

## 1 INFORMATION TO EMPLOYEES REGARDING THE EMPLOYMENT RELATIONSHIP

### 1.1 Information of an individual nature

<b>What?</b>	<b>Employers must individually notify employees of certain information related to the employment relationship in a timely manner.</b>
<b>What information?</b>	<ul style="list-style-type: none"> <li>- The identity of the parties to the employment relationship;</li> <li>- The place of work;</li> <li>- The position the employee primarily performs with the employer;</li> <li>- The start date;</li> <li>- If the employment relationship is of a definite duration, the end date or expected duration;</li> <li>- The salary, (incl. starting amount), other components, fringe benefits, payment method and frequency;</li> <li>- The duration and modalities of the probationary period, if applicable;</li> <li>- Information about the fixed or variable work schedule;</li> <li>- Additional information before departure of employee going abroad for more than 4 consecutive weeks.</li> </ul>
<b>Formalities</b>	<ul style="list-style-type: none"> <li>- Written or electronic;</li> <li>- If provided electronically, the information must be accessible to the employee and it must be possible to save or print the information;</li> <li>- In one or more documents → can be included in the employment contract itself;</li> <li>- No later than the first day of employment (or before departure abroad for longer than four consecutive weeks);</li> </ul>
<b>Entry into force</b>	<p>10<sup>th</sup> day following its publication in the Belgian Official Gazette.</p> <p>Applicable to new employment relationships from the date the act enters into force.</p> <p>For existing employment relationships, only applicable at the explicit request of the employee.</p>
<b>Sanction</b>	<ul style="list-style-type: none"> <li>- Not disclosing the elements of information on key aspects of their employment relationship to the employee → sanction <b>level 3</b> (criminal fine of 800 up to 8.000 EUR or an administrative fine of 400 up to 4.000 EUR) to be multiplied by the number of employees.</li> </ul>

	- Giving incomplete or incorrect information or not communicating it within the stipulated time → sanction <b>level 2</b> (criminal fine of 400 to 4.000 EUR or an administrative fine of 200 to 2.000 EUR), to be multiplied by the number of employees.
<b>To do's</b>	<ul style="list-style-type: none"> <li>- Perhaps little impact, as most template employment contracts already mention these provisions.</li> <li>- If not, provide an up-to-date template for your individual employment contracts.</li> </ul>

## 1.2 Information of a collective nature

<b>What?</b>	<b>Information elements of a collective nature applicable to each employee must be listed in the work rules.</b>
<b>What information?</b>	<ol style="list-style-type: none"> <li>1. the procedure, as well as the formal requirements and notice periods, but now also the periods within which a dismissal can be appealed. It is possible to refer to the statutory and regulatory provisions governing these elements;</li> <li>2. the indication of the CBA's and/or collective agreements concluded within the company and applicable to the working conditions but now also, as regards CBA's concluded outside the company, the indication of the competent joint entity in which they were concluded;</li> <li>3. the right to training offered by the employer or the reference to the legal and regulatory provisions or CBA's that regulate this;</li> <li>4. the social security institution which receives the social security contributions in connection with the employment relationship.</li> </ol>
<b>Formalities</b>	- Follow procedure to amend work rules to insert or amend provisions except for 1. and 2.
<b>Entry into force</b>	10 <sup>th</sup> day following its publication in the Belgian Official Gazette.
<b>Sanction</b>	- Failure to provide a copy of the (amended) work rules to every employee or failure to follow the procedure to amend → sanction <b>level 2</b> , to be multiplied by the number of employees.
<b>To do's</b>	- Update work rules.

## 2 MINIMUM REQUIREMENTS REGARDING WORKING CONDITIONS

The act creates new substantive rights for private sector employees and public sector contractual employees. Below you can find an overview of the most important changes:

