

Press release

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Belgium remains one of the most expensive countries for dismissal notwithstanding unified status and tax shift

Deloitte Legal International Dismissal Survey

Brussels, 27 February 2018 - Deloitte Legal today announced the results of the fourth edition of its International Dismissal Survey, a study that compares the dismissal procedures in 45 countries. The survey reveals that Belgium remains one of the most expensive countries for dismissal. Unlike most of its neighbouring countries, Belgium's unified status reform did not introduce any major changes which would have ensured a higher flexibility to hire and dismiss employees and reduce costs associated with dismissal, which helps attract foreign investment. In However, dismissal rules in Belgium are favourable in comparison with many other countries for a number of reasons, including the dismissal cost being very predictable since the duration of the notice period or indemnity in lieu of notice is determined by law. Finally, Belgian employers having absolute power to dismiss, without possibility of reinstatement of the employee by the courts.

Nicolaas Vermandel, Global Employment & Benefits Leader Deloitte Legal: "After Italy, Belgium remains the country where dismissal costs are highest for employers in case of a dismissal with objective reason. During the transitional period, Belgium is the eighth most expensive country in case of dismissal without objective reason. Even after the transitional period (application of transitional rules for seniority obtained prior to 1th of January 2014), Belgium is the 10th most expensive country."

Belgium ranks most expensive after Italy

The fourth edition of Deloitte Legal's International Dismissal Survey, which was conducted in conjunction with the partners of Belgian law firm Laga's international network, places Belgium second after Italy when taking into account the average cost of all dismissal scenarios with an objective or economic reason. Sweden, Brazil and Thailand complete the top five. All regions (EMEA, Latco and Asia) are represented in the top 10.

Taking into account the average cost of all dismissal scenarios without an objective or economic reason, the top 10 consists exclusively of European countries. Italy, Sweden, Slovakia, Luxembourg and Ireland make up the top five. Belgium ranks eighth.

Unified status reform missed opportunity for Belgium

Most of Belgium's neighbouring countries have ensured a higher flexibility to hire and dismiss employees and have reduced costs associated with dismissal by reforming their dismissal legislation. This is one of the criteria used by multinationals to determine foreign investments.

"Belgium's unified status reform was clearly a missed opportunity since no major changes were made to the system, such as the introduction of a cap or two-tier system (i.e. notice combined with severance) similar to most other countries," concluded Vermandel. "Furthermore, the cost associated with dismissals related to blue-collar workers increased significantly, whereas the cost related to white-collar workers only decreased marginally. Finally, an additional indemnity for clearly unreasonable dismissals was introduced after the reform which may trigger additional costs and administrative complexity linked to dismissals, for example the need to properly document the reason for dismissal."

In the Netherlands, one of the dramatic changes to the dismissal law was the introduction of a nominal cap (. To reduce complexity and associated costs, the Italian dismissal law reform included the introduction of an alternative settlement procedure consisting of a lump sum seniority based indemnity of minimum two months and maximum 18 months, which is exempt from tax and social security contributions.

France recently reformed its dismissal legislation under the initiative of President Macron, notably in order to increase flexibility on the French labour market. One of the key measures was the introduction of a statutory fixed scale of damages, i.e. with a minimum and maximum amount (depending on the seniority of the employee and the size of the company) to be awarded in case the dismissal is not based on a real and serious cause.

Belgian employers have absolute power to dismiss

In over 75% of the surveyed countries, the employer is free to dismiss an employee, but the employee may be reinstated by the courts if the reasons for dismissals are deemed unjustified. Upfront approval is only required in two of the surveyed countries, the Netherlands and Ecuador. In the other countries, nine in total including Belgium, the employer has absolute power to dismiss without any possibility of reinstatement.

Stijn Demeestere, Employment Lead Laga: "While the dismissal cost is high in Belgium, the dismissal rules are favourable in comparison with many other countries. Contrary to most countries, employers in Belgium have an absolute power to dismiss, meaning that the employer must not obtain prior court approval and the court cannot overrule the dismissal and impose the employee's reinstatement. In addition, the employer can end the employment contract with immediate effect paying an indemnity in lieu of notice without any formalities to be fulfilled. The dismissal cost is very predictable in Belgium since the duration of the notice period or indemnity in lieu of notice is determined by law with no margin of appreciation, and the span between dismissal with or without objective reason is limited to maximum 17 weeks, which is rarely applied in practice."

Determining the dismissal cost

In almost all surveyed countries, seniority (the length of service within a certain company) is the key factor in determining the level of dismissal cost. However, over 60% of all participating countries have capped either the notice period or the severance indemnity or both. Under Belgian law, there is no cap with regard to the notice period or indemnity in lieu of notice. Only the indemnity related to abusive dismissal is capped at maximum 17 weeks.

Notice period or indemnity in lieu of notice

About 40 percent of the countries surveyed, including Belgium, attribute only a notice period or an indemnity in lieu of notice, whilst 50 percent grant both a notice period (or garden leave) and a severance indemnity (two-tier system). Ten percent only grant a severance indemnity.

In more than 50 percent of the surveyed countries, including Belgium, the computation base for the indemnity in lieu of notice includes the total remuneration package (annual base, variable salary and benefits in kind).

Belgium does not have any specific dismissal rules for managing directors, although a high number of managing directors are hired as self-employed or through a personal service company.

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Deloitte in Belgium

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