ALLEN & OVERY

Luxembourg Employment Law: Top 10 Topics for 2024

Please find below a concise summary of our top 10 topics to watch out for in 2024, with some practical tips and recommendations on how to prepare and respond effectively to these challenges and opportunities.

1. **Social elections:** Social elections will take place on 12 March 2024. The rules for the elections are similar to previous editions, but some decisions may be challenging. For example, employers will have to determine the scope of the passive electorate (who can be a candidate) and may want to analyze the opportunity of a joint staff delegation operating for several group entities. Social elections are a major milestone, especially for companies that are setting up a delegation for the first time, such as structures that have geared up substance in Luxembourg in the aftermath of Brexit. Moreover, the staff delegations may play a more significant role than in previous cycles, as the market is facing uncertainty about potential restructuring exercises (see topic 2 below).

2. **Restructuring:** The recession in Western Europe will likely force many organizations to consider cost-cutting measures and/or reshaping exercises. These may involve redundancies, which can be complex and sensitive to implement. Depending on the number and timing of departures, employers may have to comply with collective redundancy rules and involve staff representatives. Companies may also consider alternative options, such as a *plan de maintien dans l'emploi*, a company agreement or a series of individual dismissals. In any case, appropriate planning and handling of the restructuring strategy will be key.

3. **Employment law compliance:** In 2023, Luxembourg law introduced three mandatory policies for employers on (i) the avoidance of harassment, (ii) whistleblowing (for companies with 50 or more employees and/or in certain regulated entities) and (iii) the right to disconnect. Employers who have not yet implemented these policies should do so as soon as possible to avoid legal and reputational risks. In the first half of 2024, we expect the law implementing the EU Directive 2019/1152 on Transparent and Predictable Working Conditions to be passed and to enter into force. The text is currently in the final stages of the parliamentary process. This will require employers to substantially overhaul their employment contract documentation.

4. **Salary indexation:** After three indexations in 2023, we anticipate only one indexation in 2024. Some employers may choose to apply an upfront yearly increase that covers both a merit component and an anticipation of a future indexation. However, a recent court decision has outlined some constraints for such an approach to be operational in the best way. Therefore, employers should pay attention to how they structure and word their anticipation of indexation.

5. **Workplace culture:** Workplace culture remains a top priority for employers in 2024. This is not only due to the new legal obligations mentioned under topic 3, but also to a shift in expectations and demands of employees and society in general over the past decade (*Me too*, BLM, mental health). The number of cases companies are confronted with has increased exponentially. Appropriate prevention measures, solid legal processes and delicate handling of cases and investigations is paramount. As recent news headlines demonstrate, workplace culture remains on top of the agenda in 2024.

6. **Artificial intelligence (AI):** While new stringent rules on AI will come into effect in a few months / years after the European Parliament and Council reached a political agreement on the European Union's Artificial Intelligence Act on 8 December 2023, AI will, in the meantime, extend its presence at the workplace and have to be dealt with under the existing general privacy and data protection rules.

7. **Benefits:** As of 1 January 2024, Luxembourg law allows for lunch vouchers to have a face value of up to EUR 15, with a maximum of EUR 12.20 as tax-exempt amount and EUR 2.80 EUR of employee contribution. This is an optional and not a mandatory increase for employers. Moreover, due to case law of the Court of Justice of the EU and various circulars of the Luxembourg and foreign tax administrations, the provision of company cars to employees generates VAT in various circumstances. The VAT is due in the country of residence of the employee. This leads to complex rectification exercises in Luxembourg, Germany, Belgium, and France. Most employers have adapted their processes, but some may still need to close gaps in early 2024.

8. **Remote working:** Remote working of cross-border commuters has been a hot topic for the last four years. As of 1 January 2024, German commuters are allowed to work up to 34 days (including remote work) outside of Luxembourg without triggering German income tax. This aligns the German threshold with the Belgian and French ones. Many employers in Luxembourg still use the tax thresholds as the maximum limit for the number of days of remote working that cross-border commuters can do. At the same time, the new European social security Framework Agreement (on the application of Article 16 (1)

of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework), allows employees to remain affiliated to Luxembourg social security while working up to 49% of their working time abroad, subject to burdensome formalities. While the vast majority of players have not opened up cross-border remote working so broadly, particularly because i) of the additional tax complexities, ii) the mentioned social security formalities and iii) various legal uncertainties under the Framework Agreement itself, a handful of bigger players have recently announced to make the shift in a talent attraction and retention effort.

9. **Immigration:** The law of 7 August 2023 on immigration has revised and streamlined the hiring of non-EU workers (including workers from the UK), but employers must follow specific rules for each category and expect tighter ITM checks due to more effective information sharing among the authorities.

10. **Collective bargaining:** At the end of 2023, the collective bargaining agreements (CBA) of both the banking sector and the insurance sector have been subject to a termination notice. In 2024, new CBAs will be negotiated in these two major sectors. Against the background of the ongoing economic uncertainties and tenser labour relations, it is expected that negotiations will not be easy, but their outcome will directly impact the rules governing a significant number of employees, and it may indirectly raise expectations of candidates and employees in the wider financial sector not covered by a CBA.

We hope that you find this overview useful and informative. If you have any questions or comments on any of these topics, or if you need any assistance or guidance on any employment law matter, please do not hesitate to contact any member of the team. We will be happy to hear from you and to support you in achieving your 2024 business goals.

For further information on the topic, please reach out to your usual A&O contact, or any of the below relevant contacts.

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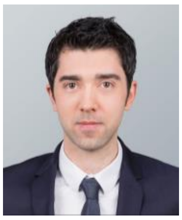

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