### 2.1 Multiple jobs

<b>What?</b>	<ul style="list-style-type: none"> <li>- The employer cannot prohibit an employee from working outside of work schedules for one or more other employers;</li> <li>- The employer cannot subject the employee to adverse treatment for that reason;</li> </ul>
<b>Legal exceptions</b>	<ul style="list-style-type: none"> <li>- e.g. if the employee engages in (un)fair competition or discloses a trade secret.</li> </ul>
<b>Entry into force</b>	10 <sup>th</sup> day following its publication in the Belgian Official Gazette.
<b>Sanction</b>	<ul style="list-style-type: none"> <li>- Prohibiting the employee, except in cases provided for by law, from working outside his work schedule for one or more other employers or subject him to adverse treatment for that reason → sanction <b>level 2</b>, to be multiplied by the number of employees.</li> </ul>
<b>To do's</b>	<ul style="list-style-type: none"> <li>- Evaluate any exclusivity clause in the template employment contract.</li> </ul>

## 2.2 Compulsory training

<b>What?</b>	<ul style="list-style-type: none"> <li>- Training which is necessary for the employee to perform his job and which is provided for by law or CBA must be provided free of charge by the employer;</li> <li>- Example: the training required for transport workers to obtain an ADR certificate.</li> </ul>
<b>Formalities</b>	<ul style="list-style-type: none"> <li>- Training must take place during working hours, unless the employer can demonstrate that this is impossible to organise;</li> </ul>
<b>Consequences</b>	<ul style="list-style-type: none"> <li>- The time of attending the training = working time.</li> <li>- The training cannot be the subject of a training clause</li> </ul>
<b>Entry into force</b>	10 <sup>th</sup> day following its publication in the Belgian Official Gazette
<b>Sanction</b>	<ul style="list-style-type: none"> <li>- Failure to provide free training → sanction <b>level 3</b> to be multiplied by the number of employees.</li> <li>- Providing training outside working hours without demonstrating that it is impossible to do so during working hours or not counting necessary training as working hours → sanction <b>level 2</b>.</li> </ul>
<b>To do's</b>	<ul style="list-style-type: none"> <li>- Provide necessary training.</li> <li>- Be careful when applying a training clause.</li> </ul>

## 2.3 Minimum predictability of work

<b>What?</b>	Employees whose work patterns are unpredictable receive extra protection.
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<b>Consequences</b>	<ul style="list-style-type: none"> <li>- <b>The part-time employee on a variable schedule</b> may refuse to perform work without adverse treatment if such work: <ul style="list-style-type: none"> <li>o does not fit into a work schedule that was communicated to him on time and/or;</li> <li>o does not fall within the daily period during which working hours can be determined and the days of the week during which working hours may be determined as provided for in the work rules</li> </ul> </li> <li>- <b>Late cancellation by the employer</b> of a service scheduled in the work schedule → the employer must still pay for this service as if it had been performed.</li> </ul>
<b>Sanction</b>	<ul style="list-style-type: none"> <li>- Treat the employee adversely, who has refused to perform a service when he was entitled to refuse it → sanction <b>level 2</b>, to be multiplied by the number of employees.</li> </ul>
<b>Entry into force</b>	10 <sup>th</sup> day following its publication in the Belgian Official Gazette.
<b>To do's</b>	<ul style="list-style-type: none"> <li>- Keep this protection in mind.</li> </ul>

### 3 PROTECTION AGAINST ADVERSE TREATMENT AND DISMISSAL

<b>What?</b>	The law provides for protection against adverse treatment and protection against dismissal for employees who lodge a file for non-compliance by the employer of rights under the Directive. The complaint may be (a) a reasoned complaint to the company, (b) to the inspectorate or (c) an action brought by the employee.
<b>Consequences</b>	<ul style="list-style-type: none"> <li>- Employer may not take any adverse action against the employee who has filed a complaint or his representatives in the company unless the reasons for doing so would be extraneous to the complaint.</li> <li>- Burden of proof lies with employer insofar as adverse measure is taken within 12 months after a complaint for non-compliance with rights under the directive or 3 months after a judicial decision has become final. Thereafter, the burden of proof lies with the employee <ul style="list-style-type: none"> <li>o Sanction → lump sum compensation of 6 months gross salary or the actual damage suffered</li> </ul> </li> <li>- Employee who exercises his rights may not be dismissed, nor may the employer take any preparatory action for dismissal <ul style="list-style-type: none"> <li>o Sanction → lump sum compensation of 6 months gross salary or</li> <li>o <u>Cannot</u> be cumulated with other compensation under a special dismissal protection procedure.</li> </ul> </li> </ul>
<b>Entry into force</b>	10 <sup>th</sup> day following its publication in the Belgian Official Gazette.

