CHAMBRE DES SALARIÉS
LUXEMBOURG

SOCIAL LAW

THE EMPLOYEE'S ILLNESS AND PROFESSIONAL REDEPLOYMENT

MAY 2025

YOU'LL NEVER WORK ALONE.

IMPRESSUM

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PREFACE

In recent years, the professional redeployment procedure has undergone a number of reforms. Changes have been made to the situation of employees on long-term sick leave. The powers of the Social Security Medical Board (CMSS), the occupational general practitioner and the National Employment Agency have been strengthened. This has a direct impact on employees' rights not only in terms of social security, but also in terms of employment law.

With this publication, the CSL wishes to raise awareness of the rules applicable to both employees and their employers.

A short preliminary quiz will familiarise readers with the subject and help them to identify the specific issues that arise in the event of an employee's illness. The answers to this test can be found in the last section of this brochure.

The second part provides a brief overview of the most recent changes introduced by the Law dated 24 July 2020[1] and the Law dated 10 August 2018[2]. The aim of the first law was to simplify redeployment procedures and improve the financial situation of the persons in a job redeployment procedure (elimination of the requirement that an employee occupies a high-risk post and has ten years' seniority in order to be eligible for redeployment at the request of the occupational general practitioner; lump-sum compensation for employees redeployed externally; remodelling of the calculation for compensatory benefits; reduction from 10 to 5 years of fitness for the post or length of service to benefit from the professional transitional allowance). The law dated 10 August 2018 reviewed the situation of employees in the event of prolonged illness (Extension of the period of care for sick employees from 52 to 78 weeks and progressive resumption to work for therapeutic reasons).

The third part takes the form of a practical guide explaining the rights and duties of sick employees (declaration of incapacity for work, protection against dismissal, remuneration), as well as the rights and duties of the employer (administrative and/or medical checks, internal redeployment, termination of contract).

This practical guide also features an "Appendices" section containing a glossary defining the most specific terms, as well as the applicable legal provisions and a list of relevant websites.

A pleasant reading.

Luxembourg, May 2025

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1 Loi du 24 juillet 2020 portant modification 1° du Code du travail ; 2° du Code de la sécurité sociale ; 3° de la loi du 23 juillet 2015 portant modification du Code du travail et du Code de la sécurité sociale concernant le dispositif du reclassement interne et externe, Mémorial A, n° 663 du 5 août 2020.

2 Loi du 10 août 2018, Mémorial A 2918, n° 703 du 21 août 2018.

ACRONYMS USED

AAA	Accident Insurance (Association d'assurance accident)
ADEM	National Employment Agency (Agence pour le développement de l'emploi)
CNAP	National Pension Insurance Fund (Caisse nationale d'assurance pension)
CASS	Social Security Arbitration Board (Conseil arbitral de la sécurité sociale)
CNS	National Health Fund (Caisse nationale de santé)
CCSS	Social Security Centre (Centre commun de la sécurité sociale)
CDD	Fixed-term employment contract (Contrat de travail à durée déterminée)
CDI	Permanent employment contract (Contrat de travail à durée indéterminée)
CMSS	Social Security Medical Board (Contrôle médical de la sécurité sociale)
CSL	Chamber of Employees (Chambre des salariés)
CSSS	High Council of Social Security (Conseil supérieur de la sécurité sociale)
ITM	Labour and Mines Inspectorate (Inspection du travail et des mines)

In this publication, the masculine gender is used without discrimination and solely for the sake of brevity. It refers to all gender identities and covers both male and female people, transgender people, as well as people who do not feel they belong to either sex or those who feel they belong to both sexes.

The translation of legislation is not legally binding but is for information purposes only. Only the official French version of the legislation has legal force.

