



SOCIONEWS



LAW

TWO NEW LAWS ON WORK-LIFE BALANCE

Two laws have been passed to transpose the European directive on work-life balance for parents and carers ¹.

The law of 29 July 2023 ² concerns extraordinary leave in the event of the birth of a child, known as "paternity leave".

It aims to take account of the situation of same-sex couples, enabling people recognised as second parents to also benefit from this leave.

The government has taken advantage of this law to answer a number of practical questions that have arisen concerning

the application of this leave in the event of the birth of a child.

This law is applicable from 22 August 2023.

The law of 15 August 2023 ³ introduces two new forms of extraordinary leave: caregiving leave and leave for reasons of force majeure.

It also enshrines the right of employees who are parents or carers to request flexible working arrangements.

This second law came into force on 21 August 2023.

1 Directive 2019/1158 of 20 June 2019 repealing Directive 2010/18/EU.

2 Mémorial A, No. 524 of 18 August 2023: <https://legilux.public.lu/eli/etat/leg/loi/2023/07/29/a524/jo>.

3 Mémorial A, N°512 of 17 August 2023: <https://legilux.public.lu/eli/etat/leg/loi/2023/08/15/a512/jo>.



1. INTRODUCTION OF NEW TYPES OF EXTRAORDINARY LEAVE⁴

Article L. 233-16 of the Labour Code is supplemented by two new points 9 and 10.

1.1 Absence for reasons of force majeure

An employee is entitled to one day's extraordinary leave over a 12-month employment period for reasons of force majeure linked to urgent family reasons, in the event of illness or accident making the employee's immediate presence indispensable.

This leave for reasons of force majeure corresponds to 8 hours a day for a full-time employee, which can be split into whole hours.

For employees whose working week is less than forty hours, who work part-time or who have several employers, these hours of leave are fixed in proportion to the weekly working hours laid down in the relevant collective bargaining agreement or employment contract.

1.2 Caregiver leave

The employee is entitled to 5 days of extraordinary leave over a 12-month period of employment to provide personal care or assistance to a family member or a person living in the same household as the employee and who requires considerable care or assistance for a serious medical reason which reduces his or her capacity and autonomy rendering the family member or the aforementioned person unable to compensate for or cope independently with physical, cognitive or psychological deficiencies or health-related constraints or requirements and which is certified by a physician.

A family member is defined as a son, daughter, mother, father, spouse or partner.

Caregiver leave corresponds to 8 hours a day for a full-time employee, which can be split into whole hours.

For employees whose working week is less than forty hours, who work part-time or who have several employers, these hours of leave are fixed in proportion to the weekly working hours laid down in the relevant collective bargaining agreement or employment contract.

1.3 What must an employee do if he or she wishes to take such leave?

An employee who wishes to take one of these types of leave must notify the employer or a representative of the employer, in person or by intermediary, orally or in writing, no later than the day of the absence.

For caregiver leave, the employee must provide, at the latest on the third day of the absence, the employer with a medical certificate attesting that the conditions for taking such leave have been met, and a document proving the family relationship between the employee and the person in need, or that their respective places of residence coincide.

1.4 Financial coverage

50% of the salaries paid by the employer for this leave are borne by the State budget.

The elements taken into account to calculate the amount to be reimbursed by the Minister for Labour are the basic salary declared by the employer to the CNS, plus the employer's social security contributions for the period of leave taken.

The basic salary used to calculate the reimbursement is limited to five times the minimum social wage for unskilled workers.

If the employee works part-time, the limit is adjusted proportionally according to the number of hours worked.

To obtain this reimbursement, the employer must submit the request, with supporting documents, electronically via Myguichet.lu, within six months of the date on which the leave is taken, or from the last day of leave if the employee takes it for several consecutive days, following which the request will be barred.

Requests that are not sent by this means are only accepted if the applicant can justify that he/she does not have access to this means of transmission.

The Minister for Labour informs the employer of the details and amount paid by the State Treasury via the electronic platform provided for this purpose or, in the case of a justified claim sent by another means, by simple or electronic mail.

Allowances unduly granted on the basis of false or erroneous declarations must be returned.

⁴ Article 1 of the law of 15 August 2023.

1.5 Employee protection

Throughout the period of leave, the employment contract is maintained.

The employer is not authorised to notify the employee of the termination of his employment contract or, if applicable, of the summons to a pre-dismissal interview on the grounds that the employee has requested or benefited from such leave.

Termination of the employment contract in breach of these provisions is null and void.

Within 15 days of the dismissal, the employee may submit a simple request to the president of the Labour Court, who shall rule as a matter of urgency and as in summary proceedings, with the parties heard or duly summoned, to declare

the dismissal null and void and order that his employment contract be maintained.

