



# GUIDE TO GOING GLOBAL EMPLOYMENT

*Belgium*



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## INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

### GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit [www.dlapiper.com](http://www.dlapiper.com) or contact:

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## BELGIUM



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official languages are Dutch, French and German.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Belgium with proper registration as employer, proper payroll registrations and proper registration of the employees. Payment of social charges on remuneration (up to approximately 27 percent for the employer portion for white-collar employees and up to approximately 13.07 percent for the employee portion) and income tax at progressive rates according to the amount of income (up to 53.5 percent, updated periodically), to be done through payroll.

### PRE-HIRE CHECKS

#### Required

Immigration compliance (work permit and/or residence permit).

#### Permissible

Criminal checks are only permissible under exceptional circumstances for specific roles and subject to proportionality requirements. Reference and education checks are common and permissible.

### IMMIGRATION

Nationals of the European Economic Area (EEA) and Switzerland, in principle, have a right to work in Belgium. For other non-Belgian nationals, a work and/or residence permit is likely to be required.

### HIRING OPTIONS

## Employee

Indefinite, fixed-term (including a specific assignment), full-time or part-time. The law provides for specific employee categories to which specific terms of employment apply, such as sales representatives, structural remote workers (ie, teleworkers or homeworkers) and students, among others.

Part-time and fixed-term employees, and, among others, sales representatives, structural remote workers (ie, homeworkers or teleworkers) and students, have the right not to be discriminated against due to their status.

## Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company. Independent contractors cannot deliver their services under an employer's authority of, and in a subordinate position towards, the principal.

## Agency worker

Agency workers are common, but may only be employed to temporarily replace an employee whose employment contract is terminated or suspended, to address an extraordinary increase of the workload, to perform exceptional work or to fill in a vacancy. Each type of agency work is subject to strict conditions and is limited in time. Agency workers can moreover only be in service with licensed interim agencies. Agency workers have the right to equal treatment to employees in relation to pay and other benefits.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

Verbal contracts are legally possible.

There are, however, specific requirements for written employment contracts with regard to specific clauses (eg, trial period, non-compete and notice) and specific contracts (eg, fixed-term, part-time and working-from-home arrangements).

### Probationary periods

It is no longer permissible to insert a trial period into an employment contract, except in an employment contract for students, temporary work or interim agency work.

### Policies

Work regulations containing, among others, applicable work schedules, an overview of disciplinary measures, a grievance procedure and a policy on alcohol and drug abuse, as well as a written health and safety policy (eg, a global prevention plan, yearly action plan, dynamic risk prevention system and risk analysis), are mandatory.

### Third-party approval

No requirement to lodge employment contract with, or get approval from, any third party. A copy of the work regulations and their annexes, as well as any modification of the work regulations and/or their annexes, must be sent to the labor authorities.

## LANGUAGE REQUIREMENTS

Either Dutch, French or German is mandatory, depending on the employee's place of work or the location of the registered office of the business for which the employee is working. The place of work or location of the registered office of the employer is determined on a case-by-case basis, depending on the factual circumstances.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

All employees are entitled to minimum employment rights, but some categories of employees are excluded from the scope of the legislation on working time and overtime, such as employees with a managerial position or a position of trust, who are strictly defined by royal decree, sales representatives and home workers.

### Working hours

Average of 38 hours per week limit on working time. Deviations based on industry level provided in collective bargaining agreements within the competent joint committees.

### Overtime

In principle, only allowed in legally defined circumstances and, in some cases, when specific legally defined formalities are met, which vary depending on the legal reason justifying the performance of overtime.

Overtime can moreover only be performed when instructed by the employer.

### Wages

At least EUR 1,954.99 gross per month; deviations on industry level.

### Vacation

30 days per year, which includes 10 public holidays; deviations on industry level possible.

### Sick leave & pay

Employees are also entitled to sick leave in case of incapacity of work. Employees are entitled to 30 days' guaranteed remuneration, paid by the employer:

- If the employee is a white-collar worker: equal to 100 percent of the employee's remuneration



- If the employee is a blue-collar worker: equal to 100 percent of the remuneration during the first 7 days, reduced to 85.88 percent of the remuneration from day 8 until day 14 inclusive, further reduced from day 15 until day 30 inclusive

Afterwards, the employees are entitled to disability allowances paid by the National Health Service.

