

Smoke lifts temporarily over Belgium's occult period (and other questions about termination)

Article By:

Marga Caprioni

In a previous blog, in a world before the coronavirus hit Europe, we noted the social elections that Belgian employers have to organise in 2020 [\[here\]](#) for the appointment of employee representatives to the Works Council and Health & Safety Committee. Being a representative of that sort (and also being a candidate for that role) gives wide-ranging protections against detriment and dismissal. As a consequence, with the social elections comes a Belgian peculiarity, the “occult period”. This is a period of 65 days, ending ultimately on 30 March, over which employees can stand as candidates in those elections but before the candidate list is communicated to the employer. It is therefore unaware who has that protection and who doesn't. Practical consequence: all terminations are put on hold until April.

Because of the Covid-19 crisis however, the social elections have been postponed, probably until the second half of November at the earliest. Mercifully the occult period has not been extended. To avoid operational paralysis and a legal limbo regarding terminations for so many months, unions and employers' representatives have come to the following agreement:

- The employees on the candidate lists which were communicated to management at the end of March are protected against dismissal, as well as the current employee representatives and substitutes.
- Employees not on these lists will not be protected at this stage but may become so later if they decide to stand for election in place of any on the March candidate list leave the company or withdraw their candidacy in the meantime. This will be effected by a new mini occult period will start earliest in August (but could be later, depending on the date of the elections). For the following 36 days, any new candidates proposed to replace them will also benefit from those protections.

But in summary, for now, the uncertainty of the occult period has lifted.

Unfortunately, the Covid-19 crisis also begs other questions about termination. The one most frequently asked these days is whether companies relying on temporary unemployment (the Belgian furlough) will be prohibited from dismissing in the months to come. The answer is no, they will not. Although the specifics may have changed to adapt to Covid-19 situation, the regime of temporary unemployment has been in place for generations in Belgium. Unlike our neighbouring countries,

applying the regime does not come with a ban on redundancy terminations or an obligation to refund allowances if such dismissals do occur.

Another question we receive frequently is whether the current climate would allow bosses to terminate employment contracts for *force majeure* or in other ways reduce the cost of termination. A contract may be terminated for *force majeure* if the circumstances make it definitively impossible to perform the work, not just harder or more expensive. In most cases, however, the Covid-19 measures will only temporarily make the performance of the contract impossible, and termination for *force majeure* will therefore not be allowed. If the employment is terminated anyway, the employee will be entitled to the regular notice or severance payment. The current economic circumstances will not reduce these entitlements.

© Copyright 2025 Squire Patton Boggs (US) LLP

National Law Review, Volume X, Number 118

Source URL: <https://natlawreview.com/article/smoke-lifts-temporarily-over-belgium-s-occult-period-and-other-questions-about>