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1. Overview

In general, the Law on Employment Contracts (LEC) does not impose any formalities as regards the formation of an employment contract. The agreement may be oral or even tacit. However, it is advisable to have an agreement in writing. An employment contract not in writing is always considered to have been concluded for an indefinite duration and is governed by following principles: (1) the mandatory clauses of the LEC, (2) a collective labour agreement concluded at individual company level or at industry level, (3) the rules of contract law as laid down in the Civil Code.

Termination of the employment contract resulting from a unilateral decision taken by either party usually takes one of the following forms: termination with notice; termination with payment of a severance compensation in lieu of notice or termination for serious cause. Unilateral modification of one of its essential elements may also cause termination of the employment contract.

No particular rules exist protecting the employee in the event of termination of an employment contract for a fixed period or a specific project. Certain categories of employees however receive special protection in case of wrongful termination of their employment contract. Finally, the LEC contains special provisions protecting blue-collar employees against abusive dismissal. Belgian labour law also contains detailed rules governing the termination of employment contracts as a result of collective redundancy or plant closure. Employment related conflicts are handled by the Labour Courts. A Labour Court can never order reinstatement.

2. Termination with notice

When an employer decides to dismiss an employee, he may either give him notice of termination, during which period the employee must continue to work, or pay a severance compensation in lieu of notice, terminating the employment contract immediately. It is also possible for the employer to terminate the employment contract during the notice period by paying a severance compensation equal to the salary which the employee would have received for the remaining part of the notice period.

In case of individual dismissals, the employer wishing to terminate an employment contract does not have to consult or obtain prior approval from the Works Council or any other regulating body or court (unless the employee has a protected status).

Notice of termination by the employer may only be validly given in a written statement, sent by registered mail of served by a bailiff, specifying the starting date and duration of the notice period. If notice is given by registered mail, the notification is deemed to be effective on the third working day following the day of mailing. The notice period for blue-collar employees commences on the first day of the week following the week in which notice was given. The notice period for white-collar employees commences on the first calendar day of the subsequent month.

As regards the duration of the notice period, the LEC distinguishes between blue-collar and white-collar employees.

Under Collective Labour Agreement No. 75 ("CLA No. 75"), the following notice periods must be observed by the employer when dismissing a blue-collar employee (Joint committees may deviate from the latter notice periods):

Seniority	Notice period
Between 6 months and 5 years	35 days
Between 5 and 10 years	42 days
Between 10 and 15 years	56 days
Between 15 and 20 years	84 days
More than 20 years	112 days

As to white-collar employees, the LEC does not establish what constitutes adequate notice, except for employees whose total annual gross salary does not exceed € 27,597 (this figure is for 2006):

<table>
<tr><td>Annual gross salary</td><td>Seniority</td><td>Notice period</td></tr>
<tr><td>< € 27,597</td><td>< 5 years
> additional 5-year period</td><td>At least 3 months' notice
Increased by 3 months
* longer notice periods:
- may be fixed in the employment agreement
- are provided by collective labour agreements</td></tr>
<tr><td>< € 55,193</td><td colspan="2">- No fixation in employment agreement possible
- Must be agreed upon by the parties at the time of the termination of the contract or, failing such agreement, by the Labour Court
- May not be less than the statutory minimum for the employees whose annual gross salary is less than € 27,597</td></tr>
<tr><td>≥ € 55,193</td><td colspan="2">- May be fixed in the employment contract, or, failing such agreement, the rules explained in the previous paragraph apply
- May not be less than the statutory minimum for the employees whose annual gross salary is less than € 27,597</td></tr>
</table>

In the absence of an agreement between the parties on the notice period, the matter will be referred to the Labour Court which will award the employee compensation in lieu of notice if it considers that the employer gave insufficient notice. Labour Courts consider personal factors (such as seniority, age, the importance of the employee's position, his salary, his education and his professional experience) as well as social and economic factors (such as the employment market at the time of termination) to determine the length of the notice period.

