



BELGIUM

Decent Work Check 2019

Iftikhar Ahmad

WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. The Collective Bargaining Agreement No. 43 of 1988, last modified in March 2013
2. Loi sur les conventions collectives de travail et les commissions paritaires 1968
3. Labour Act 1971- Loi sur le travail 16 Mars 1971
4. Public Holidays Act
5. Law of 5 March 2017 concerning Flexible and Manageable Work
6. 30 MARS 1967. - Arrêté royal déterminant les modalités générales d'exécution des lois relatives aux <vacances> annuelles des travailleurs salariés
7. 28 JUIN 1971. - Lois relatives aux <vacances> annuelles des travailleurs salariés coordonnées
8. JUILLET 1978-Loi relative aux contrats de travail (Employment Contracts Act, 1978)
9. Royal Decree to Execute the Act Respecting Compulsory Sickness and Indemnity Insurance Scheme
10. Royal Decree of 17 October 1994
11. Employment Contract Act
12. Royal Decree of 20 July 1971 concerning the Sickness and Maternity Insurance Scheme for Self-employed Workers (Arrêté royal du 20 juillet 1971 instituant une assurance indemnités et une assurance maternité en faveur des travailleurs indépendants et des conjoints aidants)
13. Loi relative au bien-être des travailleurs lors de l'exécution de leur travail, 4 Aout 1996
14. Moniteur belge 28 April 2014
15. Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination
16. Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie, 1981
17. Loi tendant à lutter contre la discrimination entre les femmes et les homes, 10 May 2007
18. Loi du 19.08.1948 relative aux prestations d'intérêt public en temps de paix
19. Loi organique du Conseil national du Travail
20. Organic Law of 29 May 1952 of the National Labor Council (as amended on 31 December 2009)
21. Law of 5 December 1968 on Collective Agreements and Joint Committees

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Belgium has ratified the Convention 95 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- The Collective Bargaining Agreement No. 43 of 1988, last modified in March 2013
- Loi sur les conventions collectives de travail et les commissions paritaires 1968

Minimum Wage

Minimum pay rates are generally set by the industry wide agreements adopted by the competent joint committees. When no such rates have been set by the Committees, an employer is required to comply with the minimum monthly pay set by the cross-industry agreements at the national level. These national level collective agreements are concluded by the National Labour Council. The Average Monthly Guaranteed Minimum Wage (Revenu Minimum Mensuel Moyen Garanti) is the minimum amount that a full time 21-year-old (or higher) employee in the private sector must be paid in a month. Paying less than the minimum wage is prohibited in Belgium. The RMMMMG, applicable to all workers in the private sector, employment is set through collective agreements negotiated in the National Labour Council. The minimum wages for different sectors can also be determined by the Joint Negotiation Committees established at the sectoral level. The sectoral minimum wage can't be less than the RMMMMG. The Revenu Minimum Mensuel Moyen Garanti is applicable to all full time workers 21 years and older. Workers under the age of 21 years (from 16 years to 21 years), workers are entitled to lower rate of pay, as a percentage of national or sectoral minimum wage, ranging from 70% for workers aged 16 years to 96% for workers aged 20 years. The RMMMMG and sectoral minimum wages are indexed to the consumer price index (CPI). Part-time workers are also entitled to the RMMMMG calculated on a pro-rata basis in accordance with the number of hours worked (full time work is 38 hours per week).

The workers aged 16 years and under are entitled to 70% of the RMMMMG (entitled to a worker 21 years of age). This percentage is 76% for workers aged 17 years. Since April 2013, a higher percentage of RMMMMG is given to young workers aged 18 years to 20 years. Workers aged 18 years are eligible for 88% of the minimum wage, 19 years old for 92% of the minimum wage and 20 years old for 96% of the minimum wage.

The Wage Norm Act, 1996 regulates the power of employers to increase workers' wage. The maximum margin for wage increase, ie, the norm is set by the social partners based on the report of National Economic Council. If no agreement is reached between the social partners, the maximum margin is determined by Royal Decree.

The 2017 amendment in the Wage Norm Act provides that the National Labour Council should formalise the wage norm as agreed upon by the social partners in a Collective Bargaining Agreement. In 2017-2018, the wage norm/maximum margin has been set at 1.1% and is formalized in the national CBA n°119. In the event of violation of this wage norm, the social inspection services may impose administrative fines amounting between EUR 250-5,000. This amount is multiplied by the number of employees concerned with a multiplier maximum of 100.

Compliance with minimum wage rates is ensured by the Belgian Federal Public Service Employment, Labour and Social Dialogue. In the event of minimum wage violations, an individual may file a complaint with the labour inspectorate.

(The Collective Bargaining Agreement No. 43 of 1988, last modified in March 2013; Convention Collective De Travail N 43 Duodecimes; Loi sur les conventions collectives de travail et les commissions paritaires 1968; CCT n° 50bis du CNT du 28 mars 2013 modifiant la convention collective de travail n° 50 du 29 octobre 1991 relative à la garantie d'un revenu minimum mensuel moyen aux travailleurs âgés de moins de 21 ans; <https://www.salairesminimums.be/document.html?jclId=31ff47e2da5043f0a1fe192a701fa020&date=01/05/2017>)

Details on minimum wages are found in the section on Minimum Wages.

Regular Pay

In accordance with Law of 12 April 1965 regarding Protection of Workers' Compensation, "it is unlawful for an employer to restrict in any manner whatsoever the freedom of the worker to dispose of his earnings at his own discretion". The remuneration may be paid in cash or through some type of transfer like bank transfer, postal cheque, postal summons or circular cheque. The remuneration in the public sector is in principle made in cash however a worker may give his written consent to transfer his remuneration through any of above transfer methods.

Compensation must be paid at regular intervals and at least twice per month at an interval of 16 days. The blue-collar workers are twice a month while white collar workers are paid at least once a month. Salaries must be paid on a working day and at or near the workplace. Salaries must be paid at the latest four working days following the pay period except when a collective labour agreement provides for a different deadline (the maximum limit is seven working days on completion of the period for which salary was earned).

There is an amendment in the law on the protection of workers' remuneration regarding the payment of remuneration. This law will take effect 1 year after publication, that is, 1st October 2016. The law changes the mode of payment of compensation to the worker: it must be paid through bank transfer, unless a collective agreement or a sectoral agreement authorizes payment of remuneration in cash. The manner of wage payment must be added in the work regulations of the enterprise.

Source: Loi concernant la protection de la rémunération des travailleurs, 12 Avril 1965

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Belgium has ratified both Conventions 01 & 171.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Labour Act 1971- Loi sur le travail 16 Mars 1971
- Labour Act and
- Public Holidays Act

Overtime Compensation

The statutory working hours are 08 hours a day and 38 hours a week on average. Employees can, however, work more than the statutory working hours in accordance with a number of exemptions provided under the Labour Law. However, such exemptions involve compliance with various conditions and a prior authorization. The types of work seeking derogation from normal working hours include "work of transport, loading or unloading; work whose execution time can't be determined accurately because of its nature; abnormal pressure of work; rotating shift work; inventory work and balance sheet work. The work performed may not exceed certain limits like 11 hours per day (12 hours per day in the case of work that can't be interrupted) and 50 hours per week except if the work is necessitated by compelling reasons like force majeure, emergency, work performed in order to prevent an imminent danger or accident. If a worker works beyond 9 hours a day and 38 hours on average per week, he/she is entitled to a premium rate of 150% of the normal rate of wages for overtime work performed on the normal weekdays and Saturday. Though overtime is allowed, the average working hours must not exceed 38 hours per week over a reference period of one year. Once the overtime reaches 143 hours, worker is immediately entitled to compensatory rest.

Amendment in the labour law has introduced a new type of overtime called "voluntary" which allows the worker who so requests to provide a quota of overtime and thus to supplement his remuneration. The worker must enter into a written agreement with his employer. Once this agreement has been reached, the employer may ask the worker to work overtime whenever necessary without prior authorization or information. However, the maximum limit of 11 hours per day and 50 hours per week cannot be exceeded. This agreement is valid for six months and may be renewed insofar as the worker still wishes to volunteer.

The worker is allowed to work up to 100 overtime hours during the year. If these overtime hours are worked on a week day, the compensation is 150% of the normal wage rate. This quota of 100 additional hours may be increased by a sectoral collective agreement made compulsory by Royal Decree, but the increase may not exceed 360 hours per calendar year.

Sources: §19-29 of Labour Act 1971- Loi sur le travail 16 Mars 1971; §4 & 7 of the Law of 5 March 2017 concerning Flexible and Manageable Work

Night Work Compensation

Work performed between 20:00 hours and 06:00 hours are considered night hours. There is general prohibition in the labour law on performance of night work for both male and female workers. However, exceptions are both provided under the Labour Act and Royal Decrees.

Some exceptions as provided under the Labour Act include "work in hotels, catering, newspaper industry, pharmacies, bakeries, cinemas, theaters, information and travel agencies, and execution of work which can't be interrupted because of its nature. Night work may also occur in work performed in shifts, for tasks that need continuous work and in enterprises where materials are subject to quick deterioration. There is no provision in the Labour Act or Royal Decrees requiring payment of premium wages to employees working at night.

In accordance with the Law of 5 March 2017, if the nature of the work and the activity justifies the use of night work, the employer may therefore introduce night work for its e-commerce activities.

