Reliance | Littler

MEMO

Subject : **THE BELGIAN LABOUR DEAL**
From: Reliance | Littler
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INTRODUCTION

The Belgian Parliament has approved Act of 3 October 2022, known as the "Labour Deal", with some provisions coming into effect as early as 20 November 2022. With the dual objective of putting more people to work and improving the work-life balance of workers, the Labour Deal introduces a series of measures with new obligations for employers and a limited window for implementation.

This memo outlines various legal and practical implications for employers, as well as recommendations for compliance. It is for informational purposes only, and not intended to substitute for legal advice.

We are available for any questions or follow up to assist you in the implementation of these new measures within your company.

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MEASURES IMPROVING FLEXIBILITY AND WORK-LIFE BALANCE

FOUR-DAY WEEK & ALTERNATING WORK SCHEDULES

Description of the measures	The Four-Day Week Under the Labour Deal, employees can spread the overall workweek over a four-day week (instead of five or six days). For this arrangement, employers can incorporate into the work regulations that the daily limit of the working time of a full-time worker be increased to 9.5 hours/day if the worker performs their normal full-time duties during a four-day week. If the actual weekly working time exceeds 38 hours (max. 40 hours with 12 compensation days), only a collective bargaining agreement (hereinafter "CBA") (at the industry level or at the company level) can provide that the daily working time be equal to the actual weekly working time divided by four. Furthermore, the explanatory memorandum of the Act states that this new system applies "*without jeopardising the provisions concerning annual leave and vacation entitlement*". This means that, as it currently stands, employees subject to the four-day week regime are entitled to only 16 days of annual leave instead of 20. The logic is always to allow four weeks of leave per year and no more (so 16 days in a four-day regime, 20 in a five-day regime and 24 in a six-day regime). Alternating work schedules Additionally, the employer can incorporate alternating work schedules into the work regulations. In practice, this means that work can be organised according to a cycle that extends over a period of two consecutive weeks (or four as an exception for the third trimester of the year) during which the work of the first week is compensated by the work of the second week, in order to respect on average the normal weekly working time. During the cycle, employees can work up to nine hours per day and up to 45 hours per week. *Example*: A full-time worker works 45 hours in week A and 31 hours in week B. How to introduce such regimes within the company? These regimes can be introduced in the work regulations on a collective basis; then, they can be activated individually for each employee on a voluntary basis. In fact, employees have the right to make a written request to work under one of these regimes.

	If the employer refuses the request, reasons for refusal must be given in writing within one month. An employee who believes that the refusal is not validly justified can file a claim before the labour authorities. If the employer accepts the request, an addendum to the employment contract must be concluded, which will remain valid for a renewable period of six months and must stipulate: - For the four-day week: the concrete working hours, or - For the alternating work schedules: the start and end dates of the period during which this regime will apply. Please note that employees working on a four-day week are not authorized to work overtime during the other days of the week. Employees working under an alternating work regime may work overtime only under specific conditions. The employee's written request and the agreement must be retained for five years, on pain of criminal sanction, and made available for review by the labour authorities, as well as for consultation in the same place as the work regulations. <u>Protection against dismissal</u> Employees having made a request to work under one of these regimes are protected against dismissal, meaning that the employer may not dismiss the employee for reasons related to this request. The Labour Deal does not provide for a sanction in case of violation of this protection, but the employee can present a claim before the labour jurisdictions and seek damages (in several other legislations providing for a protection against dismissal, the sanction is fixed by the statutory law at six months' remuneration which could be claimed by analogy by the employee).
Practical actions	❶If you **wish** to implement the four-day week or alternating work schedule: ⇨ Amend the work regulations (or enter into a CBA) by adding a "Four-Day Week" or "Alternating Work Schedules" chapter; exclude the list of functions (or departments) for which the regime is not available; identify whether the regime is not available for positions in a telework arrangement, or, if required, exclude the combination of telework and a four-day week and an alternating work schedule. ⇨ Prepare a template individual addendum to the employment agreement. ⇨ Anticipate a list of arguments to refuse requests of individual employees. ⇨ Take the necessary measures to make the documents available for consultation and for their conservation. ❷ If you do **not wish** to implement the four-day week or alternating work schedule: ⇨ Prepare for a request from an individual employee and anticipate a list of arguments to refuse. Bear in mind that if the employee considers that the refusal is not validly justified, he/she could introduce a claim before the labour jurisdictions.

