

Employment & Benefits Summer Series

July 2022

Part II : The Belgian Labour Deal - Transition Path and Promotion of Employability

Strelia's Summer Series on the Belgian Labour Deal aims to give companies a general overview of the government's measures to reform the labour market. Its goal is to reach an 80% labour force participation rate by 2030. The parliament is expected to cast a final vote on the draft bill by July 21, 2022.

Throughout this summer, Strelia's Summer Series will feature the following topics:

1. Work-life balance (see our 8 July 2022 edition)
2. **Transition path and promotion of employability**
3. Employee training
4. Part-time workers
5. Platform economy and e-commerce

Transition Path and Promotion of Employability

A. Transition path

The draft bill introduces the possibility for the employer to offer a career transition path after it dismisses an employee, or for the employee to request this. This means the dismissed employee can be made available to a potential new employer-user during the termination notice period (which is an exception to the prohibition of lending out employees to a user). This is done by involving an interim work agency or work placement service provider as intermediaries.

The conditions and duration of the transition path posting must be agreed upon in writing in advance and signed by the four parties concerned: the employee, the employer, the potential new employer (user), and the interim work agency or private employment agencies.

The employer, who terminated the employee, continues to pay his or her wage during the transitional posting period. This wage should in principle be equal to the wage that the user would pay for someone working in the same position as the employee being posted there, unless it is lower than what the employee is entitled to during the termination notice period. If it is lower, the employer must continue to pay the wage to which the employee is entitled to. However, the user must compensate the employer for part of it.

During the transitional posting period, both the employee and the user are allowed to terminate the transitional posting arrangement early by giving the other party a notice period whose length is calculated in accordance with Article 37(2) of the Employment Contracts Act while also taking into account the length of service that the employee has accumulated since the start of the transitional posting period.



At the end of the transitional posting period, the user must hire the employee under an open-ended term contract. If it does not do so, the user must pay the employee compensation that equals to half of the transitional posting period.

If the user does hire the employee, the length of service that the employee had worked during the transitional posting period must be taken into account when calculating any termination notice period. In addition, when applying the provisions on career breaks, time credit, and specific types of leaves, the employee retains the length of service that he or she has worked at the previous employer.

B. Promoting employability

If the employer dismisses an employee and gives the employee a right to at least 30 weeks' notice or indemnity in lieu of notice, the notice period or indemnity in lieu of notice is converted into a redundancy package that consists of two components:

- **Component 1: This is 2/3 of the statutory termination notice period or indemnity in lieu of notice.** This is made up of either (i) a notice period equal to 2/3 of the statutory notice period with a minimum of 26 weeks or (ii) an indemnity in lieu of notice equal to the employee's current wage that corresponds to the said notice period in this component.
- **Component 2:** This is the remaining notice period or indemnity in lieu of it. During this remaining notice period, the following provisions apply:
 - **If the employee is paid an indemnity in lieu of the remaining notice,** the employee must remain available to follow programs or measures that improve his or her employability (e.g., training, coaching, outplacement, ...). The value of such programs should correspond to the amount of the employer's social security contributions on this part of the indemnity in lieu of notice.
 - **If the employee is given a termination notice period,** the employee has the right to not come to work, without losing his or her wage, to follow training and employability improvement programs. The value of this should correspond to the amount of the employer's social security contributions on this part of the notice period.

The obligations for the employee to undergo employability improvement programs and measures (in Component 2) extinguishes if he or she finds a new job and enters into a new employment relationship with a new employer or becomes self-employed.

 The employability measures apply in addition to the existing general outplacement scheme that applies to dismissals with at least 30 weeks' notice or indemnity in lieu of notice.

 In Opinion No. 2289 of 17 May 2022, organizations representing employers at the National Labour Council have expressed several important comments on these measures. It remains to be seen whether the draft bill will be amended, considering these comments.

Strelia's Employment & Benefits practice group is closely following the legislative developments on this subject matter. We will keep you informed of when these measures will enter into force or if there are any subsequent amendments and clarifications. If you have any questions on this topic or wish to proactively discuss them with us, please contact our team.



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