Sources: §35-37 of Labour Act 1971- Loi sur le travail 16 Mars 1971; §79 of the Law of 5 March 2017 concerning feasible and manageable work

Compensatory Holidays / Rest Days

The Labour Act provides for compensatory rest for working on weekly rest day (Sunday) or Public Holiday. The compensatory rest has to be given within the following six days. The compensatory rest must be given for the whole days if the work on Sunday and Public Holiday was performed for more than 4 hours and half day when the work on these days was performed for less than 4 hours. The half day rest must be granted before or after 01 pm and the total hours of work on that day must not be greater than 5 hours.

Sources: §16 of Labour Act and §11 of Public Holidays Act

Weekend / Public Holiday Work Compensation

There is no provision in the law granting extra pay to workers for working on Sunday and Public Holidays. However, if workers perform overtime work on these days, they are paid at 200% of the normal wage rate. The collective bargaining agreements may provide for a higher rate for working on these days.

Sources: §26-bis and 29 of Labour Act

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

Belgium has ratified the Conventions 14 & 132 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week.

Regulations on annual leave and holidays:

- Labour Act 1971- Loi sur le travail 16 Mars 1971
- 30 MARS 1967. - Arrêté royal déterminant les modalités générales d'exécution des lois relatives aux <vacances> annuelles des travailleurs salariés
- 28 JUIN 1971. - Lois relatives aux <vacances> annuelles des travailleurs salariés coordonnées

Paid Vacation / Annual Leave

The number of days of annual leave depends on the number of days of work performed by a worker per week (five or six) and the number of weeks of work performed during the calendar year immediately preceding the year during which the holidays are taken. After one year of full employment, an employee is entitled to:

- i. 24 working days if they work 6 days per week; and
- ii. 20 working days if they work 5 days a week

For Blue-Collar workers, apprentices and salaried artists, annual leave is paid through the National Office for Annual Leave (ONVA). The employer does not have to pay any wages to the workers during the period of annual leave however they have to pay a special social security contribution in order to finance the holidays of blue-collar workers. The amount of annual leave pay depends on the salary earned during the year preceding the one in which worker has to take holidays. The amount corresponds to 15.38% of the annual salary earned during the year.

For white collar workers/employees, employer is required to pay annual leave pay directly to the employees. They receive their normal remuneration for the time of holidays and a supplementary 1/12th of 92% of their gross salary of the month in which the annual leave is taken. The payment of annual leave pay is made at the time of commencement of such leave. If the annual leave period is split, the payment is made at the time when worker takes the main period of leave but not earlier than 02nd May of each year.

In accordance with the Royal Decree of 10 August 2015 (Moniteur belge 2 September 2015), when two employment contracts for temporary agency workers are concluded with the same temporary agency for an assignment with the same user and are only interrupted by one or more annual leave or replacement days, then the annual leave or replacement days must be considered days during which the temporary agency worker was employed by the temporary agency. Now, it is no longer possible to evade employer obligations to pay for annual leave by concluding temporary contracts in intervals so they fall before or after the temporary worker's annual leave days.

Sources: 30 MARS 1967. - Arrêté royal déterminant les modalités générales d'exécution des lois relatives aux <vacances> annuelles des travailleurs salariés; 28 JUIN 1971. - Lois relatives aux <vacances> annuelles des travailleurs salariés coordonnées

Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These include memorial holidays and religious holidays (Christian origin). The Public Holidays are usually ten (10) in numbers. These Holidays are New Year's Day (January 01), Easter Monday (April 01), Labour Day (May 01), Ascension Day, Whit Monday, National Holiday (July 21), Assumption Day (August 15), All Saints' Day (November 01), Armistice Day (November 11), Christmas Day (November 25).

If a public holiday coincides with the day of inactivity or Sunday, it is replaced by a working day. Workers are entitled to pay for each of the public holiday.

Sources: Loi du 4 janvier 1974 relative aux jours fériés

Weekly Rest Days

Weekly rest period is provided under the Labour Act. Every worker is entitled to enjoy a weekly rest of at least 24 consecutive hours. Weekly rest day is Sunday and there is general prohibition to employ workers on weekly rest day, i.e., Sunday. Exceptions are also allowed under the law if the normal running of enterprise can't be carried out another day of week like security/surveillance of workplace, cleaning and repair tasks; work to prevent or repair accident occurred or about to occur, works necessary to prevent the deterioration of raw materials or products. Workers may be employed on Sundays in companies or for the execution of works determined by a specific royal decree. This Royal Decree may impose additional conditions.

Sources: §3, 11-18, 32.2 and 66 of Labour Act

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Belgium has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- JUILLET 1978-Loi relative aux contrats de travail (Employment Contracts Act, 1978)

Written Employment Particulars

An Employment contract is a contract under which a person, i.e., the employee undertakes to work, in exchange for a payment, for another person, i.e., the employer and does that work under the second person's authority.

The four basic elements of employment contract are "the contract, the work, the remuneration and the employer's authority" (a relation of subordination). The employment contracts can be classified as contract depending on the nature of work (contracts for blue-collar and white-collar workers), depending on the duration of contracts (indefinite term vs. fixed term, replacement, specific work, temporary work contracts) and contracts depending on the volume of services (full time vs. part time contracts). The main elements of employment contract, i.e., the nature of work, job functions, compensation, workplace, and working hours, can't be modified by employer unilaterally. Any change in the employment contract can be made with the consent of both the parties.

The permanent contract/indefinite term or open ended contract may not be in writing. On the other hand, all other contracts like fixed term contract, contract for specific work, replacement contract, part-time contract, student contracts, contract for performance of temporary work, contract for tele-working or home based working contract, must be in writing. In the absence of express written terms, there is a presumption that the contract is a full-time, open-ended/permanent contract without a probationary period. A contract of employment may be agreed verbally or in writing. Certain provisions of an employment contract (whether definite or indefinite) just be in writing in order to be valid. These are "non-compete clauses, notice period clause for senior employees and clauses relating to probationary period". The contract of employment has to be drafted in the correct language based on the region where employee is based (French, Dutch or German). If the required language is not used in drafting of the employment contract, such contract may be declared null and void.

The Flemish Parliament has amended the Decree of the Flemish Community of 19 July 1973 with the Decree of 14 March 2014 (Moniteur belge 22 April 2014), under which the contracts for individuals can be concluded in a language in addition to Dutch. The language must be the one in which the individual with whom the contract is being concluded is comfortable and must be a language of countries within the EEA. The additional legally binding employment contract can only be concluded if the employee (i) Lives in another EU- or EEA Member State or (ii) lives in Belgium and has exercised his/her right to the free movement of workers or to the freedom of establishment or (iii) is covered by the right to the free movement of workers on the basis of an international or supranational treaty. It is expressly provided that if the Dutch and the other language

version of the document differ, the Dutch version will prevail. This provision applies expressly to the Flemish Community which speaks Dutch.

Sources: 3 JUILLET 1978-Loi relative aux contrats de travail

Fixed Term Contracts

Belgian labour Law allows hiring of fixed term contract workers for tasks of permanent nature. If parties continue working beyond the agreed term of the contract without renewing the contract, they are deemed to have concluded the employment contract for indefinite duration. If parties conclude successive fixed term contracts, these will be considered as a contract for indefinite duration unless the employer justifies these contracts either by nature of work or other legitimate reasons.

Maximum length of a single fixed term contract (including four subsequent renewals) is 02 years while minimum duration of each of these contracts is at least 03 months. This duration may be extended to 03 years if the minimum duration of each of these contracts is at least 06 months on the condition of obtaining authorization.

A fixed-term employment contract can be terminated by premature notification before the expiry of the term. This can be done especially during the first half of the agreed duration of the employment contract, but only within a period not exceeding six months, whilst respecting the legal period of notice provided, in principle, by law for permanent employment contracts. In case of justified successive fixed-term employment contracts, the possibility of premature termination only applies to the first employment contract.

Where in the private sector, employment is terminated by termination of contract, the employees must be told the reasons due to which he/she was dismissed. An employee who wishes to know the specific reasons for his/her dismissal must submit his/her request addressed to the employer by registered letter, which must be made within two months after the contract has been terminated. For more information on termination by notice, see under notice period below.

The Act on feasible and manageable work introduces a new Article 8ter into the Act on Temporary Work allowing temporary employment agencies to conclude an employment contract for an indefinite period with a temporary worker in order to set up a pool of workers, which can be called to work when a work opportunity appears. This gives more security to temporary agency workers, given that between two interim assignments they remain under contract and thus constitute certain rights.

Sources: Art 10-11 of 3 JUILLET 1978-Loi relative aux contrats de travail, Moniteur belge 31 December 2013, Collective Bargaining Agreement no. 109 of 12 February, 2014; §32 of the Law of 5 March 2017 concerning feasible and manageable work

Probation Period

The trial/probationary period allows the employer to assess the skills of the employee in his work, particularly in view of his experience, and the employee to determine whether the new job suits him.

An employment contract may contain a trial clause which clearly needs to be stated in writing. If a trial clause was not included in the written contract at the start of employment, there will be no trial period and the worker will be immediately engaged under a contract of indefinite duration. The duration of trial period can vary between seven and 14 days for (blue-collar) workers. Trial period may be extended by 07 days to cater for suspension of the employment contract (due to illness, accident or annual holidays) however total duration of the trial period may never exceed 21 days (14 days of initial period + seven days' extension). If the test clause in the employment contract specifies that there will be a probationary period but does not set its duration, the probationary period is always reduced to the minimum period, i.e., seven days.