	⇨ Prepare for a request from your Work Council to include one of the regimes or both in the work regulations and anticipate a list of arguments to refuse. ⇨ Note that if no agreement is reached in the Work Council on the provisions of the work regulation, the dispute is brought for conciliation to the labour inspection authorities and, if no conciliation is reached, the dispute is settled by the joint committee. ⇨ *Our advice*: Even if there is strictly no legal obligation for employers to introduce a four-day week regime or alternating work schedule, we recommend anticipating requests by providing for such regime in your work regulations (with a specific scope of application and conditions) in order to minimize the risk of disputes. ❸ When you consider a dismissal, keep the protection against dismissal in mind to minimize claims (e.g., by adding the four-day week and alternating work schedule to a "dismissal checklist").
Entry into force	Employers can implement a four-day week or alternating work schedule starting on 20 November 2022.

EARLIER ANNOUNCEMENT OF VARIABLE WORK SCHEDULES FOR PART-TIME EMPLOYEES

Description of the measure	Part-time employees with a variable work schedule (e.g., changing each week or fortnight) must receive their work schedules seven working days in advance (instead of five). At the industry level, a CBA can provide for a shorter period, limited to an absolute minimum of three work days (instead of one).
Practical actions	Ensure part-time variable work schedules are timely notified and amend the work regulations in this respect.
Entry into force	20 November 2022 If variable part-time work hours are already in use within the company, the work regulations must be amended by 20 August 2023. Until the amended work regulations come into force, but no later than 20 August 2023, the five-day rule that was in force until 20 November 2022, remains applicable.

THE RIGHT FOR EMPLOYEES TO DISCONNECT FROM WORK

Description of the measure	Unless a CBA is concluded in this regard at the national or industry level, companies that employ at least 20 employees must adopt a CBA concluded at the company level (to be communicated to the Ministry of Employment - Collective Relations Department) or a new provision in its work regulations (to be communicated to the social legislation control authorities) providing for the modalities of the worker's right to disconnect and the measures taken by the company to regulate the use of digital tools. More specifically, the following must be provided for: - the practical modalities ensuring that the employee cannot to be reached outside of work hours; - the instructions to employees about how to use digital tools to ensure that rest periods, vacations, and the private and family life are guaranteed; - the training and awareness-raising actions/measures for employees and management personnel regarding the reasonable use of digital tools and the risks linked to excessive connection.
Practical actions	If your company is employing at least 20 employees: ⇨ Decide on the measures you wish to implement within the company (e.g., adopt an internal policy to restrict access to the company's email and internet to business use only), get in touch with training organisations. ⇨ Start discussions with the Work Council to conclude a CBA at the company level. ⇨ Draft the amendments to be included in your work regulations. We can assist you with the preparation of a CBA/amendments.
Entry into force	1 January 2023

MEASURES TO INCREASE THE CHANCES OF FINDING A NEW JOB AFTER DISMISSAL

TRANSITION PATH & EMPLOYABILITY MEASURES AFTER DISMISSAL

Description of the measures	Transition path **In case of dismissal with a notice period**, employers can offer a so-called "transition path" to the employee and the employee can request such transition path from the employer. This transition path allows the employee to work for another employer (the user) for a maximum duration equivalent to the notice period within the framework of a four-parties agreement (i.e., the original employer, the employer-user, the employee, and a temporary work agency (interim) or a regional public employment service (i.e., VDAB, Forem, Actiris)). The employee's wages will be paid by the original employer and the remuneration must equal the same amount that was paid by the original employer or that the employer-user is paying for the same position (whichever is higher). Any difference with the remuneration paid by the original employer should be compensated by the employer-user. The employee and the employer-user have the right to terminate the transition path in advance by giving notice in accordance with the notice requirements set forth in the Act of 3 July 1978 on employment contracts. At the end of the transition path, the employer-user must hire the employee with an unlimited duration employment contract. If no hiring takes place, the employer-user must pay the employee a compensation (the remuneration corresponding to half of the duration of the transition path). The employee who joins the employer-user acquires seniority from the beginning of the transition path and keeps all the seniority acquired with the previous employer for what concerns the right to time credit, career break or thematic leave. Employability measures **In case of dismissal with a notice period of at least 30 weeks**, the employer must offer additional measures to encourage employment, the so-called "employability measures". In the case of dismissal with a notice period to be served, the employee has the right, from the beginning of the notice period, to be absent from work (while continuing to receive the remuneration) to follow the employability measures.