<b>To do's</b>	- Include in dismissal checklist.
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#### 4 COLLECTIVE BARGAINING AGREEMENT NO. 161

The National Labour Council has concluded Collective Bargaining agreement no. 161 on the right of an employee to request a form of employment with more predictable and secure working conditions. This CBA also includes new protection against dismissal.

As mentioned earlier, the act contains a similar provision that will continue to apply suppletively to those (contractual) employees and employers who do not fall within the scope of the CBA-Act. This will not be discussed further in this e-zine.

##### 4.1 Request for a form of work with more predictable and secure working conditions

<b>What?</b>	<ul style="list-style-type: none"> <li>- Employees with 6 months of seniority with the same employer can request a different form of employment with more predictable and secure working conditions. This may include an open-ended instead of fixed-term employment contract or a full-time instead of a part-time employment contract.</li> <li>- Employee is eligible to obtain alternative employment if             <ul style="list-style-type: none"> <li>(a) this form of work is available;</li> <li>(b) the employee has the required qualifications and competences; and</li> <li>(c) the employee accepts the proposed schedule and salary conditions.</li> </ul> </li> </ul>
<b>Formalities</b>	<ul style="list-style-type: none"> <li>- Employee:             <ul style="list-style-type: none"> <li>o Should determines for himself what form of work he finds predictable and containing secure working conditions.</li> <li>o Written request:                 <ul style="list-style-type: none"> <li>▪ Explicit mention of CBA no. 161;</li> <li>▪ Designation of the form of work with more predictable and secure working conditions;</li> <li>▪ Desired start date.</li> </ul> </li> <li>o At least 3 months before the desired start, unless a shorter deadline was agreed upon at the sector or company level.</li> <li>o (a) By registered mail, (b) by hand delivery of writing with signature for receipt or (c) an electronic transmission with acknowledgement of receipt.</li> <li>o Application can be made once per 12-month period.</li> </ul> </li> <li>- Employer:</li> </ul>

	<ul style="list-style-type: none"> <li>○ Provide substantiated, written or electronic refusal, counterproposal or deferral;</li> <li>○ From date of application within 1 month (or 2 months if employer employs less than 20 employees).</li> </ul>
<b>To do's</b>	<ul style="list-style-type: none"> <li>- Respond to your employee's request within the deadline;</li> <li>- Consider arguments for refusing, delaying or counter-proposing the request.</li> </ul>

#### 4.2 Safeguards for the exercise of the right to request a form of employment with more secure and predictable working conditions

<b>What?</b>	The CBA provides protection against adverse treatment (e.g. non-renewal of fixed-term employment contract) and protection against dismissal.
<b>No adverse measures</b>	<ul style="list-style-type: none"> <li>- Employer may not take any adverse action against the employee submitting the request, except for reasons that are extraneous to the exercise of the rights under CBA no. 161 (reversal of burden of proof).</li> <li>- From submission of written application until 2 months (a) after start of other form of work, (b) after refusal or (c) after the requested start date in which no other form of work was started.</li> <li>- <b>Sanction:</b> Compensation of at least 2 months' salary and a maximum of 3 months' salary.</li> </ul>
<b>Protection against dismissal</b>	<ul style="list-style-type: none"> <li>- Employer may not dismiss employee who requests form of work with more predictable and secure conditions, except for reasons that are extraneous to this (reversal of burden of proof);</li> <li>- Equivalent to dismissal: making any preparation for dismissal;</li> <li>- As of submission of written application until 2 months (a) after start of other form of work, (b) after refusal or (c) after requested start date in which no other form of work was started</li> <li>- <b>Sanction:</b> Compensation of at least 4 months' salary and a maximum of 6 months' salary.</li> </ul>
<b>Cumulative damages?</b>	<ul style="list-style-type: none"> <li>- Both compensations cannot be cumulated with each other and cannot be cumulated with any other compensation due to the termination of the employment contract (e.g. protection compensation, compensation due to discrimination or compensation due to abuse of dismissal right).</li> <li>- Can be cumulated with the severance pay, a non-compete fee, a client indemnity or an additional fee paid on top of social benefits.</li> </ul>
<b>To do's</b>	<ul style="list-style-type: none"> <li>- Include in dismissal checklist.</li> </ul>