

To do's and points of attention for HR in 2020

Currently there is little or no new relevant legislation for your HR practice. Nevertheless, we would like to give you the following to do's and points of attention to take into account in 2020.

- Companies organizing social elections will have to install **new or renewed consultative bodies** (committee for prevention and protection at work and/or work councils) in May.

→ For companies that have to do this for the first time, it is important to be well **informed** about the **powers and tasks** of the committee and the works council. Also make sure that you make clear arrangements about the rights and obligations of the elected employees' representatives. To this end, it is important that you pay sufficient attention to the **drafting of an internal regulation**.
- E-bikes are a popular means of transport, also for commuting. More and more employers are offering a (fast) **electric company bicycle** as an extra-legal advantage, whether or not as part of a so-called **cafeteria plan**. This not only benefits the climate, but also the health of the employees. The downside of this trend is that the number of **accidents on the way to/from work** that occur with an e-bike has risen sharply recently.

→ Remember to offer your employees the necessary **safety equipment** (helmet, lights, fluorescent jacket, etc.) as well as the necessary **training and awareness** on bicycle safety if you include an electric company bicycle in your lease plan. This not only prevents accidents on the way to/from work, but also an increase in the insurance premium.
- Sometimes employers see no other option than to **dismiss an employee during or shortly after a period of incapacity for work**. In Belgium, dismissal during illness is possible, but recent case law is looking at this with increasing rigor. The risk of challenging the dismissal before a court and the risk that an employer is held liable for **discrimination** on grounds of state of health and/or for **manifestly unreasonable dismissal** or abuse of dismissal rights (e.g. in the absence of evidence of organizational difficulties) is real.

→ Do not lightly proceed with dismissals during or immediately after incapacity for work and provide sufficient proof of the grounds of dismissal, if not this may cost you a lot.
- Several **inspectories** have presented their **strategic action plan for 2020**. Social fraud (social dumping, undeclared work, etc.) is central, certain sectors are targeted and for some regions and sectors (e.g. construction, horeca) certain themes are highlighted as a campaign by the Welfare at Work Inspectorate (see <https://www.prebes.be/nieuws/2020/01/campagnes-tww-2020>).

→ Controls are likely to increase, mainly in cross-border posting of workers and in sectors susceptible to fraud. This may lead to a more coordinated cooperation and a smoother exchange of information between the competent services. Make sure that you are compliant with Belgian labour legislation and that you are **prepared** for possible **inspection by an inspectorate**.

More information: https://www.siod.belgie.be/sites/default/files/content/download/files/siod_actieplan_2020_nl_pub.pdf
https://www.siod.belgie.be/sites/default/files/content/download/files/siod_actieplan_2020_fr_pub.pdf

- ✓ According to European case law of May 2019, employers would be obliged to introduce **in general a time registration system**. This is currently not compulsory in Belgium, except in specific cases, e.g. in the case of gliding hours.
- Keep a close watch on the evolution of the legislation in this area, so that your working hours remain in line with the regulation. Flexible working with the necessary attention for a healthy work life balance remains an important point of attention. Check whether your working hours regulations provide sufficiently for this.
- ✓ If you wish to provide **flexible remuneration** for your employees, it is time to think about the modalities for the reference year 2020.
- Make sure you have sufficient budget and set clear targets. Consider the type of variable remuneration you wish to introduce (CBA No. 90, cash, bonus pension plan, profit sharing, shares, warrants, etc.) and make sure you implement the employee benefit correctly in your pay policy.
- ✓ **Hacking** of systems and personal data can cost your company dearly. Make sure your **HR data is GDPR and cyber proof**.
- Continue to pay the necessary attention to **GDPR-compliant processing of HR data**:
 - Ensure that personal data is not kept in different locations/systems, minimize personal data to what is strictly necessary and/or ensure that you know where which personal data of staff is kept and for which HR purposes.
 - Remember to answer your staff's questions about accessing their personnel file in a timely and correct manner.
 - Review which information you record in the personnel file or in other documents. Raise awareness among the HR managers/employees concerned to avoid explicit wording (subjective assessments, discriminatory wording, etc.). Avoid using "free" fields.
- ✓ On 1 April 2020, it will be 10 years since you had to introduce a compulsory **alcohol and drug policy** (CBA No. 100) in your company. In practice, it appears that although some companies have a policy, this does not work if efficient action must be taken with regard to employees who dysfunction as a result of occasional or chronic misuse of alcohol and/or drugs.
- **Review your alcohol and drug policy** in practice and adjust if necessary to minimize your company's possible liability.
- ✓ The British Parliament has agreed to the **Withdrawal Agreement**, which governs the UK's departure from the EU on 31 January 2020. It is likely that there will be an agreement (this means no **no-deal Brexit**). In that case, a transitional period will start on 1 February 2020, during which the rights of residence, social security and employment law will remain unchanged for the time being (until 31 December 2020).
- Ensure that all **formalities for UK nationals posted to Belgium and all Belgian employees posted to the UK** are correctly completed before 31 December 2020. In order to safeguard the existing rights of these employees as much as possible, it is recommended to ensure by then that all formalities relating to residence on the territory have been completed.
- ✓ Member States have until 30 July 2020 to transpose the **new Posting of Workers Directive** (No. 2018/957) into national law. The maximum duration of a posting will be limited to 12 months (renewable once for 6 months) for the application of employment law. Furthermore, the so-called "hard core provisions" are substantially extended. The impact for Belgium seems rather limited since the current Belgian legislation had already declared all criminally sanctioned provisions applicable to posted employees. However, it remains to be seen whether the new legislation will come in time and will still provide for additional obligations.
- Keep a close watch on the legislation in this area and ensure that the correct employment legislation is applied both to employees posted to Belgium from abroad and to employees posted from Belgium to other European Member States.

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