As for the employees (white collar workers), the duration of test period may vary between one month and six (or twelve) months, depending on the annual compensation of employee. In 2013, the threshold was €38,665 per year. The government had fixed the new minimum income threshold for 2014 as €39,422. However, in the newly crafted unified statute for white-collar and blue-collar workers, the probationary/trial period has been abolished from January 01, 2014 for new workers except in a very limited number of cases like student work or temporary agency work in which the probationary period has been limited to 03 working days.

Sources: §48-49 & 66-67 of 3 JUILLET 1978-Loi relative aux contrats de travail;
http://www.labourlawnetwork.eu/national_labour_law_latest_country_reports/national_legislation/legislative_developments/prm/109/v__detail/id__3464/category__4/index.html;
<http://www.pwc.be/en/hr-law-newsletter/2013/2013-10-09-unified-statute-white-blue-collar-workers.html>

Notice Requirement

An employment relationship terminates on expiry of the (fixed) term; completion of work for which contract was concluded; by the will of either party, if the contract was concluded for an unspecified/indefinite period or if there is a serious cause for termination; worker's death; or force majeure. Employer death does not lead termination of contract.

In a ruling of 7 July 2011, the Belgian Constitutional Court gave the Belgian legislature two years to abolish the difference in employment statutes between blue-collar workers and white-collar employees especially with regard to termination and required notice periods, because it violates constitutional rules on discrimination and equal treatment. In consideration of above ruling, Government has enacted a new Unified Statute for Blue-collar and White-collar Workers, applicable from 01 January 2014, which provides

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for a uniform system of notice of termination for both manual workers and white collar employees.

During the first 5 years of service, period of notice grows progressively, i.e., quarterly during the first two years and annually thereafter. The period of notice is 2 weeks (first quarter); 4 weeks (second quarter); 6 weeks (third quarter); 7 weeks (fourth quarter); 8 weeks (fifth quarter); 9 weeks (sixth quarter); 10 weeks (seventh quarter); 11 weeks (eighth quarter/2 years), 12 weeks (2-3 years); 13 weeks (3-4 years); 15 weeks (year 4-5). From the 6th year (05 years plus one day) until the 19th year of service/seniority, notice period is increased by 03 weeks for every additional year of service. A worker with 20 years of service has to be served a notice of 62 weeks. After 20 years, the notice period increases by one week for every year of service. A worker with 25 years of service is eligible for 66 weeks of notice. An employer may either serve the notice or pay in lieu of notice. The new rules for blue-collar workers will be phased-in over a period of up to 5 years. For white collar employees the new rules will only apply to new contracts and employee's rights under existing rules will be preserved.

While the Unified Employment Status Act unified the termination notice period for blue and white collar workers and as explained above, it was 2 weeks during the first quarter and 4 weeks during the second quarter of employment. However, under a March 2018 reform in Employment Contracts Act, the notice periods have been changed as follows: during the first 3 months of employment, the required notice period is 1 week; during the fourth month of employment, the required notice period is increased to 3 weeks; during the fifth month of employment, the required notice period is increased to 4 weeks; and during the sixth month of employment, the required notice period is increased to 5 weeks.

Where the employment of an employee is terminated by notice, an employee can know the reasons for the termination by submitting a request to the employers within six months of notification of termination by the employer, but the period may not exceed 2 months following the end of the contract. The employer's written notice must contain information that allows the employee to understand the concrete reasons leading to his/her dismissal. The employer may specify the reasons that led to the dismissal on his/her own initiative. In that case, the employer is not required to respond to a request by the employee to give reasons for the dismissal.

There are also exceptions to this obligation to inform about the reasons for the dismissal. There are as follows:

- i. In case of dismissal during the first 6 months of employment. Prior and consecutive employment contracts for a specified period or for temporary employment for an identical function count as the first 6 months of employment with the same employer;
- ii. If the employee is employed by a temporary employment contract or a contract for student work;

- iii. If an elderly employee is dismissed but is eligible for social security unemployment benefits and a supplement is paid by the former employer (early retirement called 'bridge-pension');
- iv. If the employee who has an employment contract of indefinite duration is dismissed on the first day of the month following the month in which the employee reaches statutory retirement age (65 years);
- v. If the employee is dismissed due to abandonment of the activity, the closure of the company, collective redundancies or a multiple redundancy due to restructuring
- vi. If the employer adheres to the special dismissal procedures stipulated by law for employee representatives in the works council or in the health and safety committee;
- vii. In case of immediate dismissal for gross misconduct;

If the employee works for a joint committee, where a reduced period of notification applies for the dismissal of employees in accordance with the new legal regime on joint employee status. This exception applies until 31 December 2015.

There will be fines to pay if the employer does not comply with this requirement of communication either completely or within the time frame mentioned. The fine will be equal to the wages of 2 weeks of salary.

If the employee is dismissed for reasons that are not related to their suitability or conduct, or not based on the necessities of the operation of the enterprise or under circumstances under which a normal and reasonable employer would never dismiss the employee, this is regarded as an 'unfair dismissal.' Employees who are unfairly dismissed may initiate legal proceedings in the court and the employers may be required to pay dismissal compensation of at least 3 weeks of salary and a maximum of 17 weeks.

The following types of workers, among others, are protected against dismissals: those with maternity related circumstances (pregnant and breastfeeding workers); those on various types of leaves (parental leave, career break, political leave, childcare leave); those who filed a complaint (regarding discrimination, bullying and sexual harassment); and those who are candidates/members of the works council and trade union representatives.

Source: Moniteur Belge 31 December, 2013; Arrêté Royal du 09 Janvier 2014, Published in Moniteur Belge 20 Janvier 2014

Severance Pay

There is no provision of severance pay in the Belgian labour laws in the case of individual dismissals including for economic reasons.

Workers are eligible only for the notice pay if the employer wants to pay in lieu of notice. However a special allowance is payable in the event of collective redundancies. This redundancy payment is equal to (basic average net remuneration – unemployment benefits)/2. The redundancy allowance is paid for a period of 04 months subject to certain exceptions.

All branches of industry must provide employees entitled to a notice period of at least 30 weeks with a dismissal severance package no later than 1 January 2019, consisting of a period of notice or corresponding dismissal compensation that amounts to two-thirds of the redundancy package and for the remaining third, consisting of measures that increase the employability of the worker on the labour market.

Sources: §6-13 of Convention Collective De Travail N° 10 Du 8 Mai 1973, Moniteur belge 31 December 2013

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)
Recommendation 165: Workers with Family Responsibilities (1981)

Belgium has ratified the Convention 156 only.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- 3 JUILLET 1978-Loi relative aux contrats de travail
- Royal Decree to Execute the Act Respecting Compulsory Sickness and Indemnity Insurance Scheme
- Royal Decree of 17 October 1994

Paternity Leave

Workers are entitled to 10 days of paternity leave. All the workers in the private sectors are entitled to take paternity leave. An employer wishing to take paternity leave has to give notice to the employer before commencement of leave. New fathers are entitled to be absent from work for 10 days, chosen at worker's own convenience, within 04 months after the date of birth of a child of whom the worker has been legally recognized as the father.

The first three days of paternity leave are paid by the employer and the other seven days are paid by the compulsory sickness and disability insurance scheme in the amount of 82% of his gross salary. In the case of death or hospitalization of mother, the legislation provides that the father may take the remainder of maternity leave to care for the child.

Sources: Art 30.2 of 3 JUILLET 1978-Loi relative aux contrats de travail; Royal Decree to Execute the Act Respecting Compulsory Sickness and Indemnity Insurance Scheme Art.221; Royal Decree of 17 October 1994 Art.2.3; <http://www.emploi.belgique.be/defaultTab.aspx?id=554>

Parental Leave

Laws provide for parental leave. The parental leave provisions apply to both the public sector and private sector workers.

Only a parent (biological mother, biological father or the person who acknowledged the child to establish paternity as well as adoptive parents) is eligible for paternity leave. Each parent has an independent and non-transferable right to take paternity leave.

The right to take parental leaves lapses when the child reaches the age of 12 years. In the case of mental or physical incapacity of the child, the right lapses when the child reaches the age of 21 years. In the case of adoption, the right to parental leave is available before the child reaches the age of 12 years.

In order to take parental leave, a worker must have worked with the employer for at least 12 months during the last 15 months preceding the application for parental leave. An employment contract is suspended during the term of parental leave.

An employee is entitled to a maximum of 04 months of parental leave and can decide between the following 3 options or even to change from one option to the other until the 04-month limit is reached:

- i. Parental Leave Full Time: the employee opts to take 04-month period continuously or with gaps (however employee does not working during this time);
- ii. Parental Leave Half Time: A full time employee can reduce his/her working time by half for 08 months/50% of full-time employment (or can split the 08-month period of half time into many periods of no less than two months each); and
- iii. Parental Leave One-fifth time: A full time employee reduces his/her working time by one-fifth over 20 months/20% of full-time employment (the worker can split this 20-month time in many periods however none of these periods may be less than 05 months)

Workers who fully interrupt their employment receive a flat rate of € 707.08 per month as the career interruption allowance. Workers who reduce their working time by half are entitled to €325.92 (for less than 50 years old) and €552.84 (for more than 50 years old) respectively. Workers who reduce their working time by one-fifth (and work only 80% of the time) are entitled to €110.57 (for less than 50 years old) and €221.14 (for more than 50 years old) respectively. Workers are eligible for these benefits on monthly basis from National Employment Office for the duration of their parental leave, i.e., 4 months, 08 month or 20 months. However, workers whose child was born or adopted on or after 08 March 2012 are entitled to career interruption benefit from National Employment Office for the 4th month (1st option), 7th-8th months (2nd option) or 16th-20th months(3rd option). If a child is born or adopted before this date, no benefit is paid for these extra months.