The order of the president of the Labour Court is provisionally enforceable. It may be appealed, by simple request, within fifteen days of notification through the clerk's office, to the magistrate presiding over the chamber of the Court of Appeal to which appeals in labour law matters are assigned. The parties are heard or duly summoned.

During the period of leave, the employer is obliged to keep the employee's job or, if this is not possible, a similar job corresponding to the employee's qualifications and offering at least equivalent pay. The period of leave is taken into account in determining seniority rights. The employee retains all benefits acquired prior to the start of the leave. Employees may not be subjected to reprisals or less favorable treatment for having applied for or taken one of the above-mentioned leaves.

2. POSSIBILITY OF REQUESTING FLEXIBLE WORKING ARRANGEMENTS⁵

A new article L. 236-1 of the Labour Code introduces the right to an interview with the employer for the purpose of requesting flexible working arrangements.

2.1 Conditions of entitlement

All employees are entitled to an interview with their employer to request flexible working arrangements, provided they have at least 6 months' continuous service with the same employer.

Another condition is that the employee must be the parent of a child under the age of 9, or provide personal care or assistance to a family member⁶ or a person living in the same household who requires considerable care or assistance for a serious medical reason attested by a doctor.

The serious medical reason corresponds to the one allowing the granting of the new caregiver leave (point 1.2 above): namely the one that reduces the capacity and autonomy rendering the person incapable of compensating or coping autonomously with physical, cognitive or psychological deficiencies or health-related constraints or demands.

2.2 Flexible working arrangements

The term "flexible working arrangements" refers to the possibility for the employee to arrange his or her working conditions, including teleworking, flexible working hours or reduced working hours, for a fixed period not exceeding one year.

The employer and the employee may, where appropriate, agree on any other flexible working arrangement, without this being to the employee's disadvantage.

2.3 Employer's response

The employer examines the request for flexible working arrangements and responds within one month, taking into account its own needs and those of the employee.

If the employer refuses the request or decides to postpone it, he must send the reasons for the refusal or postponement to the requesting employee by registered letter with acknowledgement of receipt.

⁵ Article 4 of the law of 15 August 2023.

⁶ As defined in article L. 233-16 of the Labour Code, a family member is defined as a son, daughter, mother, father, spouse or partner.

2.4 Return to the original working arrangement

It is also stipulated that the employee has the right to return to the original working arrangement at the end of the period agreed for the flexible working arrangements granted.

The employee has the right to ask to return to the original working arrangement before the end of the agreed period, if a change in circumstances justifies this. In this case, the employer examines the request to return to the starting work arrangement earlier and responds within one month, taking into account both his own needs and those of the employee.

2.5 Employee protection against dismissal

The employer is not authorised to notify the employee of the termination of his employment contract, or, if applicable, of the summons to a pre-dismissal interview, on the grounds that the employee has requested or benefited from several flexible working arrangements. Termination of the employment contract in breach of this article is null and void.

Within fifteen days of dismissal, the employee may submit a simple request to the president of the labour court, who shall rule as a matter of urgency and as in summary proceedings, with the parties heard or duly summoned, to declare the dismissal null and void and to order that his employment contract be maintained.

The order of the president of the Labour Court is provisionally enforceable. It may be appealed, by simple request, within

fifteen days of notification through the clerk's office, to the magistrate presiding over the chamber of the Court of Appeal to which appeals in labour law matters are assigned. The parties are heard or duly summoned.

2.6 Maintenance of employment and related rights

Throughout the period agreed for flexible working arrangements, the employer is required to maintain the employee's job or, if this is not possible, a similar job corresponding to the employee's qualifications and offering at least equivalent pay. The duration of this period is taken into account in determining seniority rights. The employee retains all benefits acquired prior to the start of this period.

2.7 No reprisals or less favorable treatment

Employees may not be subjected to reprisals or less favorable treatment for having requested or benefited from flexible working arrangements.

2.8 Penalties for non-compliance⁷

Employers who fail to comply with these new obligations are liable to a fine of between 251 and 2,500 euros.

In the event of a repeat offence within two years, these penalties may be doubled.

3. ADAPTATION OF CERTAIN EXISTING LEAVES

Two existing extraordinary leaves have been reviewed and adapted by the laws of 29 July and 15 August 2023. These are parental leave and extraordinary leave in the event of the birth of a child, known as "paternity leave".

3.1 Parental leave⁸

Employers wishing to refuse parental leave in one of the flexible forms (part-time or split) must inform the requesting parent by registered letter with acknowledgement of receipt within two weeks of the request and invite the parent to an interview within two weeks of this notification.

