

New short-time working scheme to face Coronavirus

To face the pandemic that has taken hold for several weeks now, new measures have been taken to adapt the "*force majeure*" short-time working scheme available for certain companies.

This mechanism, provided for in Article L.511-4 (4) of the Luxembourg Labour Code, has been identified by the Government, but also on the employer and on the employee side, as an essential tool to support employment and to avoid redundancies.

By way of a reminder: the Economic Conditions Committee ("*Comité de Conjoncture*") first met on 18 March 2020 to approve the related proposal and the processes elaborated by the Luxembourg Labor Ministry and the Luxembourg Ministry of Economy.

Two procedures are now available:

- 1) A "*force majeure/Coronavirus*" short-time working scheme
- 2) An accelerated procedure for companies directly affected by a Government decision of closure.

Further, in light of the exceptional situation and the repercussions on the functioning of companies and on their employees, the conditions for the application and for the obtention of short-time working have been adjusted since 27 March 2020, in order to speed up and facilitate the process. A new automated system has therefore been set up by the Employment Development Agency ("*Agence pour le Développement de l'Emploi*" or "ADEM") and the Economic Conditions Committee, enabling companies to submit their applications each month via an online form¹, by means of a secure authentication via a LuxTrust product or an electronic identity card. If companies do not have these means, they can also submit their application via a representative mandated to that effect. The data collected will then be processed automatically by the ADEM. All applications sent by post, e-mail or fax are therefore no longer accepted, as the online application is mandatory. As for requests already made based on the former form, a reply should have been provided by 3 April 2020.

Key issues

- the "*force majeure*" short-time working scheme
- new accelerated procedure
- new automated system for online application
- procedure, conditions and compensation of the short-time working

¹ <http://quichet.lu/cocp>

Who are the beneficiaries?

The short-time working scheme is available to all economic sectors directly affected by the Coronavirus. Applications from companies that can no longer carry out their activities following a decision taken by the Government are automatically eligible for short-time working, and are admissible to the accelerated procedure, where requests are directly processed by the ADEM. All companies that have had to, or still have to, completely or partially cease their activities following a governmental decision, including those covered by the Ministerial Order of 16 March 2020² and the amended Grand-Ducal Regulation of 18 March 2020³, will thus be admitted to the short-time working scheme.

The benefit of short-time working starts from the date on which the Government's decision takes effect. Applications from other companies suffering from a decline in activity due to the Coronavirus crisis will only be eligible after the approval of the Economic Conditions Committee. Temporary employment agencies are also eligible regarding their employees whose assignment contract continues, but who can no longer carry out their activity. Applications from non-profit organizations will be analyzed on a case-by-case basis, to avoid double financing.

Several conditions must be fulfilled when submitting the application: the company, legally established in Luxembourg, must suffer from the economic or legal consequences of the Coronavirus, making it impossible to continue its regular economic activity. In addition, the use of short-time working will only be possible after prior exhaustion of the company's own resources (i.e. non-extension of fixed-term contracts or temporary lending of workforce). Finally, the company undertakes not to dismiss any employees for economic reasons. In this respect, Article L.511-3 of the Labour Code provides that employers undertake to maintain the employment contract of their staff. However, dismissals on personal grounds remain possible.

As far as employees are concerned, those whose workplace is in Luxembourg, whether they are employed under a permanent or a fixed-term contract, as well as apprentices, are eligible. They must also meet certain conditions, namely that (i) they are not covered by a certificate of incapacity for work; (ii) they are under 68 years of age without receiving an old-age-pension, an early old-age-pension or an invalidity pension; (iii) they are affiliated to the Luxembourg social security system; and (iv) they are no longer occupied full time, or occupied at all. This might happen if the supplier can no longer deliver raw materials (i.e. regarding industrial or craft firms), in the event of a significant decrease in customer demand (i.e. regarding service firms), or if the company can no longer run at normal speed because one or more departments are completely shut down (notably due to staff absences caused by external decisions related to the pandemic)⁴.

