

Client Alert

COVID-19: The Latest HR Developments in Belgium

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COVID-19 continues to dominate the HR news. Recently, the Belgian government introduced some legislative changes, both to address an existing discrepancy and to respond to some developing needs of employers and employees. In particular, there are three new rules which may be of interest to companies with employees in Belgium:

1. The cost of terminating an employment contract during temporary unemployment for COVID-19 reasons can no longer be passed on to the Belgian State.
2. As employees gradually go back to work, special parental leave is foreseen to ease temporary childcare problems.
3. For companies of 50 employees or more there is some news concerning the social elections.

1. No longer possible to pass on to the Belgian State the cost of terminating an employment contract during unemployment for COVID-19

At the start of the COVID-19 pandemic, the Belgian Unemployment Office created a simplified procedure to allow employers to invoke temporary unemployment for force majeure. This specific COVID-19 temporary unemployment regime, which will remain in force until **June 30, 2020**, allows employers to suspend (or partially suspend) employment contracts in case of reduced/no work due to the virus outbreak or the measures taken by the government (such as mandatory temporary closure of the company). The employees concerned receive unemployment benefits from the Belgian State (there is no cost for the employer).

During such a period of temporary unemployment, it remains possible to terminate an employment contract. This can be done either by serving notice (legal notice period to perform), or by terminating the contract with immediate effect and paying an indemnity in lieu of notice.

According to Belgian law, the notice period is **not** itself suspended, if an employment contract is suspended on account of *force majeure* (including, up till now, the specific COVID-19 temporary unemployment regime). This rule applies whether it is the employer or the employee who terminates the contract. However, if the contract is suspended for *economic reasons*, the contrary applies: the notice period **is** suspended during the period of temporary unemployment if the contract is suspended by the employer.

In the case of temporary unemployment for *force majeure* (including COVID-19), these rules have led to a discrepancy in terms of employers' costs as is demonstrated by the following two scenarios:

1. If the termination is with immediate effect and there is payment of a legal indemnity in lieu of notice, the employer pays a one-time indemnity on termination.

2. If the termination is affected by serving legal notice (even though the notice period cannot be observed because the employment contract is suspended) the employee receives unemployment benefit during the notice period and there is **no** termination cost for the employer. (If the temporary unemployment is partial, for instance, three days per week, the employer pays the employee's salary only for the working days).

The Belgian government has decided to remove this discrepancy by passing a law (with retroactive effect back to March 1, 2020) to suspend the notice period in case of temporary unemployment because of COVID-19 where the contract is terminated by the employer (thus bringing it into line with the temporary unemployment regime for economic reasons). Therefore, it will be the employer, and not the Belgian State, that now bears the cost of the termination.

2. COVID-19 parental leave to ease childcare problems

In Belgium, businesses are gradually reopening and employees are returning to the workplace. The schools have, however, only reopened for some students and not full-time. This leaves many employees having to combine going to work (or telework) with childcare (and even home-schooling). The Belgian government has introduced a specific COVID-19 parental leave regime to tackle this problem.

Here are the main points of the new regime:

- *Who can take parental leave?*

Anyone employed for at least one month who has a child younger than 12 (or 21, in case of disability).

- *How should the leave be taken?*

Full-time employees may take 1/5th or a half of their working time as parental leave, while part-time employees (as of a 75% working time) may take 1/5th of their working time as parental leave.

- *Is the COVID-19 parental leave an employee's absolute right?*

No, the employer must agree.

- *When can employees take COVID-19 parental leave?*

From May 1 to June 30, 2020. It may be taken for the entire period, or for part of it (for instance, during one month, or for only a few weeks).

- *What is the financial impact for the employer?*

There is no direct financial impact on the employer, as the employer is not required to pay the employee's salary during the days of parental leave. The employee will receive an allowance from the Belgian State.

3. COVID-19 and the impact on the social elections 2020

The Belgian social partners have agreed to suspend the 2020 social elections, which were supposed to take place between May 11 and 24, 2020. The National Labor Council (NLC) reflected this agreement in its Advice No. 2160, in which it proposed rescheduling the social elections to between November 16 and 29, 2020. The NLC also provided an overview of the key legal consequences resulting from the suspension and recommended that these be rapidly addressed by the Belgian State.

On May 4, 2020, the suspension of the social elections 2020 was confirmed by law (published in the Belgian Official Journal of May 13, 2020, and with retroactive effect from March 17, 2020). However, the new dates on which the social elections will effectively take place still need to be confirmed by Royal Decree.

The new law enshrines the principle according to which, as a result of the COVID-19 crisis, all ongoing electoral steps within the framework of the social elections 2020 are temporarily suspended as from day X+36. In practical terms, this means that the last step prior to the suspension was step X+35 (*i.e.*, the submission to the employer of the list of candidates) and that no further steps can be taken. The electoral procedure will be resumed on a new day X+36, to be determined according to the new day Y (*i.e.*, the new day of the social elections).

The new law also confirms the following:

- The eligibility conditions for the candidates (including the replacement candidates) must be assessed and complied with on the initial day Y (*i.e.*, by May 11 – 24, 2020).
- The current Works Council and Committee for the Prevention and Protection at Work continue to function until replaced by a newly elected works council and committee, and the employees' representatives similarly continue to benefit from their dismissal protection until the re-elections.
- The new candidates (in addition to the candidates on the list submitted to the employer on day X+35) are also protected from dismissal.
- For the replacement candidates, a new "hidden protection period" applies as of a new fictitious day X (*i.e.*, 36 days prior to the new Day X+36) until a new day X+76.

Our Brussels Labor & Employment team will closely monitor any COVID-19 developments and keep you posted. Our team is available to help companies through this crisis in the best possible way.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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