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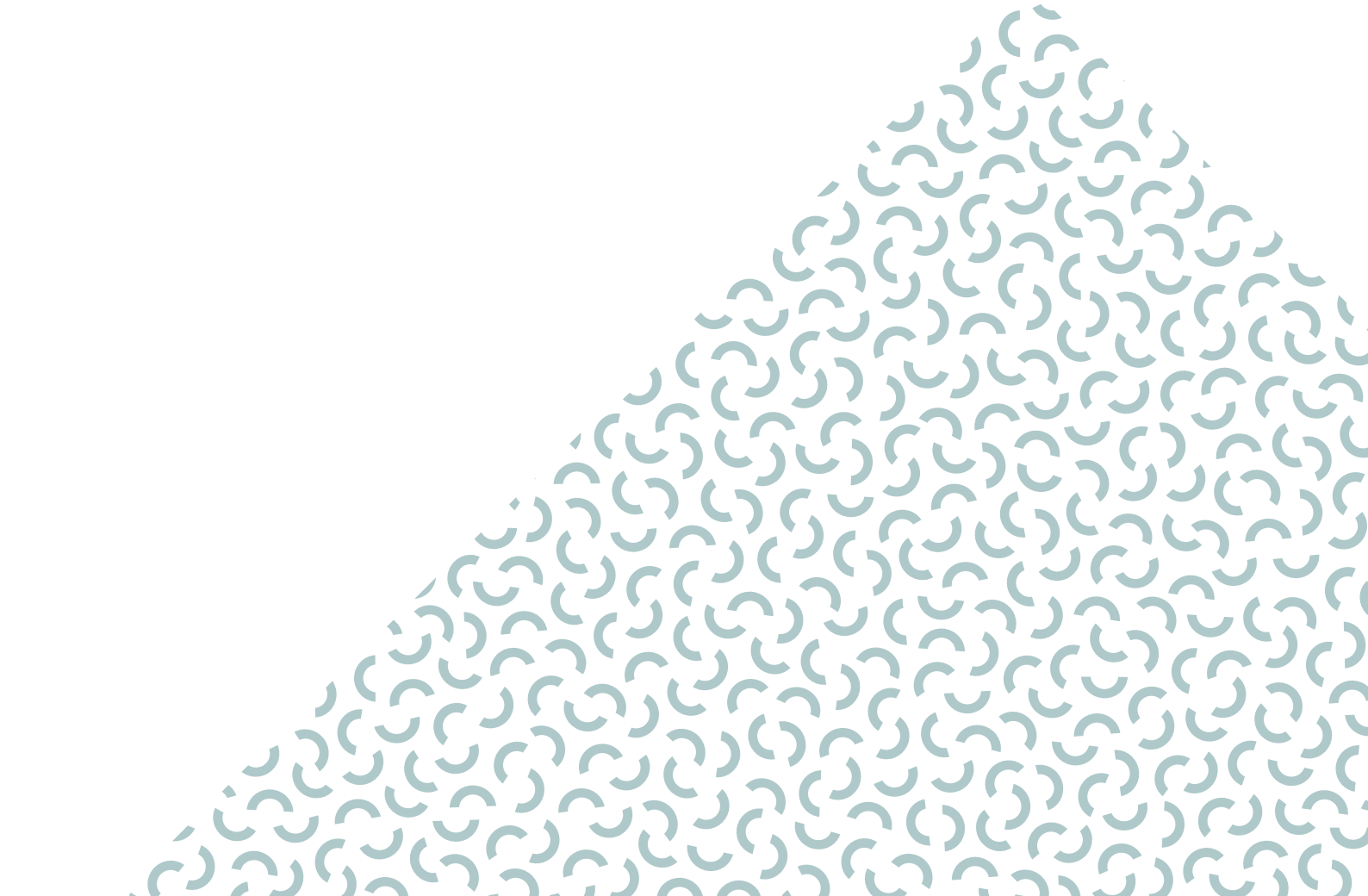


I. PRELIMINARY QUIZ

The aim of this quiz is to enable readers to assess their knowledge and/or shortcomings, by asking the most frequently asked questions when faced with an employee's illness.

It consists of multiple-choice questionnaires (MCQs).
You have to tick the appropriate boxes.
There may be one or several correct answers to the same question.

The practical guide can be read for self-correction.
An answer key for the test is available on page 89.

PRELIMINARY QUIZ

N°1 Obligations of employees who are ill

On the first day of their absence, they must:

- ▸ notify the employer or a representative of the employer of their incapacity for work ☐
- ▸ provide a medical certificate justifying their state of health ☐

This obligation must be fulfilled:

- ▸ at the start of the working day ☐
- ▸ on the morning of the first day ☐
- ▸ during the day (up until midnight) ☐

This can be done in a number of ways:

- ▸ by telephone ☐
- ▸ by text message ☐
- ▸ by email ☐
- ▸ by fax ☐
- ▸ by employees ☐
- ▸ by someone close to the employee ☐

This information must be sent to:

- ▸ the employer itself ☐
- ▸ the employee's supervisor ☐
- ▸ any of the employee's colleagues ☐

Employers who have not heard from ill employees on the first day of illness:

