

EXTRAORDINARY LEAVE FOR FAMILY REASONS IN RESPONSE TO THE CORONAVIRUS PANDEMIC

Among the measures taken to deal with the COVID-19 pandemic are two Grand Ducal Regulations ("GDR") adopted to amend the Grand Ducal Regulation of 10 May 1999 ("GDR of 10 May 1999") defining diseases or deficiencies of exceptional gravity pursuant to Article 15, Paragraph 2 of the Law of 12 February 1999 establishing parental leave and leave for family reasons (*congé pour raisons familiales*).

Article L.234-52 of the Luxembourg Labour Code indeed provides that the standard leave for family reasons can be extended for children suffering from a disease or deficiency of exceptional gravity, as defined by a grand ducal regulation.

According to Article 1 of the GDR of 10 May 1999, such diseases have so far been defined as progressive cancer diseases and other pathologies resulting in acute hospitalization for a period exceeding two consecutive weeks.

The first GDR amending the aforementioned provision entered into force on 14 March 2020.¹

Article 1 of the GDR of 10 May 1999 was thereby supplemented by a leave (in addition to the existing one for progressive cancer and pathologies resulting in a two-week acute hospitalization) available in situations in which a parent can no longer go to work because he/she has to keep his/her children under 13 years of age quarantined upon the order of the competent authorities. The purpose of this new provision is to limit the spread of an epidemic, including infectious diseases such as Coronavirus/COVID-19.

The second GDR amending this article entered into force on 14 March 2020.²

Article 1 of the GDR of 10 May 1999 was once again supplemented by a leave available in situations where a parent can no longer go to work due to an isolation, eviction or 'stay-home' measure decided against children, based on imperious public health reasons, by the competent authorities when faced with the propagation of an epidemic.

¹ <http://www.legilux.lu/eli/etat/leg/rqd/2020/03/12/a146/jo>

² <http://legilux.public.lu/eli/etat/leg/rqd/2020/03/18/a163/jo>

Several conditions must be met. First of all, as the name suggests, this leave is extraordinary, so that it should only be taken by a parent when there is no other option to care for his/her children (including the possibility of teleworking, or childcare by other persons who are not vulnerable or at risk). In addition, the parent wishing to benefit from this leave must be affiliated to the Luxembourg social security system, whether he/she is a resident or not. Finally, both parents cannot use this leave at the same time, but it is possible to alternate the leave if necessary, each having to submit a request via a specific form.

Regarding the relevant form³, the names and national identification numbers of the parent and his/her children are to be mentioned, without it being necessary to indicate precisely the start and end dates of the leave, which have to be communicated only to the employer.

According to guidance published by the Luxembourg Ministry of Social Security⁴, the leave can be extended under the form initially submitted, if need be.

As far as the procedure is concerned, the parent must promptly inform his/her employer on his/her first day of absence, orally or in writing, and then complete the form (which has the same value as a medical certificate), sign it and forward it to his/her employer and to the National Health Fund (Caisse Nationale de Santé or "CNS").

Finally, one should point out that this extension of leave is available for a duration to be determined by the government. Presumably, it will be available for as long as schools and day-care establishments are closed (said closure having been extended to Monday, 4 May 2020). Furthermore, as per guidance published notably on the government's website Guichet.lu⁵, it will not diminish the available quantum of 'regular' leave for family reasons, as it will be counted separately.

A last GDR of 25 March 2020 entered into force to remedy from difficult and unfair situations remaining for parents of children with disabilities. Indeed, the extraordinary leave applicable to children between 13 and 18 years of age was subject to a condition of hospitalization according to article L.234-52 of the labor code. The new GDR abolishes the aforementioned condition for children who receive an additional special allowance within the meaning of article 274 of the social security code paid to any child under 18 years of age, benefiting from family allowance and suffering from one or more medical conditions constituting an insufficiency or a permanent decrease of at least 50% of the physical or mental capacity of a normal child of the same age.

³ <https://gouvernement.lu/dam-assets/documents/actualites/2020/03-mars/Certificat-de-demande-pour-CRF.pdf> and https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2020/03-mars/13-formulaire-certificat-covid19.html

⁴ https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2020/03-mars/14-crf-infos-supp.html

⁵ <https://guichet.public.lu/fr/actualites/2020/mars/13-conge-raisons-familiales-covid-19.html>

The extraordinary leave for family reasons cannot be refused by the employer if all described conditions are met. The extraordinary leave is assimilated to a sickness leave with the consequence that the employee is entitled to the same remuneration than the one he/she is entitled to on sickness leave. For the same reason, the employee cannot be dismissed or invited to a preliminary meeting during the extraordinary leave.

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