

CLIENT ALERT

EU Adopts Directive Setting New Rights for Workers Towards More Transparent and Predictable Working Conditions

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Directive 2019/1152 of June 20, 2019 on transparent and predictable working conditions in the EU (which enters into force on **July 31, 2019**) aims at setting new rights for all workers in the EU, particularly those in more precarious jobs, such as casual or short-term employment, on-demand workers, intermittent workers, voucher-based workers, and platform workers. The transposition period expires on **August 1, 2022** and even if Belgium is already up to speed with several of the set obligations, some great novelties will need implementation.

Workers' new set of rights entail:

1. **Right to information on the essential elements of the work:** the worker must receive in writing, including in an electronic form (provided the employer retains proof of transmission or receipt, it is accessible to the worker, and can be stored and printed) at an early stage of his/her employment, the following information:
 - a. the identities of the parties to the employment relationship,
 - b. his/her place of work,
 - c. his/her title, grade, nature, or category of work (or a brief specification or description of the work),
 - d. the date of commencement (end date, or expected duration, if applicable) of the employment relationship,
 - e. (for temporary agency workers: the identity of the user undertakings),
 - f. the duration and conditions of the probationary period, if any,
 - g. his/her training entitlement provided by the employer, if any,
 - h. the amount of paid leave (or procedures for allocating and determining such leave),
 - i. the termination procedures, including formal requirements and notice periods or method for determining such notice periods,
 - j. his/her remuneration (including all components) and the frequency and method of payment,
 - k. if the work pattern is entirely or mostly predictable:
 - his/her standard working day or week,
 - any arrangements for overtime and its remuneration and,
 - where applicable, any arrangements for shift changes,
 - l. if the work pattern is entirely or mostly unpredictable:
 - the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours,
 - the reference hours and days within which the worker may be required to work,
 - the minimum notice period to which the worker is entitled before a work assignment and, where applicable, the deadline for cancellation,

- m. any collective agreements governing his/her conditions of work or the name of the bodies or institutions concluding such agreements,
 - n. the identity of the social security institutions receiving social contributions,
 - o. any protection relating to social security provided by the employer.
2. **Right to a limit on probationary periods:** they cannot be longer than six months or, in case of fixed-term employment, they must be proportionate to the expected duration of the contract and nature of employment. A renewed contract for the same function and tasks cannot include a new probationary period. On an exceptional basis, where justified by the nature of employment or in the interest of the worker, the probationary periods can be longer.
 3. **Right to cumulate multiple employments:** workers can take employment with other companies as long as they respect the work schedule established with the initial employer. The employer cannot penalize the worker for taking up parallel employment. Incompatibility clauses in the employment contract will only be allowed on the basis of objective grounds such as: health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.
 4. **Right to know a reasonable period in advance when work will take place:** for workers with entirely or mostly unpredictable work patterns (as is the case of on-demand/zero-hours contracts or similar contracts, see point 5. below), the worker shall only be required to work if the following conditions are fulfilled:
 - the work takes place within predetermined reference hours and days, and,
 - the worker is informed by his/her employer of a work assignment within a reasonable notice period.

If one or both conditions are not fulfilled, the worker shall have the right to refuse the work assignment without adverse consequences. If the employer cancels, after a specified reasonable deadline, the work assignment previously agreed with the worker, he/she shall be entitled to compensation.

5. **Anti-abuse legislation for on-demand contracts** (including zero-hour contracts, *i.e.*: without predefined work regime/schedule, and/or without guaranteed working hours): if national law allows for the use of such employment contracts, the Member State must adopt one or more of the following measures:
 - limitations to the use and duration of on-demand or similar employment contracts,
 - a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours (based on the average hours worked during a given period),
 - other equivalent measures.
6. **Right to request transition to a more secure form of employment and receive a written reply to that request:** after at least six months service with the same employer, the worker has the right to request an employment contract with more predictable and secure working conditions and receive a reasoned written reply.
7. **Right to free mandatory training:** training that the employer has a duty to provide according to EU or national law, should be provided free of charge, counted as working time, and, when possible, completed within working hours.

