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Belgium: Working time flexibility

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Belgium

Phase:

Management

Type:

Working time flexibility

Last modified: 10 December, 2021

Native name:

Loi du 29 mars 2012 portant des dispositions diverses relatives au travail/Wet 29 maart 2012 houdende diverse bepalingen; Arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs complété par les arrêtés royaux du 26 mars 2003, 29 mars 2006 and 1 septembre 2006/Besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders aangevuld met Koninklijk besluit van 26 maart 2003, 29 maart 2006 en 1 september 2006; Loi de redressement contenant des dispositions sociales du 22 janvier 1985/Herstelwet houdende sociale bepalingen van 22 januari 1985

English name:

Labour Act of 29 March 2012 containing various provisions relating to work; Law-decree of 28 December 1944 on social security for employees, completed with royal decrees of 26 March 2003, 29 March 2006 and 1 September 2006; Law of 22 January 1985 on social provisions

Article

Labour Act of 29 March 2012: Articles 20, 22, 23, 24, 25, 26, 27 and 292; Law-decree of 28 December 1944 (completed with Royal decrees of 26 March 2003, 29 March 2006, and 1 September 2006), whole law; Law of 22 January 1985: 99-107bis

Description

The laws in question include a series of provisions regarding working-time flexibiliy, as detailed below.

The daily eight-hour working time limit can be exceeded in response to an extraordinary workload

An employee may work a maximum of 11 hours per day and 50 hours per week. Overtime work entitles the worker to be paid at least 50% extra wage during weekdays and 100% on Sundays and public holidays. A distinction has to be made between punctual and structural overtime schemes:

- The aim of the punctual overtime schemes is to provide more flexible opportunities for companies to respond to the market needs. In this case, the longer working days are allowed within a certain period, which has to be agreed upon by unions at the company level or, in some cases, defined by a royal decree. At the end of this period, the overtime work entitles to extra pay and/or to paid leaves.
- The structural overtime schemes aim to define a way to manage human resources. These schemes are regulated by royal decrees and/or sectoral collective agreements and/or company's agreements. The agreement (or the law) usually defines a period of reference - such as a quarter or a year - during which the overtime work has to be counterbalanced by paid leaves and/or financial compensation in order to fit with the regulations on the average maximum working time limits per week.

Temporary unemployment and reduction in working time in case of economic hardship

The law-decree of 28 December 1944 on social security of workers (temporary unemployment), completed with legal decrees of 3 May 1999, 26 March 2003, 29 March 2006 and 1 September 2006, suggests that employers may suspend some workers from working, either partially or totally, in case of economic hardship.

The employer may establish a system of temporary unemployment for workers by totally suspending the execution of the employment contract or by establishing a system of short-time working. The scheme is applicable to a certain number of employees and only after exhausting their recuperation days.

A total (during all days of the week) suspension of employment contracts is possible for a period of four weeks at a time, after the period of 4 weeks it is obligated to have at least one working week before starting a new period of suspension (either full or partial).

Partial suspension is possible as well, in the form of either a small suspension or large suspension. With a small suspension the employee is obliged to work either at least 3 days per week or at least one week every two weeks. With large suspension he/she works less than 3 days a week or less than 1 week every two weeks. The maximum duration of a short suspension is 12 months (the end date has to be defined clearly), for large suspension it is 3 months.

Short-time working is available in the private sector and the semi-public sector (the latter referring to public enterprises with an economic aspect, such as the rail service and the postal service). It applies to blue-collar workers, to employees during an economic downturn, and to those whose employability has been impacted by bad weather or an unforeseen event such as a technical accident. The measure must involve a group of workers, such as all those from one unit within a company or all blue-collar workers, and it also has to be temporary.

The decrease in working time must be formally established by a collective agreement at the sector or company level or in the company's internal rules, thus requiring the agreement of the trade unions.

The income is assessed based on a worker's last monthly wage and cannot exceed a maximum of €2,700.75 per month (as of 2019). Since January 2016, workers receive 65% of their salary regardless of their family situation.

The law decree of 28 December 1944 also extended the measure to temporary workers and to those on a fixed-term contract. In cases of reduced working time, a variety of regimes or durations are possible.

A maximum period of three months is placed on cases where the employer has reduced working time to less than three days per week or, on a fortnightly schedule, to one week off and more than two days worked the following week. By royal decree, a maximum period of four weeks is extended to cases where work has been reduced to less than two days a week without specific derogation.

These cases are generally dependent on the existence of a collective agreement. The employees remain under contract with their employer during periods of temporary unemployment, even though the operation of the contract is suspended, and they retain all rights related to the contract. An additional right is conceded to workers on temporary unemployment, who are exempt from the requirement to give their employer notice of their intention to leave in order to work elsewhere.

Workers and employees are not protected from dismissal during temporary unemployment, but the period of dismissal notice may only begin after the temporary unemployment period has elapsed. Workers' long-term entitlements to pension, social security or health benefits are not negatively affected in situations where they are put on temporary unemployment. Temporary unemployment days are in the same category as days taken for sick leave – although not worked, they count towards the calculation of all benefits. This is financed by the social security budget of the state. The employer must notify the local branch of the [National Employment Office \(Office National de Sécurité sociale – ONEM/Rijksdienst voor Arbeidsvoorziening – RVA\)](#), the federal agency responsible for the payment of unemployment benefits, as well as the workers affected and the workers' representatives at least one week in advance.

Temporary unemployment in the COVID-19 crisis

As a response to the COVID-19 crisis, between 13 March and 30 June 2020, temporary unemployment due to COVID-19 is considered as temporary unemployment due to force majeure, making the support also available to white-collar workers. It has also been extended to interim workers (among other non-standard contracts) and to employees of Belgium-based companies stranded abroad or placed in quarantine after returning from an infected region.

