TETRALERT - LABOUR LAW

LAW ON FEASIBLE AND MANAGEABLE WORK – PART I

In our Tetraflash of 27 February 2017, we informed you that Minister Kris Peeters is determined to modernise the labour law, to bring it into step with the rapidity of economic exchanges, and to offer more flexibility so that workers are better able to reconcile the demands of their working and private lives.

On 23 February 2017, the Chamber gave the green light to the draft law on feasible and manageable work submitted to it by the Michel government on 4 January 2017. The law, baptised the "Peeters Law," was published in the Moniteur on Wednesday, 15 March.

I. INTRODUCTION

The law aims at putting in place the framework for a modernised labour law; it has two groups of provisions:

(i) The first, baptised the "base" or core, comprises provisions which shall be applied for all companies and all workers;

(ii) A second, which Minister Peeters has called the "menu," consists of a legal framework allowing the various economic sectors to develop specific rules. The menu consists of a first section on "manageable work" and a second section on "feasible work."

In this Tetralert, we set out for you the four measures which constitute the "base."

The measures of the "menu" will be presented to you in our next Tetralert (part II).

II. THE BASE

The base consists of four measures:

- annualisation of working time
- the arrangements for additional optional hours and increase of the 'internal limit';
- a new scheme concerning the training of workers;
- the legal framework for occasional telework.

1. Annualisation of working time within the scheme of the "limited flexibility"

The "limited flexibility" scheme stipulated by article 20bis of the labour law allows the employer to impose variable working hours depending on the rhythm of business activities and/or the needs of the company. By modifying

the work regulations or by concluding a collective bargaining agreement (CBA), the workers can serve up to two hours more or less than the normal daily schedule without exceeding the limit of nine hours per day and up to five hours more or less than the normal weekly schedule, without exceeding the limit of forty-five hours per week, so long as the work week in force in the company is respected on average over the course of a reference period.

Concretely, in a company in which the normal working time is set respectively at thirty-eight hours per week and at seven hours thirty-six minutes per day, within the framework of a fixed schedule, "limited flexibility" makes it possible to occupy the workers during at least five hours and thirty-six minutes and at a maximum nine hours a day; at a minimum thirty-three hours and at a maximum forty-three hours per week.

Work in excess of the daily and weekly limits, but within the limits authorised and within the displayed schedule, does not trigger payment of an overtime premium. The worker is paid on the basis of the average weekly schedule.

This "limited flexibility" requires that certain measures of advance information sharing be respected, among them the obligation to display the updated schedule at least seven days before it comes into force.

Whereas the law stipulated until now that the average work week must be respected over a reference period which cannot be greater than one year, while authorising the possibility of setting a shorter reference period, for example, a trimester, the Peeters Law establishes, in inviolable manner, a reference period equal to the calendar year (or to another period of twelve consecutive months). Henceforth, it is no longer possible to stipulate a shorter reference period.

2. Supplemental hours

2.1. Work more to earn more

In the event of supplemental hours, the law imposes, unless exceptions, (i) the payment of an overtime premium of 50% or 100% of the compensation, depending on whether the hours were worked during the week (including Saturday) or on Sundays and holidays and (ii) the granting of compensatory rest time.

Whereas the overtime premium is paid at the end of the payroll period during which the additional hours were performed, the normal compensation applied to these hours is paid at the time when the compensatory rest is granted.

The Peeters Law henceforth allows workers to voluntarily perform a quota of one hundred supplemental hours which need not be compensated by rest time. At the end of the payroll period, the worker shall receive the overtime premium linked to the supplemental hours served, as well as the normal compensation relating to these hours. The worker who opts for this system can thus earn more, since he will no longer be obliged to offset

his supplemental working time by equivalent compensatory rest time.

2.2. Raising the "internal limit"

In order to avoid forcing workers to accept a heavy work load over too long a period, the law limits the maximum number of supplemental hours that a worker can perform. In other words, once the internal limit is reached, the employer must immediately grant a compensatory rest period.

Up to now, when the reference period was three months, the internal limit was seventy-eight supplemental hours. When the reference period was twelve months, this limit was established at ninety-one hours, and could even be stretched to one hundred thirty or one hundred forty-three hours by means of an agreement within the company or via the Joint Committee.

Under the Peeters Law, the principle remains the same, but the internal limit is now established at one hundred forty-three hours, whatever the length of the reference period stipulated within the company.

If the work week in force in the company is thirty-eight hours over a reference period of twelve months, the worker must necessarily be given a rest before the end of the twenty-fourth work week if he has worked on average forty-four hours a week since the start of the reference period. Failing that, he will exceed the internal limit (24 x 44 hours – 24 x 38 hours = 144 hours). Under the same working conditions, when the reference period is three months, the worker will not have reached the internal limit at the time of mandatory granting of compensatory rest at the end of thirteen weeks of the reference period.

The "voluntary" supplemental hours at issue in the preceding point are taken into consideration for the internal limit, except for the first twenty-five hours. Put another way, the maximum internal limit is increased by twenty-five hours for the voluntary workers who perform up to one hundred "voluntary" supplemental hours.

3. The target of individual training

The present target of the private sector is to allot 1.9% of total payroll to training. That is now replaced and as from 2017 the target is five days of training per equivalent year of full time employment. This target shall be given concrete form either by the sector's collective bargaining agreement or by the creation of an "individual training account" at the company level, with its operation still to be determined.

In the absence of an initiative within the sector or the company, the workers can claim two days on average of training per year and per full working time equivalency year starting in a balanced manner between the two.

Training time gives the right to normal compensation whether it is allotted during or outside the working hours.

The legislator invites the King to stipulate a scheme of exemptions for SMEs and goes so far

as to exclude the very small companies (engaging less than ten workers), believing that in these cases training is done in an informal manner.

4. Occasional telework

The law introduces a framework for telework done on an occasional basis; this framework is more flexible than the one existing for telework arranged on a regular basis. Thus, the employer can simply write into the work regulations statements that normally are the subject of an amendment to the contract for each worker individually.

The worker can ask to benefit from it in cases of force majeure (e.g., his car is out of order), or for personal reasons (e.g., visit to a doctor) assuming that the duties he performs are compatible with telework. The worker must introduce his request within a reasonable period of time, stating the motive that justifies his request. If the employer believes that he has no right to make this request, for example, for reasons linked to the operational needs of the department or of the company, he explains this when he notifies the employee of his decision in writing.

We advise employers to modify their work regulations so as to list there, as the law authorises them, the activities and positions that are incompatible with telework. In addition, he sees to whether a computer will be put at the disposal of the worker or if he can claim lump-sum reimbursement of costs resulting from telework. Finally, the employer can also benefit from these provisions to establish the time period during which the worker must introduce his request.

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