In addition to the scheme of parental leave introduced by the Royal Decree of 29 October 1997, the details of which have been mentioned above, a separate regime of parental leave was introduced in Belgium through the collective bargaining agreement No. 64 of 29 April 1997 which has subsequently amended by agreement No. 64bis of 24 February, 2015. Under this collective agreement, the right to parental leave is 4 months. Furthermore, the agreement gives the right to exercise parental leave in a flexible manner i.e. by reducing working hours in a wider variety by not only half or one-fifth, but also by one-third, one-fourth etc. Part-time workers can also take parental leave by reducing their working hours, while the maximum age of the child for which parental leave can be taken has been increased from four to eight years, although this is lesser than the age provided by the Royal decree. Finally, the CBA No. 64 introduces the right for the employee to apply for a suitable work schedule or a modified work schedule during the period following the end of the parental leave.

Sources:

http://www.onem.be/frames/Frameset.aspx?Language=FR&Path=D_Opdracht_LBO/Regl/&Items=1/1; Arrêté royal relatif à l'introduction d'un droit au congé parental dans le cadre d'une interruption de la carrière professionnelle, Collective Agreement No. 64bis of 24 February, 2015

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Flexible Work Option for Parents / Work-Life Balance

Parental Leave provisions can be used a flexible working time for employees with minor children.

All eligible workers (with 5 years of employment and two years of seniority with the employer) have a basic right over their working lives to one paid year of this type of leave (24 months if working half time and 60 months if working 80% of full time). This period can be extended up to 36 months by collective agreement negotiated at sectoral or company level, but only for leave taken to care for a child younger than eight years, to provide palliative care, to care for a seriously ill family member and/or to do a training course. Payment varies according to age, civil status and years of employment.

There is a Time Credit system (Tijdskrediet) applicable to the employees in the private sector. A similar scheme is provided for the public sector employees as well. Under this scheme, employees are entitled to partially or wholly suspend their employment contract and therefore in other words, it can be seen as a representation of a form of career break or period of part-time work. The scheme entitles the Employees to State allowances, i.e., an interruption allowance from the Belgian National (Un) Employment Office. Two different types of time credit schemes exist in Belgium: time credit with a specific reason and end-of-career time credit. Specific reasons including caring for young children, providing assistance to a sick relative, giving palliative care or pursuing studies. There is an interruption allowance of maximum 36 months where the scheme is availed due to a participation in a recognized course and a maximum allowance of 48 months where availed on the basis of care. Furthermore, the Royal Decree increases the minimum age for entitlement to interruption allowance in case of end-of-career time credit to up to 60 years.

The law of March 5, 2017 stipulates that the right to time credit on grounds of care is extended to 51 months by 1 April 2017. The law also states that this enlargement becomes pointless if the social partners themselves carry out the enlargement by the "adaptation CTC No. 103 above and before the 1st February 2017. In the meantime, the social partners have adapted CTC No. 103 to 20 December 2016, notably by raising the time credit for reasons of care to 51 months. In line with what determines the law on the feasible and practical work, the social partners have determined the effective date of this amendment to the 1st April 2017.

Law of 5 March 2017 concerning feasible and manageable work introduces floating hours; a system of flexible working hours that provides a better balance between work and private life. In floating schedule, the worker determines the beginning and the end of his work and his breaks while observing the fixed and mobile ranges. Fixed ranges include hours of compulsory attendance at the workplace. Mobile ranges are periods during which the worker can modulate the beginning and the end of his working day, as well as, if necessary, the planned breaks. Workers practicing floating schedule may work up to a maximum of 09 hours per day and 45 hours per week. The worker must respect his normal weekly hours on average during the applicable reference period. The

reference period is 03 calendar months, unless the collective agreement or the work regulations determine another period, but not more than one year.

Sources:

http://www.onem.be/Frames/frameset.aspx?Path=D_opdracht_LBO/&Items=1&Language=FR; <http://www.emploi.belgique.be/defaultTab.aspx?id=553>; Arrêté Royal du 30 Décembre 2014, Published in Moniteur Belge 31 Décembre 2014; §68-75 of the Law of 5 March 2017 on Feasible and Manageable Work

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Belgium has not ratified the Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Employment Contract Act
- Royal Decree of 20 July 1971 concerning the Sickness and Maternity Insurance Scheme for Self-employed Workers (Arrêté royal du 20 juillet 1971 instituant une assurance indemnités et une assurance maternité en faveur des travailleurs indépendants et des conjoints aidants)

Free Medical Care

No maternity related statutory benefits are provided under labour laws. The Health insurance system in Belgium covers everyone who is legally in Belgium which means employees, the unemployed, pensioners, the self-employed, civil servants, the disabled, domestic workers, students, individuals registered in Belgium and their dependents.

Covered medical benefits include “General and specialist care, surgery, hospitalization, medicine, laboratory services, maternity care, dental care, nursing, rehabilitation, transportation, and appliances”. The health insurance fund reimburses major portion (more than 60%) of the costs. The co-payments vary according to the insured person’s income and status.

Source: (ISSA Country Profile)

No Harmful Work

Labour Act and other Royal Decrees provide for various forms of protection for the pregnant or breastfeeding workers. Pregnant employees are entitled to leave of absence (with pay) for pre-natal examinations when such examinations can’t take place outside working hours. Employee is also required to inform the employer about her absence beforehand in order to keep her remuneration. Night work (work between 08 p.m. and 06 a.m.) is prohibited for pregnant workers during eight weeks before the expected date of birth, or at any time during pregnancy and four weeks after the end of maternity leave on the basis of a medical certificate stating the need for security to health of female worker or health of her child. Under such condition, employer is required to transfer the worker to day work or suspend the contract for some time if transfer to day work is not technically or objectively feasible or can’t reasonably be done on duly justified grounds.

Overtime work is also prohibited for pregnant workers. In order to protect workers, employer has to assess the nature, degree and duration of risk factors arising from working conditions and their incidence in pregnant or breastfeeding women workers. If a female worker is working under dangerous working conditions, her employer is required to make necessary adaptations in her working conditions and working hours. If such adaptation is not possible for a variety of reasons, employer is required to entrust the worker with other tasks. If the woman worker can’t be transferred to other duties, her employment contract is suspended. Royal Decree on Maternity Protection also describes various protection measures for pregnant and breastfeeding workers. Pregnant workers during the last 3 months of pregnancy and breastfeeding mothers

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during the ninth and tenth weeks following birth are prohibited from handling loads. They are further prohibited manual ground and underground excavation work. Pregnant workers and breastfeeding workers may not be exposed to biological, chemical or physical agents or work involving physical strain like temperatures higher than 30 degrees Celsius.

Sources: §39-43 of Labour Act; Arrêté royal du 2 mai 1995 concernant la protection de la maternité

Maternity Leave

In general, workers are entitled to 15 weeks (6 weeks before and 9 weeks after birth) of maternity leave. One-week prenatal leave and 09 weeks postnatal leave are obligatory. In the case of multiple births, prenatal leave can be extended to 08 weeks and. Similarly, postnatal leave can also be extended by 02 weeks (11 weeks in total). Therefore, the total maternity leave in the case of multiple births is either 17 weeks or 19 weeks.

In the case of self-employed women, maternity leave is 08 weeks (09 weeks in the case of multiple births).

Female federal civil servants are also entitled to 15 weeks of maternity leave (17+2 weeks in the case of multiple births).

A women worker is required to submit a medical certificate indicating the expected date of birth, no later than seven weeks before the due date (nine weeks in the case of multiple births).

During Pregnancy, women workers who chose to do two part-time work jobs and have to leave one due to the risks posed by the job for the pregnancy but continue to do the other (that is not harmful to the pregnancy) can also claim maternity benefits for the period for which the interrupted job had to be left. Previously women could only claim the benefit if they completely suspended all their professional activities. Furthermore, the women will still be able to extend their post-natal leave by the optional prenatal leave for a job they continued to do while suspending their other part time job.

As mentioned above, earlier the maternity leave for self-employed workers was 08 weeks (09 weeks in the case of multiple births) of which 3 weeks (one week before and two weeks immediately after birth) were obligatory or compulsory. The remainder (5 or 6 weeks) was optional and could be used over a period of 21 weeks following the obligatory leave.

However, with an amendment in the Royal Decree of 20 July 1971 concerning the Sickness and Maternity Insurance Scheme for Self-employed Workers, the maximum duration of maternity leave for self-employed workers (includes all self-employed workers and their assistants, as well as assisting spouses and registered partners) has been raised to 12 weeks (13 weeks in case of multiple pregnancy) and includes above referred 3 compulsory weeks of leave. The remainder of leave (9 or 10 weeks,

depending on pregnancy) would be usable over a period of 36 weeks. The optional leave period starts from the end of two-week postpartum obligatory leave.

