



GUIDE TO GOING GLOBAL EMPLOYMENT

Luxembourg

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.

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LUXEMBOURG



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LEGAL SYSTEM, CURRENCY, LANGUAGE

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

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Luxembourg with proper payroll registrations, subject to several corporate and tax considerations.

Income tax and the employee's portion of social security contributions are withheld from the remuneration paid out by the employer. The global rate of social security contributions varies from 24.32 percent to 27.20 percent depending on the absentee rate within the company. The employee's portion varies from 12.20 percent to 12.45 percent.

PRE-HIRE CHECKS

Required

Immigration compliance.

Medical check: When recruiting, an employer must ensure that the employee undergoes a medical check with a practitioner of the occupational health service to which the employer is affiliated. The practitioner will decide if the employee's health allows them to fill the position in question. This medical check is compulsory, irrespective of the nature of the work (eg, office, industrial or construction work). In certain cases, the employer must also organize regular medical examinations during employment.

Permissible

Reference and education checks are common and permissible with the applicant's consent provided that they are compliant with data protection and privacy provisions and are linked to the nature of the position. For the purpose of human resources management and recruitment, the employer may request that any applicant provide a criminal record. In all cases, if the employer makes the decision not to hire the job applicant, the criminal record

must be immediately destroyed. If the job applicant is hired, the employer will only be entitled to retain the criminal records for 1 month post-hire.

IMMIGRATION

European Union (EU) citizens benefit from the right of free movement, which gives them the right to work and reside in any EU country.

Nationals of the European Economic Area (EEA) and Switzerland have the right to work in Luxembourg.

Third-country nationals who want to reside in Luxembourg with a view to working for more than 3 months must apply for a residence permit with authorization to work. The application must be approved by the Immigration Directorate before entering Luxembourg. However, a third-country national who is the spouse, registered partner or child of a citizen of the European Economic Area (EEA) and Switzerland already working in Luxembourg does not require a work permit. A work permit exemption must be requested.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

Independent contractor

Independent contractors may be engaged directly by the employer or via a personal services company. If there is a relationship of subordination between the independent contractor and the company, there is a risk of the relationship being re-qualified as an employment relationship.

Agency worker

Agency workers are common. Temporary lending of workforce is subject to specific conditions and non-discrimination rules.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

A written contract is required and must be entered into for each employee no later than the date an employee commences work. Employment contracts must provide for certain mandatory particulars, listed by the Labor Code.

Probationary periods

Probationary periods are, in principle, set between 2 weeks and 6 months with 2 exceptions:

- The probationary period cannot be longer than 3 months if the employee's level of professional or vocational training is below the Technical and Professional Aptitude Certificate for Technical Education (CATP), and
- The probationary period may be up to 12 months when the gross monthly salary provided for in the employment contract is greater than or equal to EUR4,700.77 gross at index 877,01.

Policies

No specific policy is mandatory.

Third-party approval

No requirement to lodge employment contract or policies with or get approval from any third-party, except for employees under the age of 18.

LANGUAGE REQUIREMENTS

There is no specific requirement as far as the language is concerned, but the contract must be in a language understood by all the parties. English is commonly used and generally accepted by the courts.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All.

Working hours

The standard number of working hours for employees is 8 hours per day and 40 hours per week.

However, the maximum number of working hours cannot exceed 10 hours per day or 48 hours per week.

Overtime

As a principle, overtime is compensated either with time off equivalent to the excess hours worked (for each overtime hour, 1.5 hours' time off or allocated to a time saving account) or with a supplementary payment of 140 percent of regular wages. Overtime payment is not required for senior executives.

For companies who apply reference periods, overtime is performed:

- When the hours worked during the reference period exceed the average of 40 hours a week and/or
- when the hours worked exceed a certain threshold:
 - Any hour exceeding 20 percent beyond the normal working hours (ie, 48 hours a week or 192 hours a month) over a reference period of up to 1 month

- Any hour exceeding 12.5 percent beyond the normal working hours (ie, 45 hours a week or 180 hours a month) over a reference period of over 1 month and less than 3 months or
- Any hour exceeding 10 percent beyond the normal working hours (44 hours a week and 176 hours a month) over a reference period of exceeding 3 months and up to 4 months.

Wages

EUR2,387.40 minimum wage per month for unqualified employees and EUR2,864.88 per month for qualified employees (index 877.01). A "qualified employee" is an employee who exercises a profession comprising a professional qualification normally acquired by means of education or training attested by an official certificate recognized by the Luxembourg State.

