eight hours per day, or less, if an applicable collective bargaining agreement so stipulates. Pursuant to article L. 211-12 of the same law, working time may not ordinarily exceed 10 hours per day or 48 hours per week. As a principle, the hours worked in excess of these limits constitute overtime and hence give rise to special compensation (i.e. extra leave or increased pay) unless they are offset under certain flexibility mechanisms, such as a so-called reference period. During a reference period, employees may be required to work beyond the limits indicated in aforementioned article L. 211-5 without benefiting from additional compensation, provided that the average weekly working time does not exceed 40 hours or the maximum normal weekly working hours established by contract. Under the previous regime, there were three types of reference periods: the legal reference period, the contractual reference period and the ministerial reference period. The Law of 2016 has abolished the ministerial reference period, while leaving the stipulations with regard to the contractual reference period unchanged. As before, in the absence of a provision on a reference period in an applicable collective bargaining agreement, the employer may opt for a legal reference period. However, as of January 2017, she or he may do so for a maximum duration of 4 months (as opposed to only 1 month or four weeks under the previous rules). A company already applying a legal reference period may extend it to up to four months. In this case, it must observe the preliminary information and consultation procedure with the staff representatives under article L. 414-3 of the Labour Code. If there is no staff representative body, the company must inform, and consult with, all employees concerned. What is more, within one month from its effective date, it must notify the Labour Inspectorate (*Inspection du Travail et des Mines*) of its decision to use a particular reference period or to modify an existing one. In compensation for an extension of the reference period, the employees concerned are entitled to extra days of leave as follows: one day and a half for any reference period of more than one month to two months, three days for any reference period of more than two months to three months, and three and a half days for any reference period of more than three months to four months. This compensation scheme only applies i) in companies that introduce a reference period of more than one month, ii) for employees actually working under this new regime, and iii) for reference periods accompanied by a POT. The companies having established a POT with the obligation of granting extra days of leave are subject to new maximum monthly working hours beyond which the extra hours are considered – and paid – as overtime: 112.5% of the normal monthly working hours (i.e. 45 hours for a weekly average of 40 hours) in case of a reference period of more than one month to three months, and 110% (i.e. 44 hours for a weekly average of 40 hours) if the reference period lasts for more than three months to four months.

Modifications with respect to the POT Under the Law of 2016, the legal duration of a POT continues to be one month (unless the reference period is less than one month), while the rules regarding its content and establishment remain also largely unchanged. However, it has brought about a few noteworthy changes. First, the law abolishes the prior criterion of unpredictability that had allowed derogating from the POT in the case of an unpredicted event.

Determination of such an event was crucial for deciding whether the work done beyond the limits set in the POT should be considered – and paid – as overtime. The new law establishes an objective criterion, namely, a prior notice period of three days. Second, the Law of 2016 foresees a new method of compensating hours subject to a change of timetable, without giving rise to an increase in the total number of working hours. Finally, the legislator has eliminated the obligation to send a copy of the POT to the director of the Labour Inspectorate.

Maintaining of collective bargaining agreements currently in force The collective bargaining agreements that are currently in force remain valid until their expiry. According to Article L. 211-9 of the Labour Code, the rules on extra leave to compensate for an extension of the reference period and the limits to the average monthly working hours do not apply in the case of a reference period negotiated by the social partners. It was the intention of the legislator that the social partners are free to negotiate any compensation that is viewed to be in the best interests of the relevant companies or sectors and their employees. As noted above, the contractual reference period remains available to the social partners, allowing them to negotiate a reference period of twelve months as part of the collective bargaining agreement (provided certain conditions are met). Within this framework, they are free to negotiate the terms of the POT and to fix a duration different from that normally applicable. The new law allows for minor changes to flexible hours in case of litigation on the conformity of the POT or on the functioning of the flexible timetable. Finally, it imposes an interim review of the new legal provisions to be made five years after their entry into force.