

19 March 2020

Coronavirus : Update on Measures Related to Safeguarding Employment Following the Lockdown Measures of 12 and 17 March 2020

Referring to our newsflash dated 10 March 2020, you will find below an overview of the complementary employment-related measures which have been put in place following the lockdown measures within the framework of Covid-19 as announced by the Belgian government on 12 and 17 March 2020.

These measures are subject to continuous changes. The current newsflash provides an overview of the situation to date and we will keep you informed about any important developments in this respect.

1. Temporary unemployment

Two specific regimes of temporary unemployment should be distinguished:

- 1) The regime of temporary unemployment for force majeure (*overmacht / force majeure*)

This regime is accessible in general for the following employers:

- Employers who are obliged to cease their activities and close their shops (e.g. non-food related retail);
- Employers who can be considered as suppliers or service providers of an organisation that should be closed, provided that the employees concerned can no longer be employed at all; and
- Employers who have applied for recognition as a company in difficulty with the Minister for Employment (*Minister van Werk / Ministre de l'Emploi*), pending the official recognition.

Based on this regime the employees concerned are entitled to unemployment allowances capped at 70% of their normal gross salary (which in turn is capped at EUR 2,754.76 gross).

In order to introduce this regime, the employer should address an electronic request to the National Employment Office (*Rijksdienst voor Arbeidsvoorziening / Office National de l'Emploi*) and should also comply with certain administrative formalities.

On 18 March 2020, the National Labour Council (*Nationale Arbeidsraad / Conseil National du Travail; NLC*) issued an advice No. 2.159. This advice calls upon the government to adopt sufficient measures to facilitate the use of temporary unemployment based on force majeure as much as possible. Such measures may a.o. include a simplification of the formalities and requirements to be complied with in order to apply the regime of temporary unemployment based on force majeure.

2) The regime of temporary unemployment for economic reasons

In general the regime of temporary unemployment for economic reasons for white-collar employees (also known as economic unemployment) is less flexible than the regime of temporary unemployment for force majeure, as employers should demonstrate a substantial decrease of at least 10% of their orders, production or profit in one of the four quarters preceding the first use of the economic unemployment compared to the same quarter of 2008 or of one of the two calendar years preceding the application. Employers failing to demonstrate this may rely on an economic unemployment due to an unexpected substantial decrease of their orders, production or profit based on a recognition as a company in difficulty by the Minister for Employment. In addition, the employers should be bound by a collective bargaining agreement (**CBA**) at industry or company level allowing the regime of economic unemployment or, failing this, adopt a specific company plan that should be approved by the competent authorities.

As several industries did not provide for a CBA at industry level, the NLC adopted on 18 March 2020 a national CBA No. 147 regarding temporary unemployment based on economic reasons for white-collar employees due to the coronavirus crisis (*Collectieve arbeidsovereenkomst tot vaststelling van een regeling van volledige schorsing van de uitvoering van de arbeidsovereenkomst en/of een regeling van gedeeltelijke arbeid bij gebrek aan werk wegens economische oorzaken voor bedienden als gevolg van de coronacrisis / Convention collective de travail établissant un régime de suspension totale de l'exécution du contrat de travail et/ou un régime de travail à temps réduit en cas de manque de travail résultant de causes économiques pour les employés en raison de la crise du coronavirus; CBA No. 147*).

As a result, employers belonging to industries for which no industry CBA has been adopted with regard to economic unemployment for white-collar employees are no longer required to conclude a company CBA with the trade unions or submit a company plan to the competent authorities.

Pursuant to CBA No. 147, employers can suspend partially or totally the employees' employment contracts and employees are entitled to unemployment allowances during

such suspension days which employers are required to supplement with a payment of EUR 5 gross per day.

CBA No. 147 is applicable until 30 June 2020. In early May 2020 the NLC will examine whether it may be useful to extend its application period.

How can VBB assist? VBB can further assist you should you have any questions in relation to the adoption of temporary unemployment based on economic reasons and/or force majeure. In addition, we can determine which regime may be most suitable given the particular circumstances.

2. Social elections

On 17 March 2020, the social partners decided to postpone the social elections due to the coronavirus (probably until the autumn of 2020).

They agreed that the procedure will continue until X+35 included (*i.e.* "X" being defined as the social elections displaying date). In other words, the procedure must be stopped between 18 and 30 March 2020 depending on the date of elections that has been decided within the organisation (initially between 11 and 24 May 2020).

The other practical modalities of this postponement such as the impact on the protection against dismissal of employee representative candidates will have to be agreed upon within the NLC in the next few days.

How can VBB assist? VBB can assist you should you have any questions in relation to the impact of this postponement of the social elections within your organisation.

3. Teleworking

In view of the requirement to organise teleworking for any function for which this is possible in the framework of the lockdown, the Preliminary Tax Ruling Service (*De Dienst Voorafgaande beslissingen in fiscal zaken / Le Service des Décisions Anticipées en matière fiscales*) confirmed on 18 March 2020 that a lump sum net cost reimbursement of maximum EUR 126.94 per month can be granted to all the employees working remotely. This indemnity will be considered as a reimbursement of employer's costs and therefore will not be subject to withholding tax or social security contributions. From a social security perspective, however, no ruling can be obtained. The amount of EUR 126.94 per month is nevertheless in line with the maximum amount accepted previously by the social security authorities.

Employers who wish to obtain a tax ruling in order to grant a lump sum net cost reimbursement must introduce a specific request [online](#) with the tax authorities.

In addition, employers should take the necessary employment law-related measures in relation to teleworking such as the adoption of a general policy or amended

employment contracts with specific provisions regarding teleworking (for example arrangements regarding the professional availability of the employees).

How can VBB assist? VBB can assist you to prepare the necessary documentation required to adopt teleworking as a result of the lockdown.

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