	In case of dismissal with payment of an indemnity in lieu of notice, the employee must be available to follow the abovementioned measures. Employees who are following a transition path are not entitled to these additional measures. The measure to be taken by the employer are, for example, additional training, coaching, outplacement, etc., and come on top of the mandatory four weeks outplacement (when applicable). The budget the employer must allocate to these new measures must correspond to the employer's social security contributions based on the remuneration corresponding to 1/3rd of the notice period. Under the Labour Deal, for purposes of this new measure, the notice period is split into two parts: - the first part corresponds to 2/3rd of the notice period with a minimum of 26 weeks, - the second part corresponds to the rest of the notice period.
Practical actions	❶ Consider the opportunity to propose transition paths and get in touch with temporary work agency (interim) or a regional public employment service (i.e., VDAB, Forem, Actiris). ❷ Determine what additional measures can be proposed (additional training, coaching, outplacement) if applicable in consultation with your preferred outplacement organisation. Then, - **For any dismissal with a notice period** o Consider the opportunity to propose a transition path to your employee - **For any dismissal with a notice period or an indemnity in lieu of notice of at least 30 weeks** o Keep in mind that additional employability measures must be offered (e.g., by adding the employability to a "dismissal checklist") o If you did not propose a transition path to your employee, offer employability measures ❸ Consider the opportunity to be an employer-user in the framework of transition paths or, if you are a services provider, to act as an intermediary between an employer and an employer-user in such context.
Entry in force	Employers can implement transition paths from 20 November 2022 Employability measures are applicable to dismissals occurring from 1 January 2023

MEASURES REGARDING EMPLOYEE'S RIGHT TO TRAINING

EMPLOYEE'S INDIVIDUAL RIGHT TO TRAINING & YEARLY TRAINING PLAN

Description of the measure	The new legislation grants employees an individual right to training and provides for the obligation (for certain employers only) to establish a yearly training plan. For these new measures, we can distinguish three categories of employers: 1) Employers with less than 10 employees: ○ no right to training ○ no annual training plan 2) Employers with between 10 and 20 employees: ○ must guarantee each full-time worker employed during the whole year(*) a right to minimum one training day/year on average over a period of five years. Before 30 September of each year, the employer determines the number of training days to which employees are entitled ○ no annual training plan 3) Employers with at least 20 employees: ○ must guarantee each full-time worker employed during the whole year(*) a right to four training days/year in 2023 and then five days/year as from 1 January 2024 on average over a period of five years (unless a CBA provides otherwise - so far, such CBA does not yet exist) ○ will have to create a mandatory training plan, each year before 31 March (*) Employees who are not employed full time and/or who are not covered by an employment contract throughout the whole calendar year are entitled to a reduced number of training days calculated in accordance with the new legal provisions. The explanatory memorandum of the Act recalls that the right to training is a right of the employee and not an obligation. Therefore, the non-exercise of this right (not taking the training days) can never be, for example, a reason for dismissal.

	Introduction of the individual right to training The individual right to training can be introduced by a CBA at the industry level by 30 September 2023 or, in the absence of such CBA, by the employer through the creation of an individual training account for each employee. In practice, the individual training account is a paper or an electronic form containing: 1) General information such as: the complete identity of the employee, the work regime of the employee, the competent joint committee, 2) Information related to training: o the training credit, i.e., the number of training days available to the employee each year (to be updated as soon as one day is used), o the number of training days attended and those remaining to be used or carried over to the following year, o the so-called "growth trajectory" that determines how the number of training days is increased from 1 January 2023 to achieve an individual right to training of at least five days per year from 1 January 2024. At least once a year, the employer shall inform the employee of the balance of the training credit and remind them of their right to consult the individual training account and the right to correct errors. Content of trainings The training courses that count towards the number of individual training days include: - formal trainings: courses and workshops designed by trainers or speakers, organized by the trainer or a training institution, in a place clearly separated from the workplace, - informal trainings: work-related training self-organized by the individual learner or by a group of learners, - trainings in matters relating to well-being at work. Attendance, remuneration and termination Employees can attend trainings during or outside working hours. If the training takes place outside working hours, only the normal salary is due, excluding any extra salary. If the employee resigns or is terminated for cause, the employee is not entitled to take the training credit days before the actual end of the employment contract. If the employee is terminated for no fault of their own, they are still entitled to the accrued training days. In the event of immediate termination, the remaining credit hours are an acquired benefit under the employment contract. In the event of dismissal not attributable to the employee, the employee has the right to take

