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Luxembourg

EMPLOYMENT AND LABOUR LAW

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Luxembourg.

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LUXEMBOURG
EMPLOYMENT AND LABOUR LAW

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Yes, an employer needs a reason to lawfully terminate an employment relationship, whether it is a termination with notice or with immediate effect. The reasons for dismissal must be precise, real, and serious. The only exception is for the dismissal of employees who are still in their probation period where no reasons are necessary.

A dismissal with notice can be motivated either by objective reasons inherent to the employee (e.g., behavioural issues, professional insufficiencies, unjustified absences, etc.) or reasons inherent to the business' operational requirements (e.g., financial difficulties, restructuration, etc.).

A dismissal with immediate effect for serious misconduct can only be motivated by reasons inherent to the employee. The employee's misconduct must be sufficiently serious to render the employment relationship definitively and immediately impossible (e.g. theft, physical violence in the workplace).

Fixed-term employment contracts can only be terminated with immediate effect due to serious misconduct.

In any case, the reasons for dismissal must always be assessed on a case-by-case basis taking into account, for instance, the employee's length of service or history.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

The employer must initiate a collective redundancy procedure if they intend to dismiss for economic reasons 7 employees over a period of 30 days or 15 employees over a period of 90 days.

Terminations of employment for reasons other than those inherent to the employees' person (e.g., termination by mutual consent, early retirement) are assimilated to redundancies in the context of calculating the relevant number of employees concerned as long as there are at least 4 actual dismissals for economic reasons.

The main steps to the collective redundancy procedure are as follows:

- Inform Luxembourg's National Employment Agency (ADEM) and the staff representatives or the employees directly if the business regularly employs less than 15 persons.
- Negotiate a social plan with the staff representatives and trade union representatives.
- If after 15 days an agreement is reached, the social plan can be implemented.
- However, if no agreement is reached after 15 days, a non-conciliation report must be signed, sent to ADEM, and submitted to the National Conciliation Service (Office National de Conciliation – "ONC").
- The conciliation procedure cannot last longer than 15 days. If an agreement is reached, the social plan shall be implemented, and the employees dismissed with notice. If no agreement is reached, the employer will need to dismiss each employee individually for economic reasons.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

In the case of a business transfer (i.e., transfer of

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undertaking, business, or part of business, provided that the transferred entity remains a stable economic unit), all rights and obligations attached to existing employment contracts are automatically transferred to the buyer (the transferee).

Pursuant to Article L.127-4 of the Labour Code, a business transfer is not a valid ground for dismissing an employee. If a dismissal is motivated by a business transfer, the dismissal will necessarily be considered wrongful.

4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

Employment contracts of an indefinite duration can be terminated with notice or, in the case of serious misconduct, with immediate effect.

According to article L.124-3 (2) of the Labour Code, the notice period to be observed depends on the seniority of the employee.

If the employment contract is terminated at the employer's initiative, the notice periods to be observed are as follows:

- Between 0-5 years of length of service, 2 months' notice period.
- Between 5-10 years of length of service, 4 months' notice period.
- Above 10 years of length of service, 6 months' notice period.

If the employment contract is terminated at the employee's initiative, the employment contract ends at the end of a notice period equal to half the notice periods indicated above i.e.

- Between 0-5 years of length of service, 1 months' notice period.
- Between 5-10 years of length of service, 2 months' notice period.
- Above 10 years of length of service, 3 months' notice period.

In certain cases, senior level employees may negotiate a longer contractual notice entitlement in the case of dismissal e.g. when moving to work for a start-up.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Unless the parties agree otherwise in a settlement agreement, employees must remain on payroll for the duration of their notice period. The employer may only pay an employee in lieu of notice if the parties so agree in a settlement agreement.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Yes, pursuant to Article L.124-9 of the Labour Code, in the event of termination of the employment contract at the initiative of the employer or the employee, the employer may require the employee to be on garden leave during the notice period. The exemption from work must be stated in writing, e.g., in the letter of dismissal or in a separate letter.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Yes, an employer must follow a prescribed procedure in order to validly terminate an employment contract.

If the company employs more than 150 employees, the employer must first summon the employee to a pre-dismissal interview by registered letter with an acknowledgment of receipt or by a letter given by hand with a copy signed as proof of receipt. The letter must indicate the purpose of the convocation, the date, time and place of the interview, and the possibility for the employee to be assisted by another employee or by a representative of a trade union.

The pre-dismissal interview must take place at the earliest on the second day after the letter of summons was sent.

During the interview, the employer must indicate the reasons for the contemplated dismissal and give the employee the opportunity to provide their comments. If after the interview the employer takes the decision to dismiss the employee, the dismissal must be notified at the earliest on the day following the pre-dismissal

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interview and no later than 8 days after the interview.