Sources: §39 of Labour Act; Article 5 of The Belgian law of 25 April 2014 published in Moniteur Belge, 6 June, 2014; Royal Decree of 20 July 1971 concerning the Sickness and Maternity Insurance Scheme for Self-employed Workers as amended by Royal Decree of 13 May 2016

Income

During the term of maternity leave (15 weeks in general cases; 17 or 19 weeks for multiple births), workers (and even unemployed and disabled women) are paid a maternity benefit. The insured person must have paid the minimum amount of contributions and must have paid these contributions for 120 days of work or days assimilated to work (annual leave, unemployment, and incapacity for work) during the last 06 months before acquiring the right to maternity benefit.

The amount of maternity benefit is as follows:

- i. For gainfully employed women workers: 82% of pay (no ceiling) for the first 30 days and 75% of the capped salary (subject to a ceiling) from 31st day onwards;
- ii. For disabled women: 79.5% of pay (subject to a ceiling) for the first 30 days and 75% (subject to a ceiling) from 31st day onwards; and
- iii. For unemployed women: 60% of the lost salary is provided as basic allowance which is equal to unemployment benefit to which a worker would be entitled to if not in the maternity protection period. The worker can claim a complementary benefit of 19.5% during the first 30 days and 15% during the remaining period.

The maternity benefits are financed by the social security, i.e., compulsory sickness and indemnity insurance scheme.

Sources: §128 of Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994; §114-115 & 216-219 of Arrêté royal portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, coordonnée le 14 juillet 1994

Protection from Dismissals

Dismissal is prohibited during pregnancy, during maternity leave, paternity leave and parental leave. Employer of a pregnant worker may not terminate the employment contract from the date he/she is informed of the pregnancy until the end of one month following postnatal leave (9 or 11 weeks). However, an employment contract can still be terminated for reasons unconnected with pregnancy or confinement. If a worker who is unfairly dismissed (while being on maternity leave, during pregnancy, paternity leave or parental leave), he/she is entitled to a lump-sum compensation equal to 06 months of gross remuneration.

In the case of paternity and parental leaves, protection against dismissals is available 03 months after the end of the leave.

Sources: §40 of Labour Act; <http://www.emploi.belgique.be/defaultTab.aspx?id=547>;
<http://www.emploi.belgique.be/defaultTab.aspx?id=554>

Right to Return to Same Position

Right to return is guaranteed under the Employment Contract Act since the contract of employment of a worker on maternity leave is temporarily suspended. The worker remains in the service of employer and on completion of leave has the right to join her former job.

Sources: §28 of Employment Contract Act

Breastfeeding/ Nursing Breaks

During 09 months following the birth of a child, breastfeeding mothers are entitled to breastfeeding breaks of one or two half an hour break(s) per day during working hours. If a woman worker works at least 4 hours but less than 7.5 hours a day, she is entitled to one 30- minute break. On the other hand, if a woman worker works at least 7.5 hours a day, she can take two 30-minute breaks. Execution of employment contract is suspended and these breaks are not paid by the employer. However, 82% of the gross remuneration is paid by the sickness and indemnity insurance scheme.

Sources: Royal Decree Rendering compulsory Collective Agreement N° 80;
http://www.emploi.belgique.be/detailA_Z.aspx?id=11790

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Belgium has ratified both Conventions 81 & 155.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Loi relative au bien-être des travailleurs lors de l'exécution de leur travail, 4 Aout 1996
- *Moniteur belge* 28 April 2014

Employer Cares

An employer is required to ensure the wellbeing of workers. Workers' wellbeing is sought through measures relating to occupational safety; protection of workers' health at the workplace; psychosocial stress caused by work including violence, bullying and sexual harassment at work; ergonomics; occupational hygiene, embellishment of the workplace and other measures taken by the enterprise to influence above factors.

Employer is required to take all the necessary measures to promote workers welfare in the performance of their work. Employer has to apply the following general principles of prevention which include avoiding risks; evaluation and assessment of unavoidable risks; combating the risks at source; replacing the dangerous practices by what is not dangerous or less dangerous; giving priority to collective protective measures over individual protection; adaptation of work for the individual especially with regard to designing the workplace, choice of work equipment and methods of work and production; limiting the risks taking into account the development of technology; prevention plan and policy on the welfare of workers; provision of information to workers about the nature of activities, risks associated and measures to prevent or minimize these hazards especially at the time of entry into service and whenever it is necessary to protect the wellbeing of workers. The other relevant royal decrees include Arrêté royal du 27 mars 1998 relatif à la politique du bien-être des travailleurs lors de l'exécution de leur travail and Arrêté royal du 28 mai 2003 relatif à la surveillance de la santé des travailleurs.

The law now also requires the employers to take into account 'psycho-social' risks while taking all necessary measures to protect their workers. A psycho-social risk is defined as the likelihood that one or more employees will suffer psychological harm as a result of being exposed to aspects of work organization, work conditions and interpersonal relationships at work over which the employer has authority and which objectively present a threat. A psycho-social risk might also include harassment. The employers are required to carry out risk assessment of such threats and take measures to prevent them. The internal procedures that apply in cases of harassment have been extended to psychological issues.

Source: sources: §4-5 of Loi relative au bien-être des travailleurs lors de l'exécution de leur travail, 4 Aout 1996;
<http://www.emploi.belgique.be/moduleDefault.aspx?id=1958>; *Moniteur belge* 28 April 2014

Free Protection

Provision and maintenance of personal protective equipment is employer's duty. The provision of personal protective equipment should not involve any financial burden for workers and should be provided free of cost. Workers are also required to use personal protective equipment available to them and store them in the designated places after using them.

The personal protective equipment (PPE), including protective clothing should be able to provide protection against specific risks to the safety and health of the worker.

PPE can only be used when the risks cannot be eliminated at source or cannot be adequately reduced by measures, methods or procedures in the field of work organization with technical or collective protection equipment. The Belgian law differentiates between the working clothes (Vêtements de travail) and Personal Protective Equipment (Equipements de protection individuelle) and clarifies that working clothes are not part of PPE. Employer is also required to provide free work clothes and ensure their cleaning and maintenance.

Clear directions on identification, procurement, and usage of personal protective equipment are provided in Royal Decree on the use of personal protective equipment.

Sources: §6 of Loi relative au bien-être des travailleurs lors de l'exécution de leur travail, 4 Aout 1996; Arrêté royal du 13 juin 2005 relatif à l'utilisation des équipements de protection individuelle

Training

Employers are required to promote the training of staff on health and safety at work, particularly with regard to the prevention of specific risks of certain assignments. Workers are also required to work in accordance with the training and instruction provided by the employer.

Workers are also provided information on emergency procedures and in particular on measures to be taken in the event of serious and imminent danger and those concerning first aid.

The employer is also required to take appropriate measures to ensure that only workers who received adequate instructions have access to the areas of serious and specific danger. Employer has to ensure that each worker receives training both sufficient and appropriate to the welfare of workers in the performance of their work and training specifically focused on job/function. The training is given on the occasion of a worker's appointment, change in the job, introduction or change in the work equipment, or the introduction of new technology. The training must be adapted to the changing risks and emergence of new risks. Detailed provisions on the trainings are provided under the Royal Decree on training and retraining to prevent accidents at work.

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Sources: §6 of Loi relative au bien-être des travailleurs lors de l'exécution de leur travail, 4 Aout 1996; §16bis-21 of Arrêté royal du 27 mars 1998 relatif à la politique du bien-être des travailleurs lors de l'exécution de leur travail; Arrêté royal du 17 mai 2007 relatif à la formation et au recyclage des conseillers en prévention des services internes et externes pour la prévention et la protection au travail

Labour Inspection System

The Belgian Labour Inspection system is quite complex as different federal public entities act to check and prevent violations of laws. The Belgian labour inspection system is regulated by §87-90bis of Law on accidents at work (10 April 1971), Law on Labour Inspection (16 November 1972), Ministerial Decree on the organization and functioning of labour inspection (28 March 2003) and §216-256 of Law on Labour Inspection (20 July 2006).

The following departments are operative in the labour inspection regime in Belgium.

- i. Two general directorates of the Service public fédéral Emploi, Travail et Concertation sociale, i.e., General Directorate of Control of Social Laws (ensuring compliance with labour laws and social security legislation, employment issues, implementation of collective agreements, industrial relations and individual employment relations) and Welfare Control Directorate (supervising and ensuring compliance with legislation on safety at work, health, ergonomics, work-related accidents and psycho-social stress caused by work).
- ii. The inspection services of Federal Department of Social Security and National Social Security Office deals with the social security issues (esp with regard to the social security status of posted workers).
- iii. The inspection services of National Employment Office deal with the legislation on unemployment.

Sources: http://www.emploi.belgique.be/detailA_Z.aspx?id=916

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Belgium has ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

Income

Workers are entitled to pay sick leave in Belgium. In accordance with the Constitutional Court's ruling regarding discrimination between blue-collar and white-collar workers (in notice periods and unpaid first day of sick leave), government announced a new unified plan for the blue-collar and white-collar workers and from 01 January 2014, blue-collar workers will receive their guaranteed salary from the first day of sick leave.

The 'carenz day' is abolished. The carenz day used to be part of the blue-collar worker statute. The general rule of the carenz day stated that the blue-collar worker won't receive any compensation for his first day of illness (no guaranteed salary by the employer, and no compensatory indemnity by the healthcare fund). The blue-collar worker was entitled to guarantee paid sick leave as from the second day of illness. The white-collar workers, on the other hand, were entitled to guarantee paid sick leave as from the first day of illness.