A "qualified employee" is one who holds:

- An official certificate at least equivalent to a vocational skills certificate
- A vocational diploma
- A manual skills certificate
- A certificate of vocational ability and has at least 2 years' practical experience
- A vocational initiation certificate and has at least 5 years' practical experience

Certain other employees may also be categorized as "qualified" even if they have no official certificate, subject to having accrued sufficient years of practical professional experience.

Vacation

26 days per year, plus 11 days of public holidays.

Sick leave & pay

An employer must continue to pay the employee in case of sickness leave due to illness or an occupational accident and must do so until the end of the month during which the 77th day of sickness leave occurs, over a reference period of 18 successive months. As from the month following the 77th day of sickness leave, the National Health Fund (Caisse Nationale de Sante or CNS) takes over payment of sickness benefits to the employee on sickness leave.

However, during the sick leave, the CNS may make a "refusal decision" pursuant to which the employee's entitlement to full salary ceases. In such cases, the employer must abide by the refusal decision once the period of 40 days allowed to lodge an appeal against the decision expires.

Maternity/parental leave & pay

Maternity leave starts 8 weeks before the expected date of birth and continues for 12 weeks after the actual date of birth.

During maternity leave, the employee is paid by the National Health Fund (Caisse Nationale de Sante or CNS).

Maternity allowances cannot be lower than the social minimum wage (gross amount of EUR2,387.40 per month as of January 1, 2023) and may not exceed an amount equal to 5 times the social minimum wage (gross amount of EUR11,937.00 per month as of January 1, 2023).

Parental leave has been recently reformed. There are 2 types of parental leave:

- First parental leave directly following the maternity leave and
- Second parental leave to be taken before the 6th birthday of the child (or the 12th birthday in case of adoption).

The amount of parental leave allowance is linked to the employee's income and replaces, proportionately, the income lost by the employee taking parental leave. The allowance will be set between EUR2,387,40 and EUR3,987,99 per month and will be paid by the Children's Future Fund (Caisse pour l'avenir des enfants). An employee earning less than EUR3,987,99 per month is entitled to an equivalent amount to replace their salary. An employee earning more than EUR3,987,99 per month is entitled to that amount as a maximum.

Other leave/time off work

Employees may also be entitled to paid or unpaid leave for other purposes, such as bereavement, parental representation leave (ie, member of the national school commission), athletics, emergency service volunteering, training, social mandate and Luxembourgish language learning.

DISCRIMINATION & HARASSMENT

Discrimination on the grounds of religion or belief, disability, age, sexual orientation, nationality, racial or ethnic origin and sex is prohibited with regard to access to employment, access to all types and levels of vocational guidance, employment and working conditions, and membership of and involvement in an organization of workers or employers.

WHISTLEBLOWING

The local implementation of the EU Whistleblower Protection Directive is currently being discussed by Luxembourg Parliament and undergoing amendments. See "Whistleblowing Laws in Europe: An international guide" for more information on the Directive and implementation status.

BENEFITS & PENSIONS

Employers have no legal obligations to provide complementary or supplementary social benefits in addition to the social coverage provided for by the social public scheme.

DATA PRIVACY

The General Data Protection Regulation (GDPR) has been in force since May 25, 2018. It has been complemented by the Luxembourg law of August 1, 2018 on the organization of the CNPD.

Since then, the processing of personal data is no longer subject to a prior notification to/authorization from the National Data Protection Commission (Commission Nationale pour la Protection des Données or CNPD). However, the processing of personal data for the purpose of supervising employees in the context of employment relationships may only be carried out by the employer under certain conditions.

The employee's consent does not legitimize the processing of data.

In case of conducting employee monitoring, the employer must first notify:

- The employees concerned
- All persons external to the company who may also be concerned (eg, customers, suppliers or visitors) and
- If a surveillance system is used in the workplace, the staff delegation or, failing this, the Inspectorate of Labor and Mines (*Inspection du travail et des mines* or ITM).

Please note that a number of strict requirements apply in this context according to the Labor Code.

Data subjects have the right to lodge a complaint with the CNPD.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In case of business transfers falling under the scope of the EU Acquired Rights Directive, as implemented in Luxembourg, all employment contracts existing at the date of the transfer must be maintained with the new employer. All employees' rights are maintained and transferred to the transferee.

Duty to inform and consult the employees' representatives and notify the transfer to the ITM.

Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Trade unions: Employees as well as employers are organized on a voluntary basis into a number of trade unions, trade and professional federations. Membership is optional.

Staff delegation: A staff delegation must be set up in every business in the private sector employing at least 15 employees under an employment contract during the 12 months prior to the date on which the announcement of elections is made. Joint works councils in every establishment employing at least 150 employees were abolished by the law of July 27, 2015, and their competences were transferred to the staff delegation as from the social elections, on March 12, 2019.

Staff delegation at the level of an economic and social entity: Several companies together form an "economic and social entity" when they have a shared management, identical and complementary activities, a community of

employees working with the same interests and a comparable social status. Where such an entity exists, a staff delegation may also be established when requested by at least 2 different companies forming part of the entity.

TERMINATION

Grounds

Termination permissible with immediate effect for gross misconduct or with notice for real and serious cause connected with the employees' attitude, aptitude or for operating needs of the business (ie, economic ground).

Employees subject to termination laws

All.

Restricted or prohibited terminations

Employee representatives, employees who have duly notified their incapacity to work, pregnant women and employees during parental leave, among others.

Third-party approval for termination/termination documents

No third-party approval is required for termination.

Mass layoff rules

- Any employer contemplating dismissing at least 7 employees within a period of 30 days, or 15 employees within a period of 90 days, for 1 or more reasons not related to the employees is required to follow the procedure applicable to mass layoffs.
- The employer must enter into prior negotiations with the employee representatives in order to come to an agreement in respect of the establishment of a social plan. Before negotiations start, the employer must inform the employee representatives in writing of the proposed collective dismissal and provide them with information thereon. Any dismissal notified before a social plan is signed is deemed null and void.

Notice

The notice period, which is not applicable in case of terminations due to gross misconduct, depends on the length of service:

- Less than 5 years: 2 months
- Between 5 and 10 years: 4 months
- More than 10 years: 6 months

Statutory right to pay in lieu of notice or garden leave

No statutory right to pay in lieu of notice. The employee may be released from the obligation to work during the notice period. During the release, the employee is entitled to the same remuneration and benefits as if they were working.

Severance

The amount of the severance depends on the length of service and varies from 1 to 12 months. Not applicable for terminations for gross misconduct.

POST-TERMINATION RESTRAINTS

Non-competes

A non-compete clause must be in writing, and it is deemed null and void when the employee signing the contract of employment is under 18 years of age and/or if the employee's annual remuneration when they leave the employer does not exceed EUR59,786.39 (index 877.01).

A non-compete clause is only valid if it anticipates an employee working as an independent contractor. The non-compete clause is only effective if the restriction:

- Applies to a specific professional sector and to similar activities to those carried out by the former employer
- Does not exceed 12 months and
- Is limited to a geographical area where the employee would be in a position to effectively compete with their former employer and take into consideration the nature and scope of the relevant activities

Customer non-solicits

Valid under Luxembourg law to the extent that they do not aim at limiting the employee's right to work as provided for in the Luxembourg constitution.

Employee non-solicits

Valid under Luxembourg law to the extent that they do not aim at limiting the employee's right to work as provided for in the Luxembourg constitution.

WAIVERS

Waivers are enforceable if they refer to rights which had arisen at the time of the waivers.

REMEDIES

Discrimination

There are 2 types of discrimination remedies:

- Remedies stipulated by the Labor Code, which entitle the affected employee to uncapped compensation, based on their financial loss and moral damage and
- Remedies stipulated by the Penal Code, which provide for imprisonment of the person who has discriminated for up to a minimum of 8 days and a maximum of 2 years and/or a fine of between EUR251 and EUR25,000.

Unfair dismissal

In case of dismissal with notice, the employee is entitled to compensation for moral damages and financial damages. In case of a dismissal for gross misconduct which is deemed unfair, the employee is entitled to a pay in lieu of notice and a severance pay in addition to the compensation for moral and financial damages.

Failure to inform & consult

Criminal sanctions if the employer does not inform/consult or negotiate with the employees' representatives when required. Prosecution is rare.

CRIMINAL SANCTIONS

Certain mandatory labor law rules are criminally punishable by fines and/or imprisonment, notably:

Publishing a job offer without informing the Administration of Employment (ADEM)

Hiring an employee without arranging a compulsory medical examination

Hiring an employee from outside the EEA without authorization

Paying wages below the minimum social wage

Failing to comply with the rules on paid leave and

Failing to comply with the rules on public holidays.

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