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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 does need a reason to lawfully terminate an employment relationship, unless the employer terminates the relationship during a validly agreed trial period (in which case no specific reason is required).

A dismissal with notice requires a reason that is based either on the considered employee's personal behaviour or performances, or on so-called economic reasons (e.g., restructuration or strategic decision to abolish the employee's position).

A dismissal with immediate effect requires a serious misconduct of the employee, which must make it immediately and definitely impossible to pursue the employment relationship.

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?

A specific collective dismissal procedure is to be followed where an employer intends to dismiss at least 7 employees over a period of 30 days or 15 employees over a period of 90 days for economic reasons.

In the framework of a collective dismissal procedure, the employer is required to negotiate a social plan with the staff delegates and trade union representatives. If no agreement is reached between the employer and the staff delegates and trade union representatives within 15 days, a conciliation procedure must be initiated before the National Conciliation Office.

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

Luxembourg labour law specifically foresees that any transfer of a business (such as a business sale) necessarily entails the transfer of all existing employment relationships, and that the business transfer cannot constitute a valid reason for dismissal.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

No, employees benefit from termination rights as of the start of the employment relationship. However, where a trial period has been agreed, an employee may be validly dismissed (during such trial period) without any particular reason.

5. 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?

In the case of a dismissal with notice, the employer must observe:

- a 2 months' notice period where the employee's length of service is of between 0 and 5 years,
- a 4 months' notice period where the employee's length of service is of between 5 and 10 years,
- and a 6 months' notice period where the employee's length of service is above 10 years.

In the case of a resignation, the employee must observe:

- a 1 month notice period where the employee's length of service is of between 0 and 5 years,
- a 2 months' notice period where the employee's length of service is of between 5 and 10 years,
- and a 3 months' notice period where the employee's length of service is above 10 years.

An employment contract may validly deviate from the abovementioned notice periods if and only if the deviation is favourable to the employee (i.e., by agreeing upon a longer notice period in case of dismissal and/or a shorter notice period in case of resignation). However, in practice, it is rare to negotiate notice periods that would deviate from the notice periods that are foreseen by the law.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

As such, an employer cannot (unilaterally) decide to make a payment instead of giving notice, but in theory, an employer and an employee can always agree to a payment in lieu of notice, either in the framework of a termination by mutual agreement, or (even) in the framework of a settlement agreement (following a dismissal).

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

Yes, an employer can exempt an employee from work during the notice period (either immediately as of the notification of the dismissal or resignation, or later on during the notice period).

8. 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, Luxembourg law prescribes a specific dismissal procedure.

If an employer employs 150 employees or more, the employer must first summon the employee to a pre-dismissal interview, during which the employer must state the reason(s) for the contemplated dismissal and allow the employee to comment.

In the case of a dismissal with notice, the employer must notify the dismissal by way of a registered letter with acknowledgement of receipt (or, alternatively, by way of a letter handed to and signed by the employee). The letter of dismissal does not need to state the reason(s) for dismissal. The notice period starts running from the 15th of the current month or from the 1st of the following month, depending on whether the letter is sent before or after the 15th of the month.

The employee may request that the employer states the reason(s) for dismissal, by way of a registered letter with acknowledgement of receipt that must be sent to the employer within one month of the receipt of the dismissal letter. If so, the employer must state the reason(s) for dismissal in writing (in a precise, detailed and exhaustive manner) within one month of the receipt of the letter by which the employee requested the employer to state the reason(s) for dismissal.

In the case of a dismissal with immediate effect, the reason(s) for dismissal (i.e., a serious misconduct on the employee's side) must be stated in the letter of dismissal itself, which must be sent within one month as of the day on which the employer became aware of the employee's serious misconduct.

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

If the employer fails to state the reason(s) for dismissal in due time (i.e., within the one month deadline as of the receipt of the letter by which the employee requested the employer to state the reason(s) for dismissal, or in the dismissal letter itself in the case of a dismissal with immediate effect) and if the employee initiates legal proceedings to challenge the validity of the dismissal before the competent court, the court will find the dismissal abusive and condemn the employer to pay damages to the employee.

In other cases, notably if the employer (who employs 150 employees or more) fails to summon the employee to a pre-dismissal interview, the employee is only entitled to a compensation which cannot exceed one month's salary.

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

Collective labour agreements can contain provisions that deviate from the legal requirements described above in a manner that is favourable to the employee. In practice, collective labour agreements often provide for longer notice periods for dismissals, or for the obligation to summon an employee to a pre-dismissal interview even if the employer employs less than 150 employees.

11. 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?

The employer is normally not required to obtain the permission of or inform a third party before being able to

terminate an employment relationship.

However, in specific situations, i.e., where the employee is legally protected against dismissals (e.g., when the employee is a staff delegate), the employer must obtain a permission of the Labour court to dismiss the employee.

Furthermore, where the employer decides to dismiss an employee for economic reasons, the employer has an obligation to inform the Economic Committee thereof, at the latest when the employer sends out the letter of dismissal.