This legal difference, qualified as discriminatory by the Constitutional Court in its July 2011 ruling, ceases to exist as from 1 January 2014.

Employees on sick leave are entitled to their full salary for a certain period during the contract suspension. The period depends on whether the employee is classified as blue-collar or white-collar employee and the employee length of continuous service. In general, white collar employees who are absent from work because of an illness or injury receive sick pay from their employer for 30 days. Blue collar workers receive full sick pay from their employer during the first 7 days. The next 7 days, they receive a percentage of the income (normally 60%). The rest of the month, the sick pay is divided by the social security and the employer.

After the first month, social security (Sickness and Invalidity Insurance) intervenes from 31st day of illness where 60% of the insured worker's earnings (with a ceiling) are paid.

Sources: ISSA Country Profile

Medical Care

The Health insurance system in Belgium covers everyone who is legally in Belgium which means employees, the unemployed, pensioners, the self-employed, civil servants, the disabled, domestic workers, students, individuals registered in Belgium and their dependents.

Covered medical benefits include "General and specialist care, surgery, hospitalization, medicine, laboratory services, maternity care, dental care, nursing, rehabilitation, transportation, and appliances". The health insurance fund reimburses major portion

The text in this document was last updated in January 2019. For the most recent and updated text on Employment & Labour Legislation in Belgium in French or Dutch, please refer to: <https://votresalaire.be/> or <https://loonwijzer.be/> respectively

(more than 60%) of the costs. The co-payments vary according to the insured person's income and status.

Sources: ISSA Country Profile

Job Security

Employment of a worker is secure during the period of sickness and a disease/sickness does not in itself constitute valid grounds for dismissal. Employment contract of a worker is suspended during the term of his illness or accident at work. When the contract is suspended for more than six months due to incapacity for work resulting from accident or illness, an employer may terminate the contract by paying the worker an allowance equal to remuneration corresponding either the notice period or part of that notice period. Maternity related period of leave and interruption from work is not taken into account while calculating six months. Similar provisions regarding indefinite term and fixed term contracts are provided under §58-59 and 78-81 of Employment Contract Act.

Under 2016 Act relating to Incapacity for Work, employment contract of a worker is not suspended if the worker, who is recognized as incapable for work under 1194 Act and is authorized to work, in agreement with the employer, resumes some suitable or other work.

Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

There is no minimum qualifying period for access to benefits under work injuries. Accidents that occur on the way to and from work are covered.

An accident at work is “any accident that happens to a worker during the course and by the fact of performance of his employment contract and which causes an injury”. Workers in the private sector are covered under the Law on Accidents at Work, 10 April 1971. On the other hand, workers from public sector are covered under a separate Law from 03 July 1967 on accidents at work.

In the event of temporary total disability, the insured person is entitled to receive 90% of his average daily pay. The maximum amount of basic salary in 2013 was €40,927.18. In the case of temporary partial incapacity, worker receives a benefit equal to the difference between the pay received before the accident and that received after returning to work.

In the case of permanent disability or when incapacity is confirmed as long term (referred to as consolidation), an annual allowance is paid for a period of three years. The amount of allowance depends on the degree of incapacity and the pay worker was receiving preceding the accident.

During these three years and especially at the end of these, a final assessment is made of the disability. If a worker is confirmed as permanently disabled after the review term, a pension is paid to the worker until he/she reaches the retirement age. One-third of total sum payable to the worker can be paid in a lump-sum if the degree of incapacity is more than 19%. If the insured person requires the help of a third person, the supplementary allowance is paid at a maximum of 12 times the average monthly guaranteed income according the degree of need.

In case of fatal injury leading to death of a worker, survivor's pension is paid. Eligible survivors include a spouse, legal cohabitant, children under 18 years of age, and, in some circumstances, the parents of the deceased insured person.

The spouse or legal cohabitant is entitled to an annuity of 30% of the basic salary earned by the deceased.

A child receives 15% of the basic salary the deceased worker received (with a maximum of 45% for all children). In the case of full orphans, children receive 20% of the basic salary of the deceased worker (with a maximum of 60% for all children).

A funeral grant, equal to 30 times the victim's average daily pay, is also paid to the survivors. Other expenses relating to the transport the deceased worker to the place of burial are also completely reimbursed.

Source: (European Commission;

http://www.socialezekerheid.fgov.be/docs/en/alwa2013_en.pdf;

<http://fedris.be/fr/home>; http://www.luttepauvrete.be/chiffres_minimum.htm

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Belgium has ratified the Convention 102, 121, 128, 130 & 168.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

Pension Rights

The legal minimum retirement age is 65 years; rising to age 66 in 2025 and to age 67 in 2030 with at least 45 years of contribution. Certain workers such as miners, seafarers and civil aviation flight crews can retire earlier under certain conditions. Lifetime earning of 60% of the Insured's average lifetime earnings is paid (75% for a married couple if the spouse has no income).

In order to avail the early retirement benefits, worker must have attained the age of 62 years (gradually rising to age 63 by 2018) with 40 years (gradually rising to 42 years by 2019) of contribution. The age requirement is reduced for certain workers with longer careers. It is calculated in the same way as the old-age pension

Partial pension is granted at the age of 65 years (rising to age 66 in 2025 and to age 67 in 2030) with less than 45 years of contribution. It is paid according to the number of years of contributions less than that required for a full career record.

If an insured person continues working upon reaching the early retirement age or who have at least 44 years of coverage, pension bonus is paid. The bonus is €2.2524 multiplied by the number of days of work performed from January 1 in the year in which the insured reaches age 62 (or the year in which the insured starts his or her 44th year of work) and the last day of the month preceding retirement, or the final day of the month in which the insured reaches age 65.

Vacation allowance is also paid to pensioners. The allowance is paid annually in May from the second year that the insured receives a pension.

Special old-age pension (means tested) is paid at age 60 to the divorced spouse of a pensioner. 50% of the insured worker's old-age pension is paid (based on 75% of average lifetime earnings minus any pension income earned by the divorced person in his or her own right). The income and individual pension of the divorced spouse is taken into consideration.

For the workers who have performed night work for 20 years, disabled workers and workers in physically demanding professions, the age limit is 58 years and the seniority condition is 33 years. Workers involved in heavy occupations should have performed physically demanding labour for at least five years in the course of the last ten calendar years before the end of their employment contract or at least seven years in the course of the last 15 calendar years.

The legal possibility remains for employees of undertakings in economic difficulties or which are undergoing restructuring. The minimum age is then increased from 53 to 55 years.

Depending upon the family situation, a worker may receive 60% of his average pay over his working life (if single) or 75% (if you have a dependent spouse or you are head of the household).

Source: European Commission;

http://www.socialezekerheid.fgov.be/docs/en/alwa2013_en.pdf;

http://www.propay.be/index.php?option=com_content&view=category&id=37&lang=en&Itemid=131&limitstart=12); http://www.luttepauvrete.be/chiffres_minimum.htm

Dependents' / Survivors' Benefit

The Law provides for survivors' benefit for surviving spouse (widow or widower). The qualifying conditions require that the surviving spouse must at least be 45 years old and six months (gradually rising to age 55 by 2030) unless they have a full occupational disability (of at least 66%) or have a dependent child. The surviving spouse must also be married to the deceased worker for at least one year (periods of legal cohabitation immediately preceding the marriage are taken into account); conditions are waived if a child was born during the marriage (or within 300 days following the insured's death), or the death was caused by an occupational accident or disease. There are also ceiling with regard to the income of the surviving spouse to be eligible for survivors' benefits. A surviving spouse loses entitlement to the benefit if he/she remarries.

The surviving spouse is entitled to 80% of the actual or hypothetical old-age pension of the insured person. The old age pension for the deceased worker is calculated on the basis of pensionable salaries and the number of years credited so far. If the deceased had less than 45 years of contributions, the pension is calculated based on the ratio of the number of years worked to the number of years from age 20 and the year before the death. The maximum survivor pension plus the widow(er)'s own pension entitlement is 110% of the value of his or her own full pension entitlement. A surviving spouse can be paid a temporary grant for 12 months if he/she does not meet the conditions for being eligible to survivors' pension. Death grant is also payable to the survivor as a lump-sum amounting to nearly €150.

Source: European Commission;

http://www.socialezekerheid.fgov.be/docs/en/alwa2013_en.pdf;

http://www.luttepauvrete.be/chiffres_minimum.htm

Unemployment Benefits

Workers are entitled to an unemployment benefit if they meet certain conditions:

- i. Must have worked for 312 days in the last 21 months (workers younger than 36 years), 468 days in the last 33 months (worker from 36 to 49 years) and 624 days in the last 42 months (worked 50 years and older);
- ii. Must not be unemployed for a fault of their own (must have lost the job involuntarily);
- iii. Must be registered as a job-seeker with the competent employment service and respond to every suitable job offer, training offer or retraining offer (after the age of 45);
- iv. Must be actively looking for work, able to work, under the age of 65 years and be resident in Belgium

There is also a provision of unemployment with company supplement in which the older workers benefit from supplementary allowance paid by the employer or fund acting on employer's behalf. In order to be entitled to unemployment with company supplement, a worker must be aged 62 (not less than 58). However, the previous age limit of 60 years may be kept by sectors until the end of 2017 on condition of a collective bargaining agreement. The duration of seniority to claim such benefits is 40 years (for a man) and 31 years (for a woman). The professional career (for women) will gradually raise to 40 years by the year 2024. However, for those employees who have performed night work for 20 years, disabled workers and workers in physically demanding professions, the age limit is 58 years and the seniority condition is 33 years. Workers in heavy occupations should have performed physically demanding labour for at least five years in the course of the last ten calendar years before the end of their employment contract or at least seven years in the course of the last 15 calendar years. For employees of firms in financial difficulties or which is going under a restructuring, the minimum age is 55 years.

