

Employment & Benefits Newsflash

February 2024

New Belgian Civil Code: How does it affect employees' potential liability?

On 1 February 2024, the Belgian parliament approved the text for Book 6 of the New Civil Code. Book 6 contains the fundamental principles of Belgium's new tort law, and, as one of the most important changes, it abolishes the principle of quasi-immunity of the executing agent. In this newsflash, we'll explain the implications that the new rules have on the potential liability of company employees.

Quasi-immunity of the executing agent

Under the rules in force now, employees are "quasi-immune" from claims brought against them by individuals or companies that are parties to a contract with their employer (e.g., a company or an individual buying certain goods or services from the employer). The new rules prohibit the employer's contracting parties from suing the employees in question directly if those employees committed a fault in the performance of said contract (except in very exceptional cases).

Hence, the contracting party that suffered harm or loss because of the employee's fault is allowed to seek compensation only from the employer on grounds of the employer's contractual liability. The employer, in turn, can then seek recovery of that compensation from the employee who committed the breach. But to do so successfully, the employer must bear the burden of proving that the employee committed fraud, was guilty of gross misconduct or repeated minor misconduct. Article 18 of the Belgian Employment Contracts Act indeed limits an employee's liability towards their employer (or third parties) to these three instances.

Risk of direct claims under the new Belgian Civil Code

The new tort law in Book 6 of the New Civil Code will allow an employer's contracting party to be able to seek compensation directly from the employee based on the employee's extra-contractual liability, but the liability is limited to cases of fraud, gross misconduct, or repeated minor misconduct.

The implications that this new legislation has for employees (and their employers) are significant. Whereas the current rules (i.e., the "old" law) exclude any direct claim against employees who are acting as executing agents of their employer (subject to certain exceptions), the new Book 6 can now implicate an employee's personal liability in a claim brought by an individual or company that is party to a contract with the employer and who alleges that the employee in question, in the performance of the contract on behalf of their employer, would have committed fraud, gross misconduct, or repeated minor misconduct. This opens the door to debate and additional risks for employees.

As regards liability towards third parties (i.e., individuals or companies that do not have a contractual relationship with the employer) that suffered harm or loss because of the employee's act or omission in the performance of his or her employment contract, this remains unchanged: employees are liable towards those third parties only if the employees in question are found guilty of fraud, gross misconduct, or repeated minor misconduct.

Nuances

Although the impact of this change is not insignificant, companies should be mindful of the following points:

- Whenever a contracting party brings a direct claim against an employee, the employee's liability in question is

limited in accordance with Article 18 of the Employment Contracts Act.

- The new rules in Book 6 are supplementary. This means that they apply only if parties did not make any other contractual arrangements between them. Hence, the extra-contractual liability of the employee in question can be limited or excluded under the contract between the company (employer) and its contracting parties.
- Finally, the employee who is being sued directly by their employer's contracting party can reject its claims by invoking the defenses available under the contractual relationship between the contracting party and his or her employer (e.g., specific rules or conditions under the contract, statute of limitations, etc.) and those available under his or her own employment contract (e.g., any specific exoneration clauses).

Timing and to-dos

Book 6 of the New Civil Code will enter into force on the first day of the sixth months following the month when the new law has been published in the Belgian Official Gazette. This date of entry into force is expected to be the 1st of January 2025.

The new law will also apply to existing contracts that were concluded before its entry into force. This means it is important not only to consider these new rules when drafting new contracts, but it is also recommended to review existing ones, as companies should consider excluding or limiting potential direct claims brought against your employees by contracting parties.

Our Employment & Benefits Practice is closely monitoring the developments on this topic and will make sure you are up to date. If you have questions and/or wish to discuss this topic in further detail, please contact our team.



Stefanie Tack
Partner

stefanie.tack@strelia.com
+32 486 79 92 42



Marnix De Greve
Senior Associate

marnix.degreve@strelia.com
+32 473 57 48 33