For the duration of the restrictive measures, the employer is no longer obliged to notify the local branch of the National Employment Office, and the form to submit the application for benefits to the designated payment institution has been simplified.

Between 1 February and 30 June 2020, employees on partial unemployment receive a benefit amounting to 70% of their average monthly salary (capped at € 2,754.76). Employees temporarily unemployed due to force majeure receive a supplement of €5.63 per day on top of the unemployment benefit. A withholding tax on professional income of 26.75% is deducted from the benefit. Workers receive an advance payment of €1,450 while their dossier is being processed.

On 10 June 2021 it was announced that the temporary unemployment system with the simplified procedure because of the Covid-19 crisis has been extended up and until 30 September 2021. It is possible that the system will be extended after that as well, this depends however on the further evolution of the economic and general health situation.

Time credit model

Another approach used to reduce working time is the time credit model, based on the legal framework of the law of 22 January 1985. Later, this framework was complemented by several collective agreements (77, 77bis and 103) in order to define what a time credit is. According to this scheme, the employees can take a complete interruption, a half time reduction or a one-fifth reduction of their working time. The complete interruption and the half time reduction apply for one year, and are extendible up to five years by collective agreement. Women aged up to 50 are the main users of the time credit entitlements and the reduction of the working hours being the most used by the group. The one-fifth reduction applies for five years in general and without any restriction for employees aged 50 and over. The one-fifth reduction of working hours for employees aged 50 and over, however, is also commonly used by male workers. Given the unlimited duration of the entitlement for employees aged 50 and over, this particular system can be seen as a part-time early retirement scheme aiming to alleviate the end of a career. This scheme is usually in line with a proportional wage cut. If requirements are met (age, seniority, etc.), employees may receive an 'interruption allowance' provided by the National Employment Office. In this case, by reducing working time without any particular effects on total income, public authorities expect to extend the working lives.

This time credit also foresees that 5% of the total number of workers in a company have the possibility to reduce their working times by one fifth of the total. The quota of 5% of simultaneous absence within the firm is determined by the National Employment Office, but only for companies employing more than 10 workers. The main goal of the quota is to ensure the continuity of work. However, this measure concerns every worker in the company and, therefore, this is not specific to older workers. Nevertheless, it seems that many companies have informal agreements with the older workers who want to be in this system, even in cases where this would imply that the quota of 5% is exceeded.

Comments

Temporary unemployment is often used by SMEs in Belgium. Funded by the national government, this instrument is established and well-known. It has a strong level of legitimacy among the social partners and the government. It offers employers both certainty and flexibility in relation to staffing levels. The scheme leaves the employees free to choose whether or not to adhere to full or partial temporary unemployment in the case of partial temporary unemployment. It enables companies to retain their human capital (and, to a lesser extent, to provide training). In addition, employees' income is cushioned during periods of temporary unemployment and access to long-term benefits

and entitlements is not negatively affected.

An important downside to the measure is the fact that it transfers the burden of the cost of flexibility from the company level to the societal level, with public authorities paying a part of the unemployment benefit. The system can be hijacked by employers, often with the workers' approval, and turned into an illicit means of avoiding taxes. In such cases, workers on temporary unemployment continue to work and are illegally paid by the company to do so. In addition, the two-week waiting period for approval of temporary unemployment requests from employers poses problems in terms of work planning and this leads to employers making precautionary applications for temporary unemployment.

The time credit model limits the impact of a working time reduction by providing income support and enabling employees to keep their social security level. The time credit is also useful in keeping older workers in the labour market.

Uptake of time credit model

Year	Total
2010	132,319
2011	135,786
2012	136,391
2013	132,728
2014	134,581
2017	117,922
2018	111,399
2019	107,392
2020	95,000

Source: Federal unemployment services (RVA/ONEM) (https://www.rva.be/sites/default/files/assets/presse/IC_CT/Cijfers_LOTK_202102.pdf)

Cost covered by

Employer
National government

Involved actors other than national government

Employer organisation
Public employment service
Trade union
Works council
Other

Involvement others











ONEM/RVA, the federal agency responsible for the payment of unemployment benefits

Thresholds

No, applicable in all circumstances

Sources

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- Belgian General Federation of Labour (FGTB/ABVV)
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- Mahy, B. (2005), Flexibilité des contrats et demande de travail en Belgique , Reflets et Perspectives, 2005/2
- Belgian Portal of public and official information: Temporary Unemployment (FR) - (NL)
- Federal Public Service Employment, Labour and Social Dialogue: Temporary unemployment for economic reasons: (FR) - (NL)
- National Office of Social Security: Temporary unemployment
- Temporary unemployment
- Federal Public Service of Justice (in French - in Dutch)
- Wet houdende diverse bepalingen

-  [Federal Public Service Employment, Labour and Social Dialogue: Time-credit \(NL\)](#)
-  [National Office of Employment: Time- credit](#)
-  [Herstelwet houdende sociale bepalingen](#)
-  [Collective agreement N°103 concluded at the National Work Council \(FR\) - \(NL\)](#)
-  [ERM database on restructuring support instruments - temporary unemployment support](#)
-  [ONEM \(2019\), A combien s'élève votre allocation en cas de chômage temporaire?](#)
-  [ONEM \(2019\), Chiffres Interruption de carrière, congés thématiques et crédit-temps - mai 2019](#)
-  [OECD Overview of policy responses in the COVID-19 crisis](#)
-  [ILO overview of policy responses in the COVID-19 crisis](#)
-  [Extension of temporary unemployment due to force majeure](#)

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