



The **Little Book** of Belgian Employment Law


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**VAN BAEL & BELLIS**



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“It is the best firm I have used  
for ability and reactivity.”

Chambers Europe, 2018

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and committed team of  
professionals who are  
driven to deliver success  
for their clients.”

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## Welcome

Ensuring compliance with local employment law is an ever-growing challenge for multinational organisations. Companies must act quickly to adapt to new employment regulations and must identify pro-actively potential HR issues when hiring, employing and firing employees.

This Little Book of Belgian Employment Law provides an overview of some key employment law issues that you will want to keep in mind to protect your business interests<sup>1</sup>.

We trust that you will find it useful in your daily practice.

**Best wishes,**

**The Employment Law Team at Van Bael & Bellis**

<sup>1</sup> This booklet contains only a succinct overview of relevant Belgian employment law as per October 2018 and is for general purposes only. Tailored legal advice should be sought for individual cases. We would be pleased to assist you in that regard.





## Hiring Employees: The Basics

- It is a legal requirement to enter into a written employment contract with certain categories of employees, such as part-time employees, students, tele-workers and employees who are hired for a definite duration. Such employment contract must be concluded at the latest on the day when the employment begins.
- It is also highly recommended to enter into a written employment contract with full-time employees who are hired for an indefinite duration.
- When drafting an employment contract, the employer should consider clauses that may protect the company during the employment relationship or in the future when faced with the departure of a (key) employee, including:
  - Flexibility clauses and other employer-friendly clauses;
  - Restrictive covenants;
  - Non-disparagement provisions.
- Each employer must adopt a set of work rules containing obligatory provisions regarding matters such as working schedules, applicable notice periods and vacation days. These work rules must be adopted in accordance with a specific procedure and filed with the Social Inspectorate.

- Although not mandatory, it is recommended to adopt policies laying down expectations about performance, behaviour and organisational culture (e.g., code of conduct, company car policy, IT policy). Such policies also can serve as a point of reference should a dispute with an employee occur.
- All employment documents must be drafted in one of the local languages (Dutch or French), depending on the location of the employer's operational seat. Non-compliance with these language requirements can result in sanctions, such as the absolute nullity of the document concerned (depending on the region where the employer's operational seat is located).
- Each employer belongs to a specific industry or Joint Committee, based on its main activities. The relevant industry or Joint Committee determines the collective employment law provisions at sector level that must be complied with by the employer.

**Hiring employees in Belgium involves a series of administrative formalities. In order to reduce this administrative burden to the greatest extent possible, Van Bael & Bellis can provide you with guidance and a standard package of legally required employment law documents that of course can be tailored further to your company's specific needs.**



## Numbers and Figures regarding the Employer's Cost and the Ensuing Benefits

- Each employer must pay employer's social security contributions on top of the employees' gross salary. These contributions currently amount to approximately 27.5 % of the employees' uncapped gross salary.
- Important social security reductions and exemptions apply for certain employers. In this respect, an exemption of basic employer's social security contributions applies for new employers who have hired their first employee subject to Belgian social security law during the period starting 1 January 2016 and ending 31 December 2020. The exemption, which should be requested by the company's payroll provider and which applies for an indefinite period of time, means that the employer does not pay any basic employer's social security contributions, resulting in a cost saving of approximately 25%.
- In addition, all employees must pay employee social security contributions, amounting to 13.07% of the employee's uncapped gross salary. The employer must withhold this amount at source and pay it to the National Social Security Office.
- In exchange for the payment of the social security contributions, the Belgian social security scheme for employees provides the following benefits to those who contribute:
  - health benefits;
  - invalidity benefits;
  - old age pension;
  - family benefits;
  - unemployment benefits.

**Van Bael & Bellis can provide further legal advice regarding the specific social security reductions and/or exemptions that your company may be eligible for so as to reduce the employer's cost as much as possible.**









## Employees' Rights

- Although the content of the employment contract is very important, employees are also entitled, subject to certain conditions, to a number of key statutory minimum benefits and rights which override less advantageous contractual provisions, including but not limited to:
  - 20 days' holiday per year that, in principle, accrue by working during the previous year, and holiday pay equalling 92% of the employee's gross monthly base salary;
  - 10 paid bank holidays per year;
  - Minimum pay in accordance with the applicable provisions at industry level;
  - (Yearly) indexation of the gross base salary in accordance with the specific indexation regime at industry level;
  - An end-of-year premium insofar as this is legally required in the industry to which the employer belongs (applies for the majority of industries);
  - Additional premiums, holidays or benefits if such salary components are legally required in the industry to which the employer belongs;
- Right not to work more than 38 hours per week (or 40 hours per week if 12 additional compensation holidays are granted by the employer) and certain rest breaks (several exceptions apply e.g., if it concerns an employee with a leadership function and/or a position of trust, or in the framework of shift work, flexible work);
- Maternity, paternity and other family friendly rights and protections;
- Guaranteed salary during the first month of illness or incapacity to work (certain exceptions apply);
- Minimum statutory notice of termination (see also below: Saying Goodbye).