	the training credit before the end of the employment contract. If the period of notice is replaced in whole or in part by an indemnity in lieu of notice, this training credit still open is considered as a benefit acquired under the contract. <u>The yearly training plan</u> For employers with at least 20 employees, a mandatory training plan must be established each year before 31 March if applicable in consultation with the Work Council or the union delegation, or in the absence of these bodies, directly with the employees to whom the draft plan must be submitted by 15 March at the latest. The plan (in either paper or electronic form) - must list the training courses and the target group of employees for whom they are intended (e.g., function by function), - must provide for formal trainings (courses and workshops designed by trainers or speakers, organized by the trainer or a training institution, in a place clearly separated from the workplace) and informal trainings (work-related training self-organized by the individual learner or by a group of learners), - must explain how it will guarantee the individual right to training as provided for by the Labour Deal, - must pay particular attention to certain categories of employees (e.g., those over 50), to function in shortage occupation and to gender issues, - must meet the minimum requirements determined by a CBA at the industry level if any (such CBA does not yet exist). <u>Other obligations regarding training resulting from the implementation of EU Directive 2019/1152</u> The employer is obliged to provide free training to the employee if such training is necessary for the performance of the work for which they were hired. Such obligation must comply with the Act of 7 October 2022 transposing EU Directive 2019/1152 of 20 June 2019 on transparent and predictable working conditions. The time during which the employee follows this type of training must be considered as working time. This type of training must also take place during working hours unless it can be demonstrated that it is not possible to organise it during working hours.

Practical actions	❶ Employers with less than 10 employees: ⇨ none ❷Employers with between 10 and 20 employees: ⇨ Define trainings to be offered to employees ⇨ Create an individual training account form to keep track of training ensuring minimum one training day/year on average over a period of five years ⇨ Once a year, inform the employee of the balance of the training credit and remind them of their right to consult the individual training account and the right to correct errors ⇨ Keep yourself informed about the conclusion of a CBA in your sector about individual right to training ⇨ When considering a dismissal, bear in mind that remaining training credit is considered a benefit for the calculation of the indemnity in lieu of notice ❸Employers with at least 20 employees: ⇨ Define trainings to be offered to employees ⇨ Create an individual training account form to keep track of trainings ensuring four training days/year in 2023 and then five days/year as from 1 January 2024 on average over a period of five years ⇨ Once a year, inform the employee of the balance of the training credit and remind them of their right to consult the individual training account and the right to correct errors ⇨ Keep yourself informed about the conclusion of a CBA in your sector about individual right to training ⇨ Establish your yearly training plan o Define useful training measures to start consultation of the work council/union delegation or employees o Ensure the submission of your draft plan for 15 March 2023 and the implementation of the plan for 31 March 2023
Entry into force	Individual right to training: provisions in force as from 20 November 2022 – individual right to training to be guaranteed as from 1 January 2023 Training plan: provisions already in force - first training plan under the Labour Deal must be implemented by 31 March 2023

MEASURES REGARDING PLATFORM WORKERS AND E-COMMERCE

PLATFORM WORKERS

Description of the measure	This measure only concerns companies that are digital platform operators (like Uber, Deliveroo, etc.). The employment relationship with a platform worker is now presumed, until proven otherwise, to be performed in the context of an employment contract when, from the analysis of the employment relationship, it appears that certain criteria are met (the criteria provided for by the Labour Deal are directly inspired by the proposed EU Direction on improving working conditions in platform work). Note that a platform operator must offer an insurance for physical damage to self-employed platform workers. This obligation offers an equivalent lever of protection when compared with the mandatory insurance applicable to employees.
Practical actions	Evaluate the nature of the employment relationship with your platform worker according to the criteria set out in the Labour Deal to assess the risk of reclassification into employee and determine whether their status should be adapted. Consider the opportunity to obtain an insurance policy for the self-employed platform worker, even if the entry into force of this obligation has yet to be determined by Royal Decree.
Entry into force	Employee presumption: 1 January 2023 Insurance obligation: to be determined

NIGHT WORK IN E-COMMERCE

Description of the measure	This measure applies only to providers of logistics and support services for e-commerce of movable goods. Employers can participate in an experiment of up to 18 months in which night work (between 8pm and midnight) can be established within the company without having to follow the legal procedure to amend the work regulations. The experiment should be implemented in consultation with the collective bodies within the company or the employees and by informing the competent supervisory authorities Employees can participate in this experience on a voluntary basis and are protected against dismissal on ground related to their wish to participate in such experiment.
Practical actions	Consider the opportunity to participate in such an experiment. We can provide you with the practical details concerning its implementation.
Entry into force	Employers can start the night work experiment from 20 November 2022

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