Impact on Belgian Law and Belgian Employers

Whereas this new directive will affect significant changes for employment conditions in several EU countries, its impact on Belgian employers remains relative with regard to the rights under points **2.**, **3.**, and **7.**:

Probationary periods are banned in Belgium (except for temporary and student contracts) since January 1, 2014 with the entry into force of the Uniform Status Act setting a unique status for blue collar and white collar employees.

Parallel employment is allowed in Belgium. Workers can cumulate as many part-time contracts as they want with different employers, as long as they respect their schedules with each of them. In principle, a part-time working week must be at least 1/3 of the normal full-time working week in the company (but there are exceptions in certain sectors or for certain jobs).

As regards the **right to free mandatory training**, under Belgian law, the time during which the worker receives training or instructions related to his/her work is considered as working time and must therefore, in principle, be accomplished during working hours.

When it comes to the rights outlined under points **1.**, **4.**, **5.**, and **6.**, the Belgian legislator still has – as many other EU States – some compliance work ahead:

Regarding the **right to information**, in Belgium, the lawmaker will be well advised to notice employers can use several channels/have options to satisfy this obligation without further implementation:

- The Work Regulations: every employer must have Work Regulations. The Law of April 8, 1965 enacting Work Regulations, foresees a minimum required content, which includes a lot of the elements listed under point **1.**, such as: work schedules and duration of work, method of payment of remuneration, notice periods or method for determining such notice periods, reference to collective agreements concluded within the company and governing working conditions, etc.,
- The employment contract: even if in principle, Belgian law does not impose formal conditions, nor a minimum content, for employment contracts to be valid, there are vast exceptions (*e.g.*: for fixed-term contracts, replacement contracts, clearly defined work contracts, part-time contracts, etc.) and in general employers make sure the contract is in writing and contains a maximum of the elements listed under point **1.**
- Other written/electronic communication channels can be used, such as the employer's Intranet (provided the employer retains proof of transmission or receipt, it is accessible to the worker and can be stored and printed).
- Also, additional Belgian legislation already foresees communication of information listed under point **1.** to workers (*e.g.*: through pay-slips).
- To finish, the directive provides that the information referred to under g) to l) and o) may be given through a reference to the laws/regulations/administrative or statutory provisions or collective agreements governing those points.

In any case, the Belgian legislator has until 2022 to verify if the checklist under point **1.** is worn down and if new obligations need to be put on employers.

Regarding the ***right to know a reasonable period in advance when work will take place in case of entirely or mostly unpredictable work pattern***, and the ***anti-abuse legislation pertaining to on-demand contracts*** there is much to do. Although on-demand contracts, zero-hours contracts, etc. are a rarity in Belgium, case-law has accepted their validity in the past (under certain conditions) while applying to them the regular protective labor laws and regulations, sometimes by analogy. For instance, in a judgement of January 9, 1995, the Belgian Court of Cassation decided the contract through which workers performed on-demand telephone market studies or opinion polls, with no obligation for the company to provide work, nor any obligation for the workers to accept work assignments, qualified as an employment contract under the Act of July 3, 1978. Also, in its decision of May 19, 2008, the Belgian Court of Cassation found the contract pertaining to potato peeling where the workers worked only a few hours in two or three months was an employment contract in the sense of the Act of July 3, 1978. In the U.K. zero-hours contracts are quite popular in the hotel, leisure, catering, and restaurant industry, especially amongst the youngest and oldest workers, because they offer great flexibility for both the employer and the worker. At the moment, there is no specific Belgian regulation setting the contours for the validity of such *sui generis* agreements. At the horizon 2022, Belgium will have to take action in order to fully comply with its new legal obligations.

To finish, the ***right to request transition to a more secure form of employment and receive a written reply to that request*** is also new and will have to be implemented into Belgian law as well.

We will closely monitor the impact and implementation of the directive into Belgian law. [For quick access to the full text in all languages, click here.](#)

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