Whether or not a pre-dismissal interview is required, the dismissal letter must always be notified either by registered letter with an acknowledgment of receipt or by a letter given by hand with a copy signed as proof of receipt.

If the employee is dismissed with notice, the dismissal letter must be very brief and the reasons for the dismissal must not be stated. The notice period can only start running from the 1st or 15th of a month (i.e., if the letter is sent before the 1st of the month, the notice starts running on the 1st; if the letter is sent before the 15th, the notice starts running on the 15th).

Each employee has the right to request within one month of their dismissal the written reasons for their dismissal in writing by registered mail with an acknowledgment of receipt or by a letter given in person with a copy signed as proof of receipt. If an employee makes such a request, the employer has one month to respond in writing with the detailed written reasons for the employee's dismissal by registered mail with an acknowledgment of receipt.

If an employee is dismissed with immediate effect, the dismissal letter must already contain the detailed and precise reasons for the dismissal.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

Failure to comply with a substantial procedural formality (e.g., the requirement to hold a pre-dismissal interview) entitles the employee to receive compensation due to a formal irregularity. Such compensation cannot exceed one month's salary and will only be due if the dismissal is not abusive on the merits. Indeed, this compensation cannot be combined with the damages awarded in the case of a dismissal that is abusive on the merits.

Some cases of non-compliance with the dismissal procedure go beyond a mere formal irregularity, e.g., if the employer fails to provide the employee with the reasons for the dismissal or fails to apply the collective dismissal procedure. In such cases, the dismissal will be found abusive on the merits and the employee will be entitled to receive material and moral damages.

9. How, if at all, are collective agreements relevant to the termination of employment?

Collective bargaining agreements define the working conditions that apply to employees in the sector of activity concerned, including with respect to dismissals (e.g., collective bargaining agreements may provide for longer notice periods or an obligation to hold a pre-dismissal interview regardless of the number of employees).

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

In principle, the employer does not have to obtain the authorisation of or inform a third party before being able to validly dismiss an employee.

However, if the employee is dismissed for reasons not related to the employee's person, and that the business employs at least 15 employees, the employer has the obligation to notify the Economic Committee (*Comité de Conjoncture*) at the latest when the letter of dismissal is sent to the employee by filling in the form "*Notification des licenciements pour des raisons non inhérentes à la personne du salarié*".

Additionally, in the event that an employee who benefit from certain types of protection against dismissal (e.g., staff representative) has committed a serious misconduct, the employer can only dismiss the employee by first submitting a request to the Labour Court for the termination of the employment contract.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Pursuant to the Luxembourg Labour Code, any direct or indirect discrimination based on gender, religion or beliefs, disability, age, sexual orientation, belonging or non-belonging, real or assumed, to a nationality, race or ethnicity is prohibited. Non-discrimination rules must also be respected at the time of dismissal. Thus, discriminatory grounds are prohibited and cannot in any case be used as a basis for dismissal, otherwise the dismissal can be annulled.

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12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

If an employee has been dismissed for a discriminatory reason, the employee can request that the dismissal be annulled and thus be reinstated in their functions. In addition, the employee can also claim damages for the moral prejudice suffered due to discrimination or harassment acts.

From a criminal law perspective, it must also be noted that any discrimination committed by the employer may constitute a criminal offence and shall be punished with imprisonment of 8 days to 2 years and/or a fine of EUR 251 to EUR 25,000.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Yes, certain categories of employees are protected against dismissal, e.g., staff representatives, pregnant women, employees on sick leave, employees on maternity leave or parental leave, etc..

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Yes, a general framework of whistle-blower protection has been introduced by the law of 16 May 2023 implementing Directive (EU) 2019/1937 of 23 October 2019.The Luxembourg legislator has opted to extend the material applicability of the whistle-blower protection to all breaches of national and European law.

Whistle-blowers are employees who report on breaches of legal provisions by their employer, and they are protected against any sort of reprisal, including termination of employment.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

It would not be recommended to dismiss an employee for economic reasons in order to re-engage this employee on new less favourable terms. Indeed, the employee would still have the faculty to challenge the dismissal in Court and, additionally, the validity of the grounds for dismissal could then easily be questioned.

In such situation, the employer and the employee can however mutually agree to amend the employment agreement, or the employer can unilaterally amend the employment terms and conditions.

However, if the unilateral amendment relates to an essential clause of the employment terms and conditions (e.g. remuneration), and that the amendment is unfavourable to the employee, the employer can only unilaterally modify the employment contract by using the procedure of unilateral modification as provided for by Article L.121-7 of the Labour Code which is similar to the dismissal procedure as notice of the unilateral amendment must be given and the employee can request the written reasons for the unilateral amendment.