It should be added that this decision must be substantiated by the employer.

As regards the postponement of the second parental leave (parental leave to be taken until the child is 6 years old), the law now stipulates that the employer's decision to postpone must be substantiated by the employer.

In addition, prior to any decision to postpone parental leave to a later date, the employer must, wherever possible, offer the employee an alternative form of part-time or split parental leave.

⁷ Article L. 236-2 of the Labour Code.

⁸ Articles 2 and 3 of the law of 15 August 2023.

3.2 Paternity leave⁹

a. Open to all second parents

Until now, access to paternity leave was restricted to fathers of newborn children. Same-sex couples could only take advantage of an additional ten days' leave in the event of the child's adoption.

From now on, this leave can be taken by the person recognised as the equivalent second parent under the national legislation applicable by virtue of the child's or the parent's place of residence or nationality, and which authorises him or her to establish filiation in respect of the child without having to resort to the adoption procedure.

b. Prorating for part-time employees

The law now stipulates that these 10 days' leave correspond to 80 hours, which can be split up, for an employee whose normal working week is 40 hours.

For employees whose working week is less than 40 hours, who work part-time or who have several employers, these hours of leave are fixed in proportion to the weekly working hours laid down in the relevant collective bargaining agreement or employment contract.

c. Details of how to take this leave

These hours must be taken within two months of the child's birth or, in the case of adoption, the child's actual move into the same household as the employee, or the date on which the adoption takes effect.

It is thus clearly stipulated that this leave in the event of the fostering of a child under the age of sixteen with a view to adoption begins on the day when the child actually lives in the same household as the employee requesting the fostering leave, respectively from the date when the adoption takes effect, i.e., from the moment when an official decision authorises the child's adoption.

This is to cover cases where a person joins his/her partner's household and subsequently decides to adopt the partner's child.

d. Non-cumulative leave

These 10 days of extraordinary leave in the event of the birth of a child or the adoption of a child are limited to a single leave per employee and per child and cannot be accumulated.

e. 2 months' notice required in principle

In principle, the employer must be informed two months in advance of the foreseeable dates on which the employee intends to take his 10 days of leave.

Problems can arise in the event of premature childbirth. In such cases, the employee wishing to take advantage of the ten-day paternity leave was logically unable to comply with the two-month notice period, with the result that some employers only granted two days' leave¹⁰.

In order not to penalise employees who find themselves in such a situation, the new law stipulates that the notice period does not apply if the birth takes place two months before the presumed date.

The law specifies that if the employee has not respected the two-month notice period, the leave must be taken in one go and immediately after the birth of the child, unless the employer and employee agree to a flexible solution, enabling the employee to take the leave, in full or in instalments, at a later date, taking into account as far as possible the needs of the employee and those of the employer.

The employer can therefore no longer reduce this leave to 2 days if the 2-month notice period is not respected.

f. Financial responsibility for this leave

From the seventeenth hour onwards, this leave is paid for from the State budget.

For employees whose working week is less than forty hours, who work part-time or who have several employers, the hour from which reimbursement is due is set in proportion to the weekly working time stipulated in the relevant collective bargaining agreement or employment contract.

⁹ Article 1 of the law of 15 August 2023.

¹⁰ Former article L. 233-16 paragraph 10 of the Labour Code stipulates that "in the absence of notification within the required period, the leave may be reduced to 2 days by decision of the employer".



The elements taken into account to calculate the amount to be reimbursed by the Minister for Labour are the basic salary, declared by the employer to the Joint Social Security Centre, increased by the employer's social security contributions relating to the period of said leave.

The basic salary used to calculate the reimbursement is limited to five times the minimum social wage for unskilled workers. If the employee works part-time, the limit is adjusted proportionally according to the number of hours worked.

To obtain reimbursement of salaries and social security contributions, the employer must submit the request, with supporting documents, electronically via Myguichet.lu, within 5 months of the child's birth or, in the case of adoption, the child's actual move into the same household, or the effective date of the adoption, failing which the claim will be barred. Applications not submitted by this means will only

be accepted if the applicant can justify that he/she does not have access to this means of transmission.

The Minister for Labour informs the employer of the details and amount transferred by the State Treasury via the electronic platform set up for this purpose or, in the case of a justified request sent by another means, by simple or electronic mail.

Allowances unduly granted on the basis of false or erroneous declarations must be returned.

g. Effective date

These provisions apply to all childbirth leave taken for a child whose birth or, in the case of adoption, the child's actual move into the same household or the effective date of adoption, occurs after 22 August 2023.
