Career savings: "Time is rest ... and the money to enjoy it?"

For more information, please contact:

Cecilia Lahaye
Counsel
cecilia.lahaye@strelia.com

On February 1, 2018 the legal framework regarding career savings ("loopbaansparen" or "compte épargne carrière") as introduced by the Act of 5 March 2017 on flexible and feasible work took effect. As part of the current government's ambition to provide for a better work/life balance, the career savings scheme was set up to offer workers the opportunity to convert worked overtime under certain conditions into periods of rest, to be used at a later moment in their careers. With life expectancy as well as the retirement age continuously on the rise, the career saving scheme thus seeks to keep workers at work as fit and healthily as possible for the whole long(er) duration of their career.

In view of Belgium's long standing tradition of collective bargaining, the legislator had only laid down a general framework, leaving it up to the workers' and employers' representative organisations to set up a fully fledged, harmonised national scheme by 1 August 2017. However, no collective bargaining agreement could be reached within the National Labour Council (NAR or CNT), not even after having been given another 6 months extra time until 1 February 2018.

This is hardly surprising, considering the formidable task that the NAR was facing. Although laudable in concept and in line with the millenials' rightful aspiration to a better work/life balance, the actual scheme of 'career savings' may well prove to be extremely difficult to put into place. Indeed, how does one transform "time" into "money" to be deposited into an account, either managed by the employer himself, by a bank or an insurance company or possibly a Fund established within the Joint Committee, as the Act of 5 March 2017 sets out? Exactly how should the NAR have computed worked time in a harmonized and standardized way, notwithstanding sectorial differences? The financial valorisation of one hour's work not only varies drastically from one sector of professional activities to the other but also from one category of workers to the next, i.e. white collar vs. blue collar workers. More often than not, an employee's wages also comprise various extra-legal benefits, such as an additional health care insurance, an occupational pension scheme, the use of a company car, mobile phone, laptop etc... for private purposes, in addition to a fixed salary, possibly even topped by an annual bonus. Should all those salary elements (including holiday pay, paid sick leave, ...) be taken into account and if so, to what extent? And how should one convert time that is worked today (in return for certain wages) in time that will be used to pay for rest time at an unknown moment in the future?

Let's take the example of Mrs Smith, a 40 year old employee who has worked 8 h and saved a capital of time equivalent to 400 € in 2018 (50 € per hour). It seems highly unlikely that these savings will buy her 8 h of rest time 15 years

later in 2033, taking into account i.e. inflation, pay raises, a different way of computing wages and/or working hours and other yet unknown cost factors. If 1 hour's worth now is to equal one hour's worth in the future, the question inevitably rises who is to pay for the difference: Mrs Smith, her employer or the Government (i.e. the taxpayer)? And what happens if Mrs Smith changes jobs, possibly moving to a different sector of activities, with a new employer, as well as different wage and working conditions?

The Act of 5 March 2017 only answers a few of these questions. We know what kind of "time" can be used for career savings: only specific kinds of overtime and conventional holidays, but not the regular legal holidays (art. 34 § 2). The Act further sets out that the worker is free to participate in the scheme (art. 34 § 3) and that he is entitled to the full package of all his savings when his employment contract ends for any reason (art. 37). The latter provision is exceptionally favorable for the worker in comparison to e.g. the reduced working hours holidays (the so-called "ADV"-days) that are irremediably lost if the worker does not take them in due time.

But the bulk of the questions raised above remain unanswered. The actual "ins and outs" of the career savings scheme will now have to be laid down by collective bargaining agreement, on the basis of the principle of gender equality (art. 35 § 4). Sectorial Joint Committees will thus have to determine what kind of time periods can be saved, within which time frame, how the worker may use these savings, how to assess their value (at the moment of input or of payment?), how these schemes will be managed and how the workers' rights are safeguarded, also in the event of discontinuity of the company.

If no agreement can be reached on a sectorial level within 6 months of the date of submission with the Joint Committee of a request to set up a scheme, it will be up to the companies to try and do so. This means that the whole viability of the career savings scheme now depends on whether or not the sectorial Joint Committees (or ultimately individual companies) will succeed in laying down a quite complex set of rules, taking into account ideosyncracies on a sectorial (or possibly company) level.

Will our 40 year old Mrs Smith actually have the opportunity to fill up her own 'rucksack of time' allowing her to take extra leave from work in 2033 to rest - or, why not, to go backpacking in the Himalayas?

Only time will tell.