## Maternity/parental leave & pay

15 weeks of maternity leave with deviations in case of multiple births. During leave, allowances paid by the National Health Service (ie, 82 percent of pay for first 30 days, then 75 percent); right to return to work and protection against dismissal.

20 days of paternity leave at birth for a child; right to return to work and protection against dismissal. 4 months of full-time parental leave; possibility to take up part-time parental leave (1/2 or 1/5 of working time); right to return to work; protection against dismissal.

## Other leave/time off work

There are extensive family-friendly rights allowing employees to take time off work to care for a child (including in the event of an adoption) or to assist a person in need of palliative care or a family member who is suffering from a serious disease. Aside from the various family leave types, each sector of industry may determine its own short-term leave (eg, jury duty, weddings, funerals, Holy Communion) and imperative leave types in a sectorial collective bargaining agreement, concluded at the level of the competent sector of industry.

## DISCRIMINATION & HARASSMENT

Characteristics protected from unlawful discrimination and harassment: age, disability, gender, marital status, religion or belief, sex or sexual orientation, political conviction, physical or genetic characteristics, language, current or future health and affiliation to trade union.

## WHISTLEBLOWING

In accordance with the Belgian legislation transposing the Whistleblowing Directive, entities with more than 250 employees must set up an internal reporting channel as from February 15, 2023, but legal entities employing between 50 and 249 employees must set up the internal reporting channel by December 17, 2023. Non-compliance with the obligation to set up an internal reporting channel is severely sanctioned.

## BENEFITS & PENSIONS

Currently, no benefits obligatory above those covered under social insurance contributions. Sectorial pension schemes within some joint committees. Strict legal framework with regard to complementary pension schemes.

## DATA PRIVACY

Employees generally must be informed of personal data processing and, in certain cases, give prior and explicit consent. Special rules apply to data transfer outside the EEA. Significant and local-specific restrictions apply on monitoring email and internet use and use of cameras at the workplace. The personal data processing must occur in line with the General Data Protection Regulation (GDPR) and the Belgian data protection laws.

## RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive/Collective Bargaining Agreement no. 32, in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employee representative bodies, or, in absence of employee representative bodies, provide this information directly to employees. Any dismissal connected to the transfer is unfair unless for an economic, technical or organizational reason.

## EMPLOYEE REPRESENTATION

Trade unions are prevalent. Approximately 50 percent of workers are affiliated with a trade union. Works councils must be established by social elections if the company has at least 100 employees. Committees for Prevention and Protection at Work must be established by social elections if the company has at least 50 employees. The requirements for establishing a trade union delegation are determined at sectorial level.

Industry-level collective bargaining agreements, concluded within the joint committees (ie, permanent bodies on the industry level in which an equal number of employers' federations and trade unions are represented and that have as their main task concluding industrywide collective bargaining agreements and mediating in social conflicts) are common.

## TERMINATION

### Grounds

In principle, no obligation to justify the dismissal, except in case of a dismissal for serious cause. However, in most circumstances, on the request of the employee, the employer must explain the dismissal on grounds which relate to the employee's work ability, their behavior at work or the employer's business necessities, or the employee may be entitled to a complementary indemnity.

A dismissal for serious cause must be implemented via a specific legal procedure and within specific legally defined timeframes.

### Employees subject to termination laws

All.

### Prohibited or restricted terminations

Specific protection against dismissal applies in notably the following circumstances (without being exhaustive): application for time credit leave; application for maternity or paternity leave, parental leave or adoption leave; formulation of observations in the register in the framework of the procedure for introducing or amending the



work regulations; being a holder of or being a candidate for a political mandate; redundancy or threatened redundancy due to the introduction of new technologies; application for paid educational leave; application for leave in order to assist a person with palliative care, in order to assist a person who is suffering a serious disease or in order to take up the education of a child; request by a night worker to return to a daytime schedule; being a prevention advisor; lodging of a claim in relation to violence, harassment or sexual harassment or testifying in the framework of such a claim; lodging of a claim in relation to discrimination; appointment as union delegate; and being a candidate in the election process for the appointment of employee representatives within the works council or the committee for prevention and protection at work. Other protections against dismissal can exist on an industry level.