- ▸ may dismiss an employee with notice ☐
- ▸ may dismiss this employee with immediate effect ☐
- ▸ must wait ☐

A dismissal would be:

- ▸ wrongful* ☐
- ▸ null and void** ☐

On the third day of absence, employees must have:

- ▸ sent a medical certificate ☐
- ▸ scanned a medical certificate ☐
- ▸ submitted a medical certificate ☐
- ▸ to their employer ☐
- ▸ to the National Health Fund ☐
- ▸ to the Social Security Medical Board ☐
- ▸ to the Chamber of Employees ☐
- ▸ to the Accident Insurance Association ☐

* Wrongful dismissal is only compensated by damages, while the contract will still be terminated.
** In the event of wrongful dismissal, employees must be reinstated once the competent court has reversed the termination of the contract.

N°2 Prolonged illness

Employees must inform their employer:

- ▸ before the end of the period covered by their first medical certificate ☐
- ▸ the day they were scheduled to return to work ☐
- ▸ the third day after the planned resumption of work ☐

The certificate must be given to employers:

- ▸ the day after the planned resumption ☐
- ▸ the third day of the planned resumption ☐
- ▸ as soon as possible ☐

The certificate must be submitted to the National Health Fund:

- ▸ the day after the planned resumption ☐
- ▸ the third day of the planned resumption ☐
- ▸ as soon as possible ☐

N°3 Protection against dismissal

Once these two obligations have been fulfilled (informing entities on the first day and submitting of certificates to employers on the third day), employees are protected against dismissal for:

- ▸ 26 consecutive weeks ☐
- ▸ 26 non-consecutive weeks ☐
- ▸ 52 non-consecutive weeks ☐
- ▸ 78 non-consecutive weeks ☐

A dismissal carried out in spite of this prohibition is:

- ▸ null and void* ☐
- ▸ wrongful** ☐

After this period, employers may:

- ▸ dismiss with notice if company activities are disrupted ☐
- ▸ dismiss him with immediate effect ☐
- ▸ keep an employee in the company ☐

* In the event of wrongful dismissal, employees must be reinstated once the competent court has annulled termination of the contract.
** Wrongful dismissal is only compensated by damages, while the contract will still be terminated.

N°4

Remuneration of employees who are ill

Employees continue to receive their pay from:

- their employer ☐
- the National Health Fund ☐
- the Accident Insurance Association ☐

Employees are entitled to continue to receive their full salary by employers for:

- 77 days ☐
- Three months ☐
- Until the end of the month in which the 77th day of illness occurs during an 18-month reference period ☐
- 18 months ☐

Continuation of salary by an employer

Employers must pay employees who are ill:

- their basic salary ☐
- extra pay for overtime work ☐
- extra pay for working on a public holiday ☐
- extra pay for night work ☐
- extra pay for Sunday work ☐

An employer is reimbursed:

- at the rate of 0% ☐
- 80% in most cases ☐
- in full for employees during the trial period (three months), leave for family reasons and support leave ☐
- by the Accident Insurance Association ☐
- by the National Health Fund ☐
- by the Employers' Mutual Fund ☐

Sick allowance paid by the National Health Fund

The sick allowance takes into account:

- basic salary ☐
- all payments and accessories to compensations ☐
- only payments and accessories to compensation payable monthly in cash ☐
- benefits in kind ☐
- 13th and 14th months ☐
- bonuses ☐
- overtime ☐

...
N°4

Compensation paid by the employer and by the National Health Fund to employees who are ill

Employees is entitled to compensation during:

- 26 consecutive weeks ☐
- 78 consecutive weeks
- 26 weeks over a 52-week reference period ☐
- 78 weeks over a 104-week reference period ☐

After this period, permanent work contracts:

- are cancelled ☐
- can be terminated by the employer ☐
- automatically cease ☐

Sick allowance paid by the National Health Fund

Even before the 78-week mark, the National Health Fund may stop compensating insured parties who:

- fail to undergo a medical examination without good reason ☐
- fail to respond without good reason to a summons from the company practitioner as part of a redeployment procedure ☐
- stay abroad without prior authorisation from the National Health Fund ☐
- are in police custody ☐
- fail to provide all the information, documents and evidence requested by the National Health Fund or the Social Security Medical Board including a detailed medical report ☐
- the Social Security Medical Board issues an opinion on fitness to work ☐

N°5

Monitoring employees who are ill

During their incapacity for work, employees may be subject to:

- an administrative check ☐
- a medical check-up ☐

Administrative controls can be carried out:

- at the employer's request ☐
- at the request of the Social Security Medical Board ☐
- at the request of the National Health Fund ☐

- while your employer continues to pay you ☐
- while receiving compensation from the National Health Fund ☐

...
N°5

Medical examinations may be carried out:

- at an employer's request, with a practitioner of its choice ☐
- at the request of the Social Security Medical Board ☐
- at the request of the National Health Fund ☐

- while your employer continues to pay you ☐
- while receiving compensation from the National Health Fund ☐

Medical examination at the employer's request by a practitioner of its choice

If the practitioner (chosen by the employer) considers the employee fit:

- the employer must continue to pay him ☐
- the employer can stop paying him ☐
- protection against dismissal ends ☐

If two physicians (other than the Social Security Medical Board) consider an employee fit:

- the employer must continue to pay him ☐
- protection against dismissal ends ☐
- the employer can stop paying if the employee does not return to work ☐

Medical examination at the request of the Social Security Medical Board

If the Social Security Medical Board considers an employee fit:

- the National Health Fund stops compensating the employee ☐
- the employer must continue to pay him ☐
- the employer can stop paying him ☐
- protection against dismissal ends immediately ☐
- protection against dismissal ends after 40 days if the employee fails to appeal the fitness decision ☐
- protection against dismissal ends after 40 days if the employee appeals the fitness decision ☐

N°6

Redeploying the employee

Cases may be referred to the Joint Committee by:

- the Social Security Medical Board ☐
- the employer ☐
- the employee ☐
- the employee's GP ☐
- the occupational general practitioner ☐

Referral to the Joint Committee has the following consequences:

- suspension of the 78-week time limit ☐
- suspension of the employee's employment contract ☐
- protection against dismissal of the employee ☐
- referral to the occupational general practitioner ☐

Internal redeployment is compulsory for:

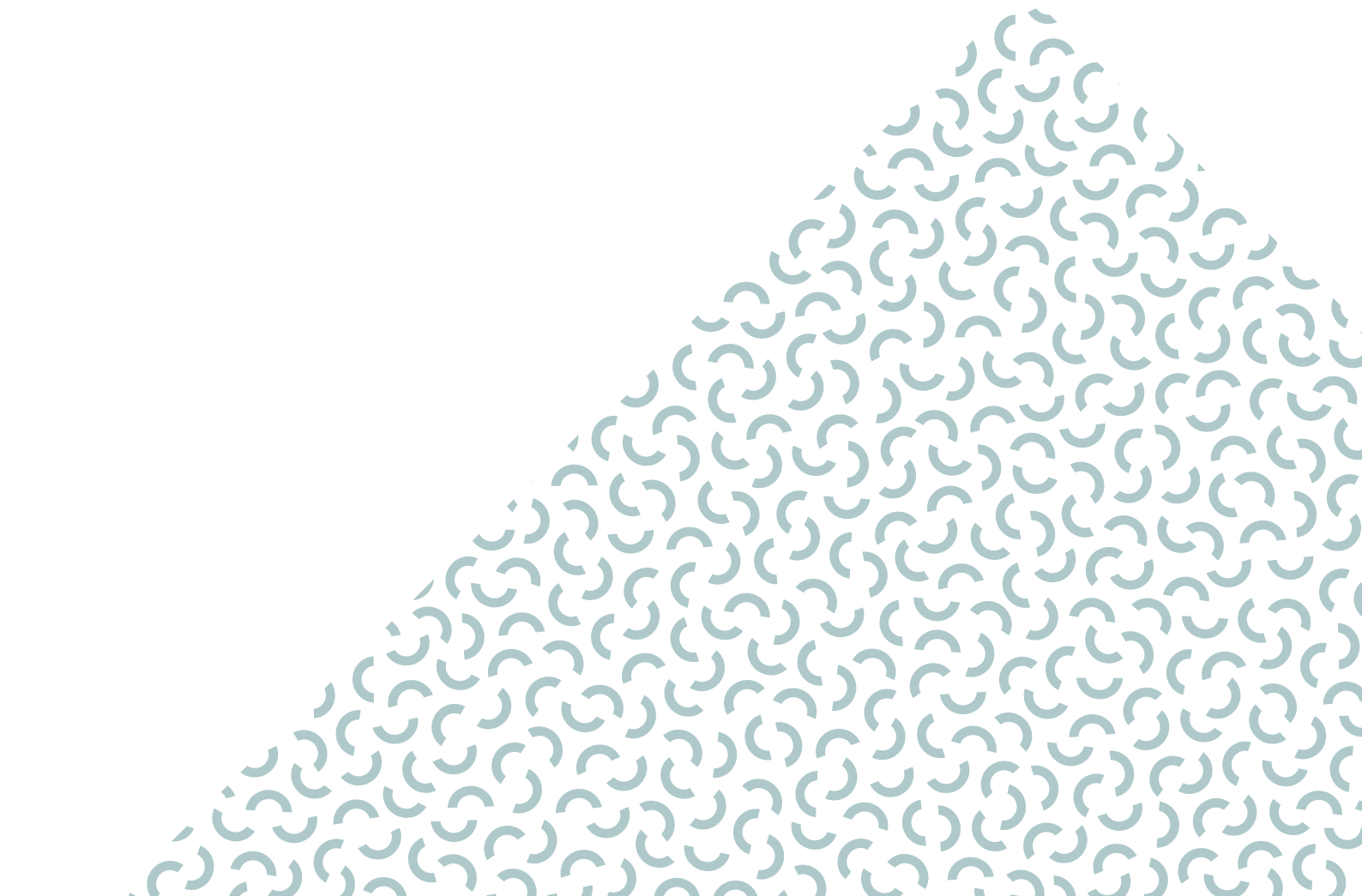
- any employer ☐
- any employer with more than 25 employees ☐
- any employer who does not employ the number of disabled employees required by law ☐