The most commonly used formula to reflect the various factors relied upon by the courts to determine the duration of the notice period, is the so-called "Claeys" formula (this formula is not, however, binding):

Notice period in months =

(0.89 x seniority) + (0.08 x age) + (0.052 x indexed gross yearly remuneration) - 2

The remuneration is expressed in thousands of Euros and includes all fringe benefits, pension scheme contributions, bonuses and other benefits. Based on court decisions, the notice requirements to be observed considerably exceed the minima provided for in the LEC.

3. Termination with payment of an compensation in lieu of notice

An compensation in lieu of notice is due when the employer (or employee) terminates the employment contract without notice or with insufficient notice. At any time during the notice period, the employer may decide to pay an compensation in lieu of notice.

There are no termination formalities to be complied with when the employer decides to terminate an employment contract with immediate effect. However, it is common practice to confirm such termination by registered letter and to specify the amount offered as the severance compensation or the duration of the notice period in lieu of which the compensation is paid.

The compensation is equal to the salary which would have been due for the full duration or the remaining part of the notice period. The basis for calculation of the salary is the current salary at the time of termination, including all advantages to which the employee is entitled by virtue of his employment, for example, a "thirteenth month" bonus, use of a company car, group insurance premiums, and similar benefits, but not any reimbursement of costs (plus the double vacation allowance for a white-collar employee if notice is given by the employer).

The compensation has a lump-sum character. The compensation in lieu of notice is presumed to cover all prejudice resulting from the termination of the employment relationship, except the compensation for abusive dismissal. The amount of the compensation is calculated by the Labour Court without reference to the actual prejudice sustained by the employee. It is, therefore, of no relevance, for example whether the employee has immediately found another job and has sustained no or little damage.

Article 78 of the LEC allows the employer to dismiss a white-collar employee whose contract (for an indefinite duration) had been suspended for more than 6 months due to illness or accident by paying him a compensation equal to the salary which would have been due during the notice period to which the employee is normally entitled, less any remuneration paid to that employee since the beginning of his incapacity or, if notice has been given, since the date on which the notice took effect. Maternity leave may not be included in the calculation of the 6-month period.

4. Termination for serious cause

The employer may terminate an employment contract without notice and without paying any compensation if there is serious cause : such cause may be any fact due to which the relation between employer and employee is immediately and irrevocably damaged beyond repair. This serious cause justifying termination must not be known to the employer for more than 3 working days. The justification for terminating the contract without notice or before the expiry of its term must be notified to the other party within 3 working days following the termination of the contract; the facts must be sufficiently and clearly identified. The employee must be in a position to determine whether the invoked reason(s) may justify immediate termination without notice or compensation or whether such question must be decided by the courts.

Article 35 of the LEC provides little explanation of what is meant by "serious cause"; it only states that it must be a fault making professional co-operation between the employer and the employee immediately and definitely impossible. The employer must provide the Labour Court, in case of litigation, with evidence of all the facts justifying the termination. In the event the Labour Court rejects the serious cause invoked, the employer must pay a compensation in lieu of notice.

5. Unilateral modification of a working condition

As a general rule, the employer is not allowed to modify unilaterally working conditions.

Contractual clauses which entitle the employer to unilaterally modify contractual provisions are null and void (Art. of the 25 LEC).The courts have held that a unilateral modification of the working conditions will amount to an illegal termination under the following conditions; the modification must:

- either concern an essential element of the employment contract or a working condition expressly agreed upon (place of work; duration and timetable of work; function and responsibilities and remuneration);
- be unilateral. A modification will become bilateral if the employee accepts the modification. Such acceptance may be express or implicit : resulting from the conduct of the employee; and
- be definitive.

However, the courts have, within certain limits, also accepted that employment contracts may be modified unilaterally by the employer if the changes are justifiable for economic reasons (for example a reorganisation, if this overall status is respected and the change is not "directed against the employee").