**Van Bael & Bellis can provide further legal advice regarding employees' rights and assist employers in strengthening their own rights within the parameters of the law.**



## Things to Focus on During the Employment Relationship

- It is essential to adopt clear contractual provisions or policies that set out the standard of behaviour required. If behavioural or performance issues are identified, it is recommended to take immediate steps to assess the risk to the organisation and to take appropriate action towards the employee(s) concerned by taking disciplinary action such as issuing a formal warning.
- Formal appraisal processes should be followed for all employees, including at senior levels, in order to document issues carefully and to allow such issues to be addressed and rectified.



- For employers wishing to retain their best employees and ensure employee satisfaction, optimising the salary package and/or working schedule can be useful tools. Legal optimisation possibilities include, amongst others, the introduction of:
  - (Part-time) tele-work;
  - Flexible working schedules;
  - Extra-legal vacation days;
  - Occupational pension plan;
  - Meal and/or eco-vouchers;
  - Warrants, stock options and/or RSUs;
  - Tax beneficial premiums such as a collective result-oriented bonus.

**These salary optimisation possibilities enjoy tax and social security friendly treatment, subject to compliance with specific legal requirements. Van Bael & Bellis can assist employers with the implementation of an optimised salary package.**





## Saying Goodbye

- As a general rule, an employment contract can be terminated by the employer at any time, either with immediate effect and the payment of an indemnity in lieu of notice amounting to the salary for the duration of the notice period, or with the performance of a notice period (a combination of these two options is possible as well).
- In addition, the employer must provide a dismissed employee (except in case of a dismissal for serious cause) with a written outplacement offer in case: (i) he/she is entitled to a notice period/indemnity in lieu of notice equalling at least 30 weeks' gross salary; or (ii) he/she is at least 45 years old with at least one year's seniority within the company.
- It is important to anticipate the cost of a dismissal. The specific status of an employee (e.g., sales representative, prevention advisor, employee on time-credit/parental leave) may increase the cost of the dismissal, as such employees may be entitled to specific additional indemnities.

Notice to be Performed	Immediate Termination
<p>A notice of termination must be given in writing specifying: (i) the starting date; and (ii) the duration of the notice period. The notification must be sent by registered mail or served by bailiff. If notice is given by registered mail, the notification is deemed to be effective on the third business day following the day of mailing.</p>	<p>No specific formalities must be complied with. However, for the purpose of evidence, it is recommended to prepare a written document, confirming the termination of the employment contract and the amount of the indemnity in lieu of notice.</p>
<p>The notice period starts to run on the first Monday after the notice. If notice is given by registered letter, consideration must be given to the three business day rule as explained above. In order for the notice period to start running the next Monday, the notice letter thus must be sent at the latest on Wednesday.</p>	<p>The termination letter must be given to the employee who signs for receipt and must be sent by registered mail and by e-mail (in order to avoid any issues regarding the actual receipt of the letter).</p>
<p>The notice letter must be signed by a person or persons legally mandated to represent the company for that purpose.</p>	<p>The termination letter must be signed by a person or persons legally mandated to represent the company for that purpose.</p>

In general, the following notice periods/indemnities in lieu of notice must be observed in case of termination of the employment contract:

Seniority	Notice to be respected by the employer	Notice to be respected by the employee
< 3 months	1 week	1 week
As of 3 months but < 4 months	3 weeks	2 weeks
As of 4 months but < 5 months	4 weeks	2 weeks
As of 5 months but < 6 months	5 weeks	2 weeks
As of 6 months but < 9 months	6 weeks	3 weeks
As of 9 months but < 12 months	7 weeks	3 weeks
As of 12 months but < 15 months	8 weeks	4 weeks
As of 15 months but < 18 months	9 weeks	4 weeks
As of 18 months but < 21 months	10 weeks	5 weeks
As of 21 months but < 2 years	11 weeks	5 weeks
As of 2 years but < 3 years	12 weeks	6 weeks
As of 3 years but < 4 years	13 weeks	6 weeks
As of 4 years but < 5 years	15 weeks	7 weeks
As of 5 years but < 6 years	18 weeks	9 weeks
As of 6 years but < 7 years	21 weeks	10 weeks
As of 7 years but < 8 years	24 weeks	12 weeks