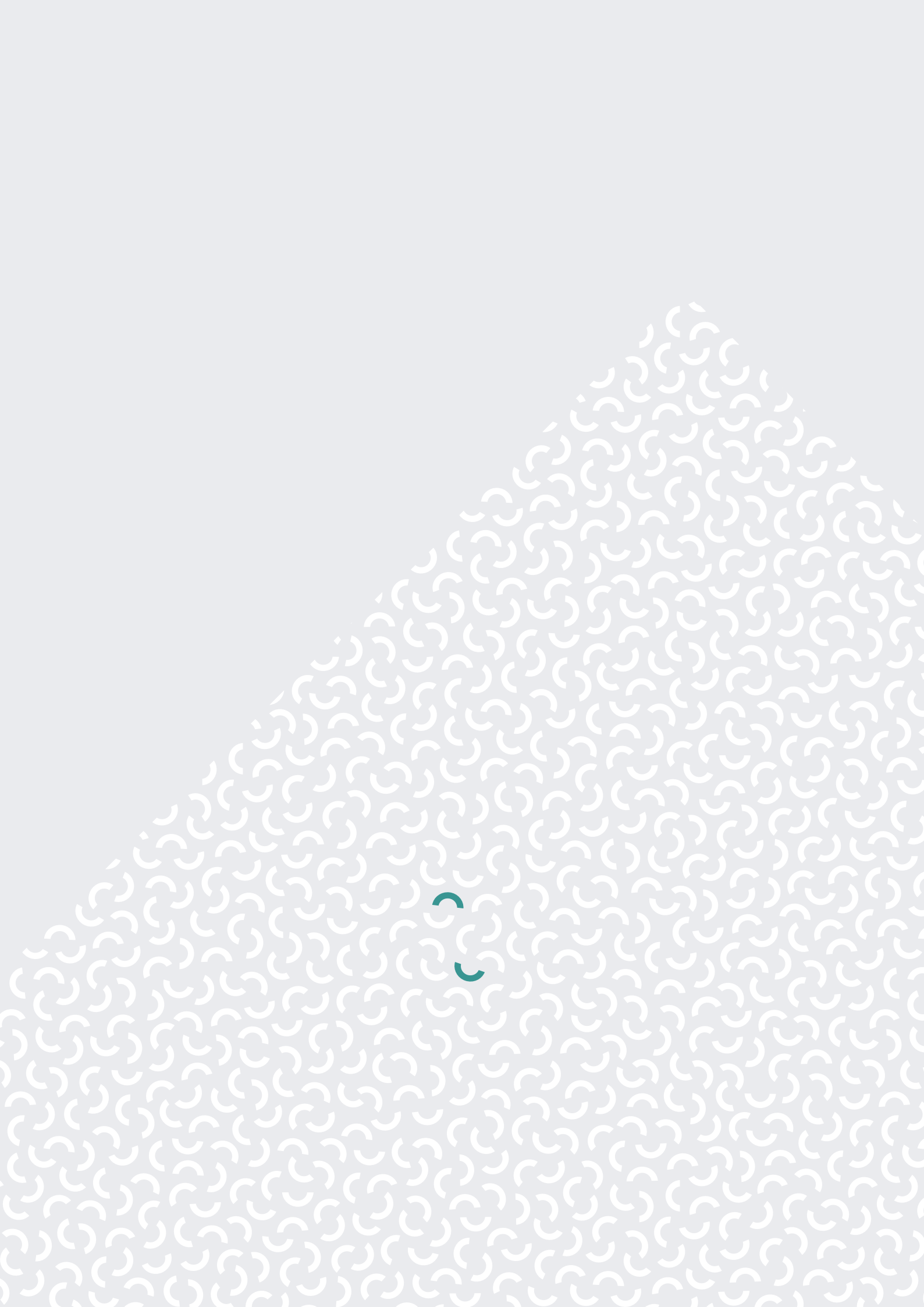
Employees who are redeployed internally can receive:

- a compensatory benefit ☐
- a professional transitional allowance ☐
- a periodic reassessment by the occupational general practitioner ☐
- specific protective status ☐

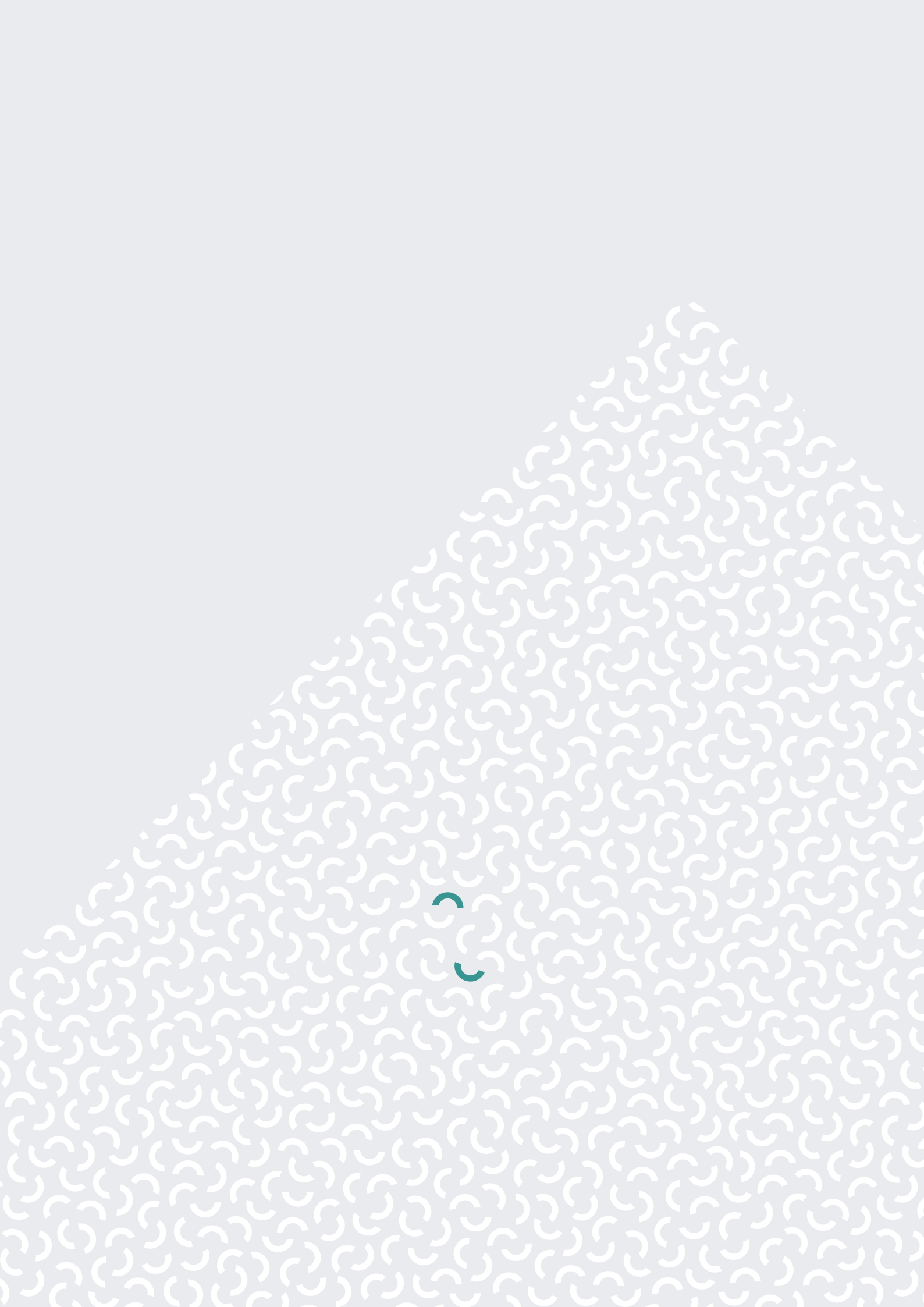
Employees who have been externally redeployed can receive:

- a lump-sum payment depending on seniority ☐
- a compensatory benefit when they return to work ☐
- a professional transitional allowance ☐
- periodic reassessment by the occupational general practitioner ☐
- specific protective status ☐





II.
LAST CHANGES



1. TWO MEASURES TO HELP EMPLOYEES ON LONG-TERM SICK LEAVE 1 JANUARY 2019

1.1. Extension of the period during which employees who are ill are covered from 52 to 78 weeks

Until 31 December 2018, after 52 weeks of incapacity for work out of a reference period of 104 weeks, the right to sick pay was exhausted and employment contracts were automatically terminated.

The law dated 10 August 2018 [3] increased the duration of employees' sickness cover from 52 to 78 weeks, with the 104-week reference period remaining unchanged.

As a result, the automatic expiry of an employee's employment contract has also been postponed.

At the same time, the reference period for continued payment of salary by an employer has been adjusted. If an employee is unable to work, the employer will continue to pay his or her salary until the end of the month in which the 77th day of incapacity for work occurs, calculated over a reference period of 18 successive calendar months, rather than 12 months.

1.2. Introduction of a progressive resumption to work for therapeutic reasons

The law dated 10 August 2018 created the possibility of a progressive resumption to work for therapeutic reasons, if the return to work and the work performed are recognised as being likely to promote improvement in the employee's state of health.

This request must be made by employees to the National Health Fund on the basis of a medical certificate from their GP and with the agreement of the employer.

To qualify for the progressive resumption to work for therapeutic reasons, the insured must have been unable to work for at least one month out of the three months preceding the application.

A progressive resumption to work for therapeutic reasons is granted by a prior decision of the National Health Fund taken on the basis of a reasoned opinion from the Social Security Medical Board .

Unlike the former "*mi-temps thérapeutique*" (therapeutic part-time), governed by the statutes of the National Health Fund, where the hours worked were paid for by the employer, the progressive resumption to work is treated as a period of incapacity for work and is counted as such. The insured continues to receive sick pay and is also covered by accident insurance.

3 Loi du 10 août 2018, Mémorial A 2918, n° 703 du 21 août 2018.

2. SEVERAL CHANGES IN REDEPLOYMENT MATTERS FROM 1 NOVEMBER 2020

The law dated 24 July 2020 [4] amended the internal and external redeployment system as reformed in January 2016.

Here are the main modifications:

- Occupational general practitioners may refer cases directly to the Joint Committee with a view to external redeployment;
- Elimination of the requirement for an employee to occupy a high-risk position and have 10 years' seniority;
- In order to obtain professional redeployment at the request of the occupational general practitioner;
- Lump-sum compensation for employees redeployed externally;
- Transfer of certain powers from the Joint Committee to the National Employment Agency (ADEM);
- Protection against dismissal as soon as the matter is referred to the Joint Committee;
- Reintroduction of the provision whereby employees undergoing professional redeployment who are part of the company's workforce are taken into account when calculating quotas for disabled employees;
- Redesign of the calculation of the compensatory benefit;
- Reduction from 10 to 5 years of fitness for the post or length of service to qualify for the professional transitional allowance.

These changes are applicable from 1 November 2020.

2.1. Access to the redeployment procedure as part of the medical examinations by an occupational general practitioner

An employee who is not incapacitated for work may be declared unfit for work by the occupational general practitioner during a periodic medical examination, a medical examination for resuming work or an examination at the request of an employer or employee.

The new law stipulates that the competent occupational general practitioner must carry out a medical examination of the employee before declaring him unfit for work.

2.1.1. Relaxing of the conditions for referral to the Joint Committee

Until 31 December 2015, there was no obligation or (official) possibility for an occupational general practitioner to refer a case to the Joint Committee when he finds that the employee is unfit to hold a job.

