

Belgium Takes First Steps Towards Improved Work-Life Balance in New Labour Deal

Article By:

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After the federal majority parties failed to conclude an agreement on Friday on a series of labour market reforms, they finally broke the deadlock overnight on Monday this week. In an early fail on the work:life balance front, the new measures were unveiled at a presumably sparsely-attended press conference at 2.30am. Bleary-eyed Ministers praised the agreement as “concrete progress for employees”, and assured sceptical employers that in turn “there will be more flexibility for companies” too. This blog post offers an overview of the most important measures agreed in the Labour Deal.

Right to be Offline

The measure that has attracted the most attention so far is the introduction of a right for employees to be offline. Companies with at least 20 employees will be obliged to respect this right and come to an agreement on the topic in consultation with their trade unions. The government believes that most employees cannot reasonably be expected to read or answer emails outside working hours. The collective labour agreement to be agreed at a company level will have to clarify how this principle is to be applied throughout the business and to set out the inevitable exceptions for seniority, role, emergency, etc.

Evening work

In previous communications, the government had already announced that the rules for evening work in e-commerce would become more flexible. In Belgium, work between 8pm and 6am is considered night work. If companies want staff to work at night, they have to try to conclude an agreement with the trade unions. In exchange, unions often demand high premiums for night work. It has now been agreed that the rules for *evening* work (8pm – midnight) will be more flexible. From now on, only one union’s permission is needed to work in the evenings, whereas up to now the approval of all unions in the workplace has been required. This gives companies a little more flexibility because the veto of one union can now be circumvented.

At the same time, there will be pilot projects for an even more flexible arrangement. If no general arrangement for evening work can be agreed with the trade unions, then workers may be allowed to

work in the evening on a voluntary basis, so side-stepping the union and creating a deterrent to its being too extreme in its demands in relation to those premiums. This arrangement will remain in place for up to 18 months. As it is a pilot only, there will be no need to change the employee handbook in this respect at this stage.

This measure will come as a relief to many employers, as only last week, the Chairman of the Walloon Socialist Party was particularly critical opinion of e-commerce and the working conditions it entails (in particular, night work), voicing the wish that Belgium could return to an era of flourishing city centres and physical stores only. His views on a return also to quill pens and horse-drawn transport were not recorded.

More flexible working week

Furthermore, the principle of the more flexible full-time working week is confirmed, allowing employees to work full-time in four days instead of five. An employer can refuse this, but must justify this refusal in writing. The possibility is also offered, in the context of co-parenting, to work a little more one week and a little less the next. If employer and employee agree to this flexibility, their agreement is to be confirmed in an addendum to the employment contract. That variation should be limited in duration to six months (renewable) and a copy of the addendum should be sent to the Health & Safety Committee, or where there isn't one, the union delegation.

Right to training

The right to training will be extended, where training will be awarded individually, up to five days a year, as opposed to an average on company level. Employees will be better supported when they are dismissed on no-fault grounds, for example by paying more attention to outplacement for those who have a long notice period. If an employee is dismissed and has to serve a notice period, he can ask his employer for a "transition path" to a new job. As part of this transition route, if agreed, the employee can voluntarily start working for a new employer during his notice period. A compensation mechanism to be put in place between the two employers concerned will be established. There are also measures in preparation that should give greater autonomy to the regional states as to guidance on how to find a new job.

Platform economy

The Socialist parties in the government had insisted on better working conditions for those who work in the platform ("gig") economy (meal delivery services, etc.). Usually, the drivers working for such platforms are notionally self-employed. The Socialists want them to be engaged as employees more often, to enjoy better social protection. In the UK and the Netherlands, judges have ruled that some platform workers have to be recognised as workers and so are entitled to certain minimum rights around whistle-blowing, minimum wage, holiday pay, etc., but a Brussels court recently came to the opposite decision, ruling that they could continue to work as fully self-employed workers without those protections.

The government has now agreed that a rebuttable presumption of employment applies to the platform economy, so they will be employees unless the employer can show that they are not. This presumption can be rebutted on the basis of the general criteria of the Labour Relations Act of 2006, including such indicators as the requirement of exclusivity, using GPS capabilities for purposes other than the proper functioning of the basic services, limiting the freedom to accept or refuse orders,

whether or not drivers are able to develop a customer base outside the platform, etc. As a result, platform employees will be able to work as employees more often, but it will also remain possible for them to do so on a self-employed basis where the facts of the relationship warrant it.

The new Labour Deal agreement will be transposed into law in the coming months. Many of the questions we currently still have about the detail of these measures will hopefully be answered by then, but new questions will undoubtedly arise. Whatever may come, we will keep you informed through this blog.

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