The amount of unemployment benefit varies according to the unemployed person's average daily pay, length of time a person has been unemployed and his/her family situation.

If the unemployed person is the sole breadwinner for the family, the unemployment benefit is 60% of the previous earnings. An unemployed person without dependents is eligible for 60% of the previous earnings for the first year 55% thereafter. An unemployed person (without dependents) living with persons who have income receives 60% of the previous earnings for the first year and 40% thereafter. Unemployed persons receive a flat rate amount after a certain period. Unemployed persons of 50 years or more or who have worked for at least 20 years are entitled to seniority supplement or return to work supplement.

For older workers, collective agreements have introduced schemes under which employees working for a long time are entitled to take part-time career breaks in the form of reduction of their weekly working hours. This can also entitle them to claim additional unemployment benefits while ending their career in a 'landing' job, where they reduce the numbers of hours they work for. The working hours can be reduced by 1/2 or 1/5 and the minimum age to qualify for these benefits is 55. Duration of 25-year career is also required for older employees in a 'landing job' to be able to avail the reduction of working hour's scheme.

Source: (European Commission;

http://www.socialezekerheid.fgov.be/docs/en/alwa2013_en.pdf); Arrêté Royal du 30 Décembre 2014, Published in Moniteur Belge 31 Décembre 2014, CBA No. 103bis of 27 April 2015 and CBA No. 118 of 27 April 2015;

http://www.luttepauvrete.be/chiffres_minimum.htm

Invalidity Benefits

To be entitled to invalidity benefit, the insured must be younger than the normal retirement age, have at least a 66.7% assessed loss of earning capacity in any occupation, with at least 120 days of coverage within the six-month period before the disability began, be certified as having been able to work for a year and whose minimum contributions have been paid.

Invalidity Benefit is 65% of your previous earnings if worker has dependents. If worker has no dependents, the benefits are reduced to 55% or further to 40% (if the spouse or cohabiting partner has gross monthly income exceeding a set ceiling).

If the insured person requires the help of a third person in daily life, a lump-sum allowance is paid from the fourth amount of incapacity amounting to around €17.

Source: (European Commission;

http://www.socialezekerheid.fgov.be/docs/en/alwa2013_en.pdf);

http://www.luttepauvrete.be/chiffres_minimum.htm

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Belgium has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination
- Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie, 1981
- Loi tendant à lutter contre la discrimination entre les femmes et les homes, 10 May 2007
- Loi relative au bien-être des travailleurs lors de l'exécution de leur travail, 4 Aout 1996

Equal Pay

In accordance with §23 of the Belgian Constitution, everyone has the right to fair terms of employment and fair remuneration. The Collective Bargaining Agreement of the National Labour Council no. 25 of 15 October 1975 (amended later by 25bis of 2001 and 25Ter of 2008) provides for equal pay for work of equal value between men and women workers. The General Anti-Discrimination Act of 10 May 2007 also prohibits discrimination in employment related matters, including granting or fixing the salary, wages or remuneration and all current and future benefits in cash or in kind, on 13 specific grounds.

In April 2012, government enacted a new law to reduce the wage gap between men and women workers. According to this law, differences in pay and labour costs between men and women have to be outlined in companies' annual audit.

Sources: §4-5 of Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination; 22 AVRIL 2012. – Loi visant à lutter contre l'écart salarial entre hommes et femmes

Sexual Harassment

Sexual harassment is any form of unwanted verbal, non-verbal or physical behavior with a sexual connotation, with the purpose or effect of violating the victim's dignity or creation of a hostile, degrading, humiliating or offensive environment.

The Welfare at Work Act of 04 August 1996 (health and safety and wellbeing of workers) has extensive provisions on sexual harassment at work and prohibits sexual harassment, harassment (bullying) and violence at work (§32bis-32octiesdecies). Sexual harassment is considered as gender discrimination and prohibited under the Gender Act of 10 May 2007.

The Royal Decree of 17 May 2007 on the Prevention of Psychosocial Stress caused by work including violence, harassment/bullying or sexual harassment at work is also relevant for taking preventive measures.

The Welfare at Work Act contains a double set of provisions on which a sexual harassment victim may rely: the internal mechanism and external mechanism. The internal procedure aims identifying conflict situations and seeking informal and out of court remedies. If the internal procedure fails, the victim may ask the Labour Court to intervene and order stopping of sexual harassment. The victim can also claim damages from the harasser and the employer who did not take appropriate action to prevent or stop harassment. The harasser may then be subject to disciplinary sanctions or dismissal. The employer and harasser may also face criminal sanctions.

Non-Discrimination

In accordance with the Belgian Constitution, “Belgians are equal before the law”; “no class distinctions exist in the state” and that “equality between men and women is guaranteed”. The Constitution also requires that “enjoyment of rights and freedoms recognized for Belgians must be provided without discrimination” without specifying protected classes (§10-11).

Three new anti-discrimination laws were promulgated on 10 May 2007 in Belgium:

- i. The Racism Act modifying the July 30 1981 Law to punish acts initiated by Racism or Xenophobia (Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie) prohibits discrimination on the basis of race, colour, descent or national or ethnic origin and nationality. (Art.4). The law also prohibits direct and indirect discrimination, harassment and instruction to discriminate.
- ii. The Gender Equality Act prohibits discrimination based on sex, including discrimination based on pregnancy, childbirth, motherhood and sex change. (§4 of Loi tendant à lutter contre la discrimination entre les femmes et les homes)
- iii. The General Ant-Discrimination Act prohibits discrimination on 13 protected grounds which include age, sexual orientation, marital status, birth, financial status/wealth, religious or philosophical conviction, trade union affiliation or conviction, political conviction, language, current or future health status, disability, physical or genetic features, and social origin. The Act prohibits direct and indirect discrimination, harassment, instruction to discriminate and refusal to provide reasonable accommodation to disabled persons. (§4 of Loi tendant à lutter contre certaines formes de discrimination)

All of the above anti-discrimination laws provides for severe criminal sanctions in cases of violation, i.e., incitement to discrimination, harassment, or violence against the protected classes. A Labour Court decision of February 2018 declares the consequences of cancer to constitute a disability thus requiring reasonable accommodation.

Sources: §19-28 of the Racism Act; §26-31 of the Gender Equality Act; §21-26 of the Anti-Discrimination Act

Equal Choice of Profession

Everyone has the right to lead a life in keeping with human dignity. Everyone has the right to right to employment and free choice of occupation within the context of general employment policy. No provision could be located in the law prohibiting women in certain occupations.

Source: §23 of the Belgian Constitution

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Belgium has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Employment Contracts Act
- Labour Act

Minimum Age for Employment

Minimum age for employment is 15 years. Persons between the ages of 15 and 18 may participate in part-time work and study programs and work full time during school vacations. There are no limitations on occupational health and safety restrictions. The Labour Act allows for certain exemptions if a child is engaged in artistic activities like singing, dancing, acting, modeling in fashion shows and presentation of clothing collection.

Under article 7 of the Labour Act of 16 March 1971 it is forbidden to employ minors who are still covered by the full-time education requirement or to employ them on work that is outside the framework of their education or training. It is prohibited in all cases to let children engage in activity that can have disadvantageous influence on the educational, intellectual or social development of the child or can endanger or is prejudicial to his physical, mental or moral aspects of well-being. It is only from the age of 18 years that a young worker can enter into a full-time employment contract.

The Employment Contract Act allows a minor to conclude and terminate an employment contract with the express or tacit authorization of parents or a guardian.

Sources: §43-46bis of Employment Contracts Act

Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years and children under the age of 18 years (but over the age of 15 years and no longer subject to compulsory education, referred to as young workers) can't be employed work in mining, quarrying and underground mines. Young workers may also not be hired to perform work beyond their strength, threatening their health or impairing their morals.

In addition to the weekly rest on Sunday, workers are entitled to additional rest preceding or following Sunday. Young workers may also not work without interruption for more than 4 hours. Night work is prohibited for young workers.

Royal Decree of 3 May 1999 on the protection of young people at work (Arrêté royal du 3 mai 1999 relatif à la protection des jeunes au travail) also prohibits employment of young workers in works beyond their physical or mental capacity, involving exposure to toxic agents, involving exposure to ionizing radiation, etc.

Sources: §8, 9, 32, 34 & 34bis of Labour Act

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Belgium has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Penal Code

Prohibition on Forced and Compulsory Labor

Forced Labour is prohibited under the Law and is dealt specifically under the Anti-Trafficking laws and Penal Code. Belgium prohibits all forms of trafficking through a 2005 amendment to its 1995 Act Containing Measures to Repress Trafficking in Persons. With the Act of 10 August 2005, trafficking in human beings for labour exploitation and services has been explicitly criminalized in the Penal Code. The failure of an employer to meet prevailing wages and hours and working conditions and making workers work under conditions contrary to human dignity is treated as exploitation and treated similarly as sexual exploitation (engaging others in forced prostitution), forced begging, removal of organs or making a person commit a felony or misdemeanor against his own will.