In case of a protection against dismissal, the employer either must prove that the grounds of dismissal are not related to the reason why the employee is protected (eg, in case of maternity leave) or must comply with a strict dismissal procedure before terminating the employment contract (eg, in case of the contemplated dismissal of a candidate or employee representative).

### Third-party approval for termination

Required in the event of a dismissal of a candidate or employee representative in the works council or the Committee for Prevention and Protection at Work:

- In case of a dismissal for economic or technical reasons, an approval by the competent joint committee or in absence of such approval, an approval by the president of the employment tribunal is required.
- In case of a dismissal for serious cause, an approval by the president of the employment tribunal is required.

A prevention advisor may only be dismissed in case of approval by the Committee for Prevention and Protection of Work, unless the employment contract is terminated for serious cause.

### Mass layoff rules

Strict information and consultation rules apply where 10 or more employees – depending on the total number of employees – are to be made redundant over 60 days or less and in case of a closure of an undertaking or a department thereof. Failure to comply is a criminal offense.

Specific “multiple dismissal” rules may apply at industry level.

### Notice

The following notice periods apply in case of dismissal of an employee who entered into service after January 1, 2014:

Period of continuous service	Notice period
Less than 3 months	1 week
3 months – 4 months	3 weeks
4 months – 5 months	4 weeks

5 months – 6 months	5 weeks
6 months – less than 9 months	6 weeks
9 months – less than 12 months	7 weeks
12 months – less than 15 months	8 weeks
15 months – less than 18 months	9 weeks
18 months – less than 21 months	10 weeks
21 months – less than 24 months	11 weeks
2 years – less than 3 years	12 weeks
3 years – less than 4 years	13 weeks
4 years – less than 5 years	15 weeks
As of 5 years	plus 3 weeks per commenced year of continuous service
As of 20 years	plus 2 weeks per commenced year of continuous service
As of 21 years	plus 1 week per commenced year of continuous service

Deviations exist within certain industry sectors (eg, construction sector), and specific rules apply to employees who commenced employment before January 1, 2014.

No notice period to be observed in case of a dismissal for serious cause.

### Statutory right to pay in lieu of notice or garden leave

The employer may terminate the employment contract with immediate effect, by payment of an indemnity in lieu of notice equal to the remuneration (all benefits included) due for the notice period. Garden leave is only allowed with the employee's prior and explicit consent.

### Severance

No general statutory severance, but clientele indemnity in case of the dismissal of a sales representative; closure indemnity, in case of the closure of an undertaking or a department of an undertaking; mobilization indemnity within the framework of a mass layoff (ie, collective dismissal); and protection indemnity, among others.

## POST-TERMINATION RESTRAINTS

Those that protect the employer's legitimate business interests may be enforced if reasonable.

### Non-competes

Strict conditions, including conditions in relation to salary level, scope of application of the clause and, in some cases, duration (in principle, no longer than 12 months, except for so-called “international non-compete clauses” with a geographical scope beyond the Belgian territory). A-compete indemnity will be due equal to 1/2 of the remuneration due for the period of non-compete obligation if not explicitly waived in time by the employer, except for a non-compete in an employment contract for sales representatives.

## Customer non-solicits

Permissible, but only enforceable if reasonable.

## Employee non-solicits

Permissible, but only enforceable if reasonable.

## WAIVERS

Enforceable, but employees may only sign a settlement agreement with regard to acquired rights and not with regard to future rights.

## REMEDIES

### Discrimination

Uncapped compensation, based on the claimant's financial loss or lump sum indemnity equal to 6 months' remuneration.

### Flagrant and unreasonable dismissal

If the employer cannot motivate the dismissal of the employee on grounds related to the employee's work ability, their behavior at work or the employer's business necessities, and if a normal and reasonable employer would not have dismissed the employee in the case at hand, the dismissal will be considered flagrant and unreasonable. The employee will be entitled to an additional indemnity equal to between 3 and 17 weeks' remuneration (in addition to the normal termination entitlements).

### Failure to inform & consult

Re-employment of the employees in case of a collective dismissal (ie, mass layoff). Compensation for moral damages.

## CRIMINAL SANCTIONS

Most legal dispositions with regard to labor law are subject to criminal or administrative sanctions in case of breach.

## KEY CONTACTS



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