Employees dismissed for economic reasons may benefit from priority for re-employment for one year as from the end of their employment contract, provided that they inform the employer in writing about their will to benefit from this right. This re-employment priority is intended to apply in cases where the company's financial situation has finally improved, and it wishes to recruit again in the year following the dismissal for economic reasons.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

When using artificial intelligence in a recruitment or termination decision, it is advisable to pay attention to data protection considerations, especially if the use of artificial intelligence entails the transfer of personal data to a third-party or the use of a third-party software. Data protection laws must be complied with in all cases.

Additionally, in the context of a dismissal, the employer must be able to explain in detail the reasons for the

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dismissal and to prove them. It is therefore necessary to ensure that the use of artificial intelligence does not lead to arbitrary decisions that cannot be justified in court, otherwise the dismissal will be found wrongful.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

An employer who dismisses an employee for a reason other than serious misconduct must give the employee the applicable statutory notice period and, if they have worked in the business for 5 or more years, pay them a statutory severance indemnity (*indemnité de départ*).

The severance pay depends on the employee's length of service, which must be calculated at the end of the notice period:

– 1 month's salary after 5 to 10 years of service;

– 2 months' salary after 10 to 15 years of service;

– 3 months' salary after 15 to 20 years of service;

– 6 months' salary after 20 to 25 years of service;

– 9 months' salary after 25 to 30 years of service;

– 12 months' salary after 30 years of service.

However, if the company employs less than 20 employees, the employer can choose to replace the severance pay with an extended notice period.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Yes, the employer and the employee can enter into a settlement agreement in which the employee waives their rights to take legal action against the employer in return for the payment of a settlement indemnity. In order for the settlement agreement to be valid, the parties must make reciprocal concessions.

Settlement agreements typically provide for confidentiality undertakings not to disclose the content of the settlement agreement or the negotiations to third parties, save as required by law.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Non-compete covenants are specifically regulated by Article L.125-8 of the Labour Code and are defined as a prohibition for employees to engage in similar activities as an individual entrepreneur after the end of the employment relationship in order not to harm the interests of the former employer.

The non-compete clause must be in writing, otherwise it is null and void.

The employee must be of legal age at the time the agreement is signed, and the employee's annual gross salary must exceed EUR 59,786.43 (at current index 944.43) at the end of the employment relationship.

Furthermore, the scope of the non-compete clause must be limited as follows:

1. it must relate to a specific professional sector and to activities similar to those carried out by the employer.
2. it must not exceed a period of 12 months, starting on the day the employment contract is terminated.
3. it must be limited geographically to the localities where the employee can be in real competition with the employer, taking into account the nature of the business and its radius of action; in no case may it extend beyond the national territory.
4. It must only prohibit the employee from operating a competing personal business as an individual entrepreneur (as opposed to salaried activities).

However, according to case-law, extended non-compete covenants may be valid, provided that an appropriate financial compensation is given to the employee and that the clause is not manifestly excessive. Furthermore, the employer must be able to demonstrate that such extended non-compete obligation is justified by an interest to be protected. In any case, the Labour Courts have the power to assess *in concreto* the enforceability of a non-compete clause and to reduce its scope in case of disproportionality.

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The non-compete clause is inapplicable when the employer has wrongfully terminated the employment contract with immediate effect or if, upon termination, the employee has not been granted the statutory notice period.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes, the employer can include a confidentiality clause in the employment agreement, which obliges the employee to keep certain information confidential both during the employment relationship and after its termination. The confidentiality clause must be proportionate and drafted in a limited and precise manner.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

No, employees are not obliged to provide references to new employers.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

One of the most common difficulties faced by employers is assessing the validity of the grounds for dismissal, as in the event of litigation the grounds for dismissal will always be assessed on a case-by-case basis. Regardless of the seriousness of the misconduct, other factors, such as the employee's length of service or employment history, must always be considered.

Additionally, in practice, employers often have difficulties in gathering concrete evidence, especially in the case of performance-related dismissals. Therefore, in this type of dismissal, it is strongly recommended, for instance, to have robust performance reviews documented in writing internally. In this way, the performance reviews can be filed as an exhibit with the Court in the event of litigation, in order to evidence the performance difficulties and the fact that despite the feedbacks the employee did not improve.

Finally, at the time of dismissal, it is often difficult to estimate the amount of damages that could be awarded to the employee in case of wrongful dismissal. Indeed, the court always considers the efforts made by the employee to find a new job, and therefore if the employee has been unable to find a new job despite significant effort, the damages awarded will likely be increased. The financial risk is therefore difficult to fully anticipate.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

There are no known upcoming changes in 2024 under Luxembourg law concerning termination of employment contracts.

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