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

Employees are protected in this respect by the fact that a dismissal cannot be validly based on reasons that are discriminatory, i.e., that relate to gender, religion, convictions, sexual orientation, age, disability, nationality, race or ethnicity, and that it is forbidden to dismiss an employee who had protested against harassment, as a retaliation.

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

Where a dismissal would be based on discriminatory grounds or would constitute a retaliation against an employee who had protested against harassment, the concerned employee could initiate legal proceedings in order to have the competent court rule that the dismissal is null and void, and that the employee should be reinstated.

14. 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 – mainly: staff delegates, pregnant women, employees on parental leave and employees on sickness leave – are legally protected against dismissal.

In most cases, an employee who would benefit from a legal protection against dismissal (but would be dismissed regardless) would be able to initiate legal proceedings to have the competent court find the dismissal abusive and condemn the employer to pay damages to the employee. In certain cases (e.g. employee who is pregnant), the employee could initiate legal proceedings to have the competent court rule that the dismissal is null and void.

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

Yes, whistleblowers are protected against all forms of retaliation, including dismissal. A whistleblower who would be dismissed as a retaliation could initiate legal proceedings to have the competent court rule that the dismissal is null and void.

16. 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?

Financial difficulties may constitute a valid reason for a dismissal with notice, and in theory, an employer can re-engage a dismissed employee (later on) on less favourable terms, yes.

17. 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?

The main risk associated with the use of artificial intelligence in a recruitment or termination process relates to personal data protection laws, as the use of artificial intelligence can imply the transfer of personal data to a third party.

To our knowledge, there is no case-law (yet) in Luxembourg regarding an employer's use of AI or automated decision-making in the termination process.

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

A severance pay is only required in the case of a dismissal with notice (i.e., not in the case of a dismissal with immediate effect) and provided that the dismissed employee's length of service reached at least 5 years (at the end of the notice period).

The amount of the severance pay is:

- 1 month's salary where the employee's length of service is of between 5 and 10 years;
- 2 months' salary where the employee's length of service is of between 10 and 15 years;
- 3 months' salary where the employee's length of service is of between 15 and 20 years;
- 6 months' salary where the employee's length of service is of between 20 and 25 years;
- 9 months' salary where the employee's length of service is of between 25 and 30 years;
- and 12 months' salary where the employee's length of service reaches at least 30 years of service.

An employer who employs less than 20 employees may opt for an extended notice period instead of a severance pay, i.e., by granting the employee 1 additional month of notice per (and in lieu of) every 1 month of salary that would have constituted the amount of severance pay.

19. 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, an employer and an employee are in principle free to enter into a settlement agreement, by virtue of which the employee waives their rights to challenge the dismissal in consideration of the payment (by the employer) of a settlement indemnity.

A settlement agreement should be documented in writing and should state the parties' reciprocal concessions. Settlement agreements usually contain confidentiality clauses.

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

As such, it is only possible to restrict an employee from working for competitors after the termination of employment by way of a dedicated post-contractual non-competition clause that has been validly inserted in the employment contract.

The Luxembourg labour code foresees that a post-contractual non-competition clause by which an employee undertakes, for a certain period of time (max. 12 months) following the termination of the employment and on a certain territory (which cannot extend beyond the territory of the Grand-Duchy of Luxembourg), not to engage as an independent in activities similar to those of the employer, is valid, provided that the concerned employee's annual gross salary exceeds EUR 64,382.45 (index 944.43).

Luxembourg courts usually consider that a post-contractual non-competition clause may validly extend to activities that the ex-employee would carry out as an employee (of a competitor), if, on top of the conditions already mentioned, a specific financial compensation is agreed.

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

Yes. It is common practice to insert confidentiality clauses in employment contracts, pursuant to which the employee is to keep certain information confidential during as well as after the termination of employment.

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

Luxembourg law does not provide for such an obligation, but an employer and an employee may agree (contractually) that the employer will have such an obligation.

23. 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?

Based on our experience, the most common difficulties faced by employers in Luxembourg are related to the substantial and formal requirements set by Luxembourg employment law for terminating employment relationships.

In particular, employers often fail to meet the requirements set by Luxembourg law and case-law when they draft a letter stating the reason(s) for dismissal (following a formal request by a dismissed employee). Indeed: pursuant to case-law, the reason(s) for dismissal must be stated in a detailed, precise and exhaustive manner, so that both the employee and (eventually) the judge are able to properly assess the reality and seriousness of said reason(s). Employers often underestimate the degree of detail and of precision that is awaited, and believe that they will still have the possibility to explain said reason(s) in a more detailed and precise manner if and when the case is considered by the competent court – although in reality, the court will be largely bound by the exact content of the letter stating the reason(s) for dismissal (and will refuse to consider any reasons or arguments that were not stated in said letter).

Employers can mitigate these difficulties by paying special attention to the drafting of the letter stating the reason(s) for dismissal, and by properly documenting the reason(s) for dismissal early in the process (i.e., before sending out a dismissal letter or summoning the employee to a pre-dismissal interview, when required).

24. 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?

No such legal changes are planned, to our knowledge.

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