The perpetrator of such crime (forcing others to work under inhuman working conditions) is punishable with an imprisonment ranging from 15 to 20 years.

Sources: §433quinquies and 433octies of Penal Code

Freedom to Change Jobs and Right to Quit

Belgian law gives a worker freedom to change jobs and the right to quit. In accordance with the provisions of the Constitution, everyone has the right to work. Everyone is free to choose his profession and occupation. A worker who wants to terminate his employment contract must also give his employer a minimum period of notice depending on the length of employment as follows: 2 weeks (first quarter); 4 weeks (second quarter); 6 weeks (third quarter); 7 weeks (fourth quarter); 8 weeks (fifth quarter); 9 weeks (sixth quarter); 10 weeks (seventh quarter); 11 weeks (eighth quarter/2 years), 12 weeks (2-3 years); 13 weeks (3-4 years); 15 weeks (year 4-5). From the 6th year (05 years plus one day) until the 19th year of service/seniority, notice period is increased by 03 weeks for every additional year of service.

Inhumane Working Conditions

The statutory working hours are 08 hours a day and 38 hours a week on average. The work performed may not exceed certain limits like 11 hours per day (12 hours per day in the case of work that can't be interrupted) and 50 hours per week except if the work is necessitated by compelling reasons like force majeure, emergency, work performed in order to prevent an imminent danger or accident.

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Belgium has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Loi du 19.08.1948 relative aux prestations d'intérêt public en temps de paix
- Loi organique du Conseil national du Travail

Freedom to Join and Form a Union

Everyone may defend their rights and interests through union action and may belong to the union of their choice. An employee may freely join the trade union of his choice. Law prohibits antiunion discrimination.

For companies with more than 50 employees, the law provides workers the right to form and join independent unions of their choice without previous authorization, conduct legal strikes, and bargain collectively. Health and Safety committee elections are mandatory in companies employing more than 50 employees while work council elections are mandatory in enterprises employing more than 100 employees.

There are three major trade union confederations that are recognized in Belgium. These are:

- i. Confederation of Christian Trade Unions (Confédération des Syndicats Chrétiens/ Algemeen Christelijk Vakverbond, CSC/ACV);
- ii. Belgian General Federation of Labour (Fédération Générale du Travail de Belgique/ Algemeen Belgisch Vakverbond, FGTB/ABVV); and
- iii. Federation of Liberal Trade Unions of Belgium (Centrale Générale des Syndicats Libéraux de Belgique)
- iv. Belgique/ Algemene Centrale der Liberale Vakbonden van België, CGSLB/ACLVB)

Trade unions do not have legal personality. However, they do enjoy a number of specific rights; the right to conclude CBAs, the right to a seat on advisory and consultative bodies, the right to defend their union members in court, etc.

Freedom of Collective Bargaining

Right to collective bargaining is guaranteed under the Law and a 1968 Act on Collective Labour Agreements and Joint Committees gives collective agreements (Convention Collective De Travail: CCT) legal status as they are concluded in National Labour Council. The National Labour Council is established under an Organic Act of 29 May 1952 (Loi organique du Conseil national du Travail).

Every two years, an intersectoral collective agreement is negotiated between the main organizations representing employees and employers at the national level, this is called Inter-professional agreement (IPA). This agreement establishes the main developments in terms of wages and working conditions that will be further discussed in the following two years within the joint committees at sectoral level. This agreement is concluded at the level of National labour Council.

Many collective agreements are however negotiated at the level of sectoral joint committees established on the basis of loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires. There are nearly 100 Joint Committees in operation in Belgium industrial relations and their main mission is to conclude collective labour agreements and prevent or resolve social conflicts.

Collective agreements are also binding for employers, and their workers, who are not members of signatory organizations but who are covered by the sectoral joint committee within which the agreement has been concluded.

Worker and employer organizations are considered representative if these are inter-industry wide organizations and are represented on the Central Economic Council and National Labour Council. Collective agreements must follow the legislative provisions. Individual employment contracts must follow the provisions of collective labour agreements. A collective agreement may be concluded for a definite or indefinite period or for definite period with a renewal clause. The agreement must indicate the duration of a collective agreement (for agreements of definite duration) or the method of termination of an indefinite term agreement. A collective agreement concluded by a sectoral joint committee may extend to non-signatory parties in some cases. A collective agreement must be filed with the Ministry of Employment and Labour.

A 1952 law, amended in 2009, provides for National Labour Council which is a bipartite advisory body. The Council is composed of 26 members (13 members each from workers and employers' groups) and 26 substitute members. The Council concludes collective bargaining agreements; issue opinions and formulate proposals on social issues and submit these to the Belgian Government and the Parliament; arbitration between branches of industry; and settlement of settlement of jurisdictional conflicts among joint commissions. Members of the Council are appointed by the King for a (renewable) term of four years.

Source: Organic Law of 29 May 1952 of the National Labor Council (as amended on 31 December 2009); Law of 5 December 1968 on Collective Agreements and Joint Committees

Right to Strike

The right to strike is recognized as a fundamental right in Belgium since it is acknowledged in various international covenants/conventions like European Social Charter that Belgium has ratified. However, it is not directly regulated by the Belgian legislation and there is no legal provision defining the term strike.

However, many CBAs (both at industry and at company level) do provide for industrial peace clauses (which state that industrial peace will be maintained during the term of a collective agreement); or industrial conciliation and strike notification proceedings (under which strikes are generally only allowed if all industrial conciliation proceedings have been exhausted and formal notification of the strike has been given to the President of Joint Committee or the employer).

Payment of union premium (Prime syndicale) at the end of the year is also dependent on the respect of social peace in business or industry.

Joint Committees are also required to define minimum services that have to be provided even during the period of strikes/lockouts to meet the vital needs, to do some urgent work on machinery and equipment and perform certain tasks caused by force majeure or unforeseen circumstances.

Legislation prohibits use of agency workers to replace striking workers. Moreover, a case law from 1981 recognizes the prohibition of dismissal of workers engaged in lawful strike action.

Source: Loi du 19.08.1948 relative aux prestations d'intérêt public en temps de paix



DECENT WORK QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

Decent Work Check Belgium is a product of WageIndicator.org and
www.loonwijzer.be/main and www.votresalaire.be/main

National Regulation exists



National Regulation does not exist

01/13 Work & Wages

| | NR | Yes | No |
|---|----|--------------------------|--------------------------|
| 1. I earn at least the minimum wage announced by the Government | | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly) | | <input type="checkbox"/> | <input type="checkbox"/> |

02/13 Compensation

| | | | |
|--|--|--------------------------|--------------------------|
| 3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i> | | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Whenever I work at night, I get higher compensation for night work | | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. I get compensatory holiday when I have to work on a public holiday or weekly rest day | | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it | | <input type="checkbox"/> | <input type="checkbox"/> |

03/13 Annual Leave & Holidays

| | | | |
|---|--|--|---|
| 7. How many weeks of paid annual leave are you entitled to?* | | <input type="checkbox"/> 1 <input type="checkbox"/> 2 | <input type="checkbox"/> 3 <input type="checkbox"/> 4+ |
| 8. I get paid during public (national and religious) holidays | | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week | | <input type="checkbox"/> | <input type="checkbox"/> |

04/13 Employment Security

| | | | |
|--|--|--------------------------|--------------------------|
| 10. I was provided a written statement of particulars at the start of my employment | | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i> | | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. My probation period is only 06 months | | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice) | | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i> | | <input type="checkbox"/> | <input type="checkbox"/> |

05/13 Family Responsibilities

| | | | |
|---|--|--------------------------|--------------------------|
| 15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i> | | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i> | | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i> | | <input type="checkbox"/> | <input type="checkbox"/> |

06/13 Maternity & Work

| | | | |
|---|--|--------------------------|--------------------------|
| 18. I get free ante and post natal medical care | | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work | | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. My maternity leave lasts at least 14 weeks | | <input type="checkbox"/> | <input type="checkbox"/> |

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy <i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |

07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |

08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |

09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |

* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

| | | | |
|---|---|--------------------------|--------------------------|
| Nationality/Place of Birth | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Social Origin/Caste | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Family responsibilities/family status | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Age | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Disability/HIV-AIDS | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Trade union membership and related activities | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Language | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Sexual Orientation (homosexual, bisexual or heterosexual orientation) | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Marital Status | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Physical Appearance | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| Pregnancy/Maternity | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| 40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |

11/13 Minors & Youth

| | | | |
|---|---|--------------------------|--------------------------|
| 41. In my workplace, children under 15 are forbidden | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| 42. In my workplace, children under 18 are forbidden for hazardous work | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |

12/13 Forced Labour

| | | | |
|--|---|--------------------------|--------------------------|
| 43. I have the right to terminate employment at will or after serving a notice | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| 44. My employer keeps my workplace free of forced or bonded labour | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| 45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |

13/13 Trade Union Rights

| | | | |
|---|---|--------------------------|--------------------------|
| 46. I have a labour union at my workplace | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| 47. I have the right to join a union at my workplace | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| 48. My employer allows collective bargaining at my workplace | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |
| 49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination | ☺ | <input type="checkbox"/> | <input type="checkbox"/> |

DECENTWORKCHECK.ORG

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Belgium scored 45 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.