

The Emergency Powers Decree No. 14 with employment-related measures to safeguard an adequate work organisation in certain essential and vital sectors due to the Covid-19 crisis

1. BACKGROUND AND SCOPE OF THE NEW MEASURES

On 28 April 2020, an Emergency Powers Decree No. 14 (the **Decree**) was published in the Belgian Official Journal in order to guarantee an adequate work organisation during the Covid-19 crisis. In particular, the Decree adopts several employment-law related measures in order to address staff shortages in certain essential and vital sectors.

This newsflash provides an overview of the most important measures which may be relevant for certain employers.

2. POSSIBILITY TO PERFORM 100 ADDITIONAL VOLUNTARY OVERTIME HOURS

Pursuant to the current applicable legal framework, an employer can implement a regime of voluntary overtime based on which employees can perform 120 overtime hours per calendar year (which can be increased up to 360 hours per calendar year based on an industry collective bargaining agreement), subject to the conclusion of a written contract with the employees concerned. The employer is not obliged to justify the introduction of such overtime based on specific grounds.

The Decree now increases the standard number of voluntary overtime hours which can be implemented by employers belonging to essential sectors (the **Essential Sector**), as defined in the Ministerial Decree of 23 March 2020 (and afterwards amended by several other Ministerial Decrees) with 100 hours. **These 100 additional overtime hours should be performed between 1 April 2020 and 30 June 2020.** Employers belonging to Essential Sectors are for example food stores, hospitals, banks, suppliers of medical devices and radio and television services.

The overtime quota of 100 hours can be performed by the employees subject to their consent **and does not give rise to the payment of overtime pay or the grant of compensatory rest by the employer.**

According to the draft legislative text which has been approved by the Council of Ministers, the remuneration for the additional overtime quota of 100 hours would be exempt from social security contributions as well.

Hence, in total employees can perform up to 220 voluntary overtime hours between 1 April 2020 and 30 June 2020.

3. DEROGATION TO THE PROHIBITION OF LENDING OUT OF EMPLOYEES

As a general principle under Belgian law, it is prohibited for an employer to lend out employees to another party unless specific conditions are met. Specifically, an employee who is formally employed by an employer may not work under the employer's authority of another party (the **User**).

The Decree derogates from this prohibition **by allowing an employer to lend out employees, who have been recruited prior to 10 April 2020, to a User belonging to an Essential Sector for the period between 1 April 2020 and 30 June 2020.**

The employer, the employee and the User must enter into a written contract prior to the start of the lending out. This document must contain at least the conditions and duration of the lending out. No further formalities such as the consent from the trade unions and/or the Social Inspectorate are required.

The original employment contract between the employer and the employee remains in force during the lending out. In this respect, the User will be held jointly and severally liable together with the employer for the payment of all salary, social security contributions, allowances and benefits resulting from that employment contract. In addition, employees who are lent out should be paid a salary which is at least equal to the salary that they would be entitled to if they had been employed directly by the User.

Finally, during the lending out period, the User is responsible for the application of the provisions related to regulation and protection of work applicable at the User's workplace.

4. DEROGATION TO THE LIMITS ON THE USE OF SUCCESSIVE FIXED-TERM EMPLOYMENT CONTRACTS

As a general rule, when parties enter into multiple successive fixed-term employment contracts without any interruption that may be attributed to the employee, they are deemed to have entered into an employment contract of unlimited duration. Certain exceptions to this principle apply.

As a further exception to the above-mentioned principle, the Decree now **allows employers belonging to Essential Sectors to enter into an unlimited number of successive fixed-term employment contracts of at least 7 days for the period between 1 April 2020 and 30 June 2020.**

5. STUDENT WORK

Pursuant to the current legal framework, students are entitled to perform a quota of 475 hours per calendar year whilst the remuneration that they receive is only subject to limited social security contributions (*i.e.* an employer's solidarity contribution of 5.42% and a student's contribution of 2.71%).

According to the Decree, **any hours performed in the second quarter of 2020 by a student for the benefit of any employer (hence no limitation in terms of sector) are not taken into account to calculate the quota of the 475 hours.** Such students' additional working hours thus will be subject to the favourable social security regime without affecting the remaining quota of 475 hours.

6. POSSIBILITY TO WORK FOR AN EMPLOYER BELONGING TO A VITAL SECTOR

The Decree contains **several measures aimed at increasing the employment within vital sectors.** Vital sectors are defined as the agricultural, horticultural and forestry sectors and the temporary staffing agency sector, provided that the employees concerned are temporarily employed in one of the aforementioned sectors (the **Vital Sectors**).

The measures can be summarised as follows:

- Employees who interrupted or reduced their work performance within the framework of a time credit or career break with an employer who belongs to a Vital Sector are allowed to suspend this work interruption or reduction and continue to work for their employer. During such suspension period, the employees will no longer be entitled to any allowances from the National Employment Office (*Rijksdienst voor Arbeidsvoorziening / Office National de l'Emploi*; the **NEO**). At the end of such suspension, the original interruption or reduction of work performance will be resumed for the remainder of the period without the employees being required to file another request for a time credit or career break.
- Employees who are employed by an employer not belonging to a Vital Sector and who interrupted or reduced their work performances within the framework of time credit or career break can also perform work for an employer belonging to a Vital Sector. In such an event, an employment contract should be entered into between the employee and the employer belonging to a Vital Sector, for which the approval of the initial employer is not required. During the employment with the employer belonging to the Vital Sector, the employees concerned will continue to be entitled to 75% of the allowances of the NEO granted within the framework of the time credit or career break, which can be combined with the salary derived from the employment within the Vital Sector.
- Employees who benefit from the regime of unemployment with company allowance (previously known as bridge pension) are entitled to work for an employer belonging to a Vital Sector. In such an event, they can combine 75% of their unemployment benefits granted by the NEO with the salary earned from their employment within the Vital Sector and the company allowance which should be paid by their previous employer is exempt from social security contributions. Temporarily unemployed individuals also would be able to perform work for employers belonging to the Vital Sector whilst combining 75% of their unemployment benefits with the salary of such employment. This measure is, however, laid down in another draft legislative text which has not been published in the Belgian Official Journal in its final form yet.

All these measures apply as from 1 April 2020 until 31 May 2020, with the possibility for the legislator to extend them until 30 June 2020.