Seniority	Notice to be respected by the employer	Notice to be respected by the employee
As of 8 years but < 9 years	27 weeks	13 weeks
As of 9 years but < 10 years	30 weeks	13 weeks
As of 10 years but < 11 years	33 weeks	13 weeks
As of 11 years but < 12 years	36 weeks	13 weeks
As of 12 years but < 13 years	39 weeks	13 weeks
As of 13 years but < 14 years	42 weeks	13 weeks
As of 14 years but < 15 years	45 weeks	13 weeks
As of 15 years but < 16 years	48 weeks	13 weeks
As of 16 years but < 17 years	51 weeks	13 weeks
As of 17 years but < 18 years	54 weeks	13 weeks
As of 18 years but < 19 years	57 weeks	13 weeks
As of 19 years but < 20 years	60 weeks	13 weeks
As of 19 years but < 20 years	62 weeks	13 weeks
Etc.		







## Dismissing for Serious Cause by the Book

- Each party to the employment contract also has the right to terminate the contract without a notice period or an indemnity in lieu of notice if there is a serious cause for doing so. Serious cause is defined as a material fault which renders immediately and definitively impossible any further professional cooperation between the parties.
- Incidents that can justify a dismissal for serious cause attributable to the employee include fraud, theft, consistent non-compliance with company procedures, recurring insubordination, etc.
- The concept of serious cause is interpreted restrictively by the Labour Courts and specific factual elements are taken into account as well, including the employee's salary and seniority, previous warnings, etc.
- The employer must observe a strict procedure when dismissing an employee for serious cause:
  - The employer must dismiss the employee within 3 working days following the day on which the person who has the power within the company to dismiss the employee became sufficiently aware of the fact(s) justifying the dismissal for serious cause. For the purpose of evidence, this dismissal should be notified to the employee by registered mail;
  - Within a subsequent period of 3 working days as from the date of the notification of dismissal, the employer must inform the employee in a detailed manner, by registered mail or by writ served by a bailiff or by letter countersigned for receipt by the employee, about the grounds for the dismissal for serious cause;
  - It is possible to put all of this information (notification of dismissal + detailed grounds for dismissal) in one single letter, but then such letter must be sent within the first period of 3 working days.

**Employers must prepare carefully the termination of any employment contract. Van Bael & Bellis has significant experience in assisting clients with the termination of employment contracts and can provide all the legally required documents, best and worst-case cost calculations and related guidance.**





## Avoiding Post-Termination Issues

- If a non-compete clause has been concluded with an employee, the company can waive this clause within 15 days after the end of the employment contract in order to avoid having to pay a compensatory non-compete indemnity (amounting to the gross salary for half the non-compete period).
- An employee with an employment contract of indefinite duration can request the employer to provide him/her with the reasons for his/her dismissal (except in the case of a dismissal for serious cause where the employer must state such reasons proactively – see above). Failure to provide and/or demonstrate such grounds exposes the employer to a lump sum penalty equalling 2 weeks' gross salary and to additional damages for manifestly unfair dismissal ranging between 3 and 17 weeks' gross salary.
- In order to protect the company, the modalities surrounding any termination of the employment contract (e.g., payments by the employer, waiver of additional claims by the employee, etc.) should be laid down, if the employee agrees, in a binding settlement agreement between the employer and the employee.
- It is recommended to also include in the settlement agreement a confidentiality clause, non-solicitation and non-disparagement obligations, etc.

- The employee's waiver of claims under the settlement agreement also should comprise waivers towards any other group companies and individuals related to the company, such as current and former employees and directors.

**Van Bael & Bellis can provide you with a complete checklist of post-termination matters that should be addressed and a tailored draft settlement agreement .**







The Employment Law Team at Van Bael & Bellis would be pleased to answer any further queries you may have regarding individual and collective Belgian employment law and Belgian social security law.

Tailored training can be provided in-house on a wide range of topics in that field.



Our monthly **Belgian Business Law Newsletter** addresses inter alia noteworthy developments in the area of employment law. If you wish to be added to the mailing list, please let us know.

**“Intellectual curiosity and outgoing personality make them one of the best teams I have ever worked with.”**

Chambers Europe, 2016

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**“Van Bael & Bellis’ overall level of service is excellent. The firm has a very good reputation on the Belgian market and deservedly so. The output is always of a very high quality.”**

Chambers Europe, 2016



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