²<http://legilux.public.lu/eli/etat/leg/rgd/2020/03/18/a165/consolide/20200409>

³<http://legilux.public.lu/eli/etat/leg/rgd/2020/03/18/a165/consolide/20200409>

⁴ These examples have been provided by the Luxembourg Government on:
<https://quichet.public.lu/fr/actualites/2020/mars/10-chomage-partiel-coronavirus.html>

The employee is then not obliged to be physically present at his/her workplace during non-working hours, but he/she must remain at the disposal of his/her employer, who may call him/her back at any time in case of resumption of activity.

Besides, employees who are teleworking or on leave for family reasons⁵ are not eligible for short-time working, as clarified in a Grand-Ducal Regulation of 27 March 2020⁶.

What about the compensation?

Short-time working entails a reduction of the working time of up to a maximum of 1.022 hours per year, per full-time employee (*i.e.* under the short-time working scheme, a full-time employee's working hours may not be reduced by more than 1.022 hours a year). For a part-time employee, the 1.022 hours are pro-rated. Thus, during the period of short-time working, the State covers the compensation allowance up to 80% of the normal salary, capped at 250% of the minimum social wage for unskilled employees over 18 years of age (*i.e.* EUR 5.354,98 at index 834,76, applicable as of 1st January 2020). Moreover, thanks to the introduction of the new Grand-Ducal Regulation of 27 March 2020⁷ temporarily amending Article 2 of the amended Grand-Ducal Regulation of 15 September 1975 fixing the rate of compensation for the short-time workers, this compensation may not be less than the rate of the minimum social wage for unskilled workers over 18 years of age (*i.e.* EUR 2.141,99 at index 834,76, applicable as of 1st January 2020).

Regarding the procedure, as soon as the application is accepted, companies receive (monthly) advance payments from the ADEM based on the forecasted number of employees who cannot carry out their activity normally. These advances enable companies to obtain the funds needed to pay their employees' wages, and also ensure that the measure is cash-flow neutral. By the end of the month, the companies must produce a detailed statement to the ADEM showing the actual non-working hours and the sums owed by the State. On that basis, the ADEM then calculates the sums owed by the Employment Fund ("*Fonds pour l'Emploi*"). If advance payments are greater than the sums owed by the State, companies will be required to reimburse these overpayments. The form for the detailed statement is being developed and will be available soon. It is also to be noted that applications must be renewed on a monthly basis. Besides, admissible companies' refund of non-working hours applications will be given retroactive effect as from 16 March 2020.

The employer continues to pay the social security contributions, performs the tax deductions corresponding to the wages paid for working hours and those corresponding to the compensatory allowance paid for non-working hours. Accident insurance contributions and family benefits contributions remain excluded.

⁵Further details in our contribution on the new Extraordinary Leave for Family Reasons:

<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/03/extraordinary-leave-for-family-reasons-in-response-to-the-covid-19-pandemic.pdf>

⁶<http://legilux.public.lu/eli/etat/leg/rgd/2020/03/27/a203/je>

Further details in our contribution on the additional measures of the Government regarding the pandemic:

<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/04/Client%20Briefing%20-%20Employment%20additional%20measures%20regarding%20Coronavirus%20pandemic.pdf>

⁷<http://legilux.public.lu/eli/etat/leg/rgd/2020/03/27/a204/je>

Lastly, on 14 April 2020, the Luxembourg Labor Minister (Mr Dan KERSCH) announced a 10% deduction on the aid for employers that are three months late in the payment of social security charges, and a 20% deduction for employers that are over three months late in paying social security charges. Mr KERSCH also underlined that the advances received may only be dedicated to the payment of employees' wages. If advances are used in any other way, this will constitute a misappropriation of public funds. A draft bill will be introduced to increase the related penalties.

Finally, during its meeting on Thursday 16 April 2020, the Economic Conditions Committee will determine further companies eligible for short-time working.

A Government hotline⁸ for questions regarding short-time working is also open and runs from Monday through Friday, from 8am to 6pm.

⁸ Contact: 8002 9191

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