6. Termination of an employment contract for a fixed period or for a specific project

The employer terminating the contract before its expiry date without a serious cause or after the probationary period, must pay to the other party a compensation equal to the remuneration due until the expiry of the contract. However, such compensation is limited to a maximum of twice the remuneration corresponding to the notice period which would have been required if the contract had been entered into for an indefinite period.

7. Protected employees

Some categories of employees receive special protection in case of dismissal; they cannot be dismissed under the general rules described above. Employers wishing to dismiss a protected employee will need specific grounds to do so and must follow special procedures. The main categories of protected employees are members and non-elected candidates of the Works Council and of the Committee for Prevention and Protection at Work, trade union delegates and pregnant women.

8. Abusive dismissal

Both blue-collar and white-collar employees are entitled to a special compensation in case of abusive dismissal by the employer:

- Blue-collar employees receive special protection under Article 63 of the LEC which determines that a dismissal will be abusive if the reasons for termination of a contract of indefinite duration are unrelated to the skills or conduct of the employee or to the operating requirements of the employer's company or service. The employer bears the burden of proof. In case of an abusive dismissal, the blue-collar employee is entitled to a special compensation equal to 6 months' remuneration in addition to his normal severance compensation or notice period.
- The LEC does not provide for a specific compensation in case of abusive dismissal of white-collar employees. Moreover, white-collar employees bear the burden of proof. The Labour Court will determine a compensation based on principles of good faith if she decided that the dismissal was abusive.

An employer who dismissed an employee for serious cause, but fails convince the Labour Court that such dismissal was justified, will not necessarily be condemned to pay a compensation for abusive dismissal.

The compensation in lieu of notice is deemed to cover the prejudice resulting from the termination of the contract. The special compensation for abusive dismissal will only be due if the termination caused additional (material or moral) damage that is unrelated to the dismissal as such.

9. Collective redundancy/plant closure

The dismissal of several employees within a short period of time without the closing of the employer's or the company's main activities or the activities of one of its divisions may result in additional liabilities for the employer. In the event of a collective redundancy, the employer must:

- meet certain information and consultation obligations with personnel representatives, and
- pay a special compensation which equals 50 per cent of the difference between the unemployment benefit or the net income earned in new employment/professional training and the so-called net "reference income"; the compensation is due during a period of 4 months as from the termination of the employment agreement or upon the expiry of the period which is covered by an compensation in lieu of notice. However, the compensation is reduced by one month for each month of the notice period (or compensation in lieu thereof) that exceeds 3 months. Thus, employees entitled to a notice period of seven months or more are not entitled to the supplementary compensation.

The compensation cannot be combined with the indemnities for abusive dismissal due to protected employees or trade union delegates or the plant closure compensation.

In case of a plant closure, the employer must pay a closure premium to several categories of employees (with at least one year's seniority, employed for an indefinite duration, etc.). The employee is no longer entitled to the closure premium if he is transferred to another company while keeping his remuneration and seniority provided that his employment is not terminated by the new employer within a period of 6 months and he has not refused an offer of employment from another employer.

The closure premium can be cumulated with a compensation in lieu of notice, unemployment benefits and the special compensation for protected employees.

10. Transfer of undertakings, businesses or parts of businesses

In case of a transfer (within the meaning of a CLA No. 32*bis*, implementing the EC Council Directives on the matter), the rights and obligations of the transferring employer arising from an employment contract existing on the date of the transfer are automatically transferred to any person who, by reason of the transfer, becomes the employer of the employees of the transferred business.

After the transfer date, the transferring employer and the transferee are jointly and severally liable for the payment of debts existing at the time of the transfer and resulting from the employment contracts which are prior to the transfer. There is an exception to the transfer of those debts to the transferee, provided that the payment of such debts is guaranteed by the Closure Fund.

The transfer may not in itself constitute grounds for dismissal by the transferor or the transferee.

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