Since 1 January 2016, when an occupational general practitioner declares an employee unfit for the last position following a medical examination in occupational medicine, the employee may refer the matter to the Joint Committee with a view to professional redeployment under two conditions:

- The employee must have been with the company for more than 10 years;
- The employee must work in a high-risk job.

4 Loi du 24 juillet 2020 portant modification 1° du Code du travail ; 2° du Code de la sécurité sociale ; 3° de la loi du 23 juillet 2015 portant modification du Code du travail et du Code de la sécurité sociale concernant le dispositif du reclassement interne et externe, Mémorial A, n° 663 du 5 août 2020.

From 1 November 2020, the condition of occupying a high-risk post has been abolished, and all that is required is for the employee to be in possession of a certificate of fitness for the post or to have at least three years' seniority with the company.

The occupational general practitioner sends his opinion and a complete file to the Joint Committee, which now has the clear option of deciding either to redeploy internally or externally.

2.1.2. Different procedures depending on the size of the company

Referral to the Joint Committee by the occupational general practitioner varies depending on the size of the company:

- **for companies with at least 25 employees**, the occupational general practitioner refers the matter directly to the Joint Committee and informs the employer and the employee;

  If, on the day of referral to the Joint Committee, an employer has a total workforce of at least 25 employees and does not employ the number of employees eligible for internal or external redeployment within the limits of the rates laid down for disabled employees, the employer is required to redeploy the employee internally. For the purposes of meeting this obligation, since 1 November 2020, employees who have been redeployed internally or externally are once again considered in the same way as disabled employees.

  The Joint Committee may waive the requirement for in-house redeployment if an employer submits a substantiated case to this effect and can prove that such redeployment would cause serious prejudice (see point 2.5.1.).

- **for companies with fewer than 25 employees**, until 31 October 2020, an occupational general practitioner could only refer a case to the Joint Committee if the employee and the employer agreed in advance. Employees who disagreed were exposed to his employer's discretionary power. This law removes the requirement that an employer approve the referral. The Joint Committee decides on internal or external redeployment. However, internal redeployment is only possible with the employer's agreement.

In the event of external redeployment, from 1 November 2020, the employer will be obliged to pay to the employee, a lump-sum payment which varies according to the employee's length of service as follows:

- One month's salary after at least 5 years' continuous service;
- Two months' salary after at least 10 years' continuous service;
- Three months' salary after at least 15 years' continuous service;
- Four months' salary after 20 years' continuous service or more.

Length of service is assessed on the date of notification of the decision to upgrade to a redeploy externally.

This compensation is based on the gross salaries actually paid to an employee for the last 12 months immediately preceding the month in which the decision to redeploy the employee's job was notified. The salaries used to calculate the lump-sum compensation include sick pay as well as current bonuses and supplements, excluding overtime pay, gratuities and any compensation for incidental expenses incurred.

This compensation paid to the employee is reimbursed to the employer by the Employment Fund upon written request with supporting documents, to be submitted within six months of notification of the Joint Committee's decision. The request should be sent to ADEM's Disability and Professional Redeployment Department.

2.2. More powers for ADEM

2.2.1. Transfer of certain tasks from the Joint Committee to ADEM

As of 1 November 2020, the Joint Committee will only decide on the internal or external redeployment of employees, redeployment status, adaptation of working hours, the compensation tax and rehabilitation or retraining measures for those undergoing internal redeployment.

Decisions following internal or external redeployment fall within the remit of the National Employment Agency (ADEM).

As of 1 November 2020, the Joint Committee will only decide on the internal or external redeployment of employees, redeployment status, adaptation of working hours, the compensation tax and rehabilitation or retraining measures for those undergoing internal redeployment.

Decisions following internal or external redeployment fall within the remit of the National Employment Agency (ADEM).

2.2.2. ADEM general practitioners responsible in the absence of an employment contract

ADEM's occupational general practitioners are responsible for examining people undergoing redeployment procedures, rather than the general practitioners of the multi-sector occupational health service.

2.3. Accidents at work and occupational disease

In order to obtain internal or external redeployment, as well as the status of person undergoing redeployment, employees who have been in their last position for less than three years must hold a certificate of fitness for the position, issued by the relevant occupational general practitioner at the time of recruitment to the last position.

Through this law of July 2020, the conditions of seniority and the requirement of a certificate of fitness are no longer required for employees who are unable to perform the tasks corresponding to their last job, mainly due to the after-effects of an accident at work or an occupational disease, entitling them to a partial pension or to transitional occupational benefits.

2.4. Internal redeployment

2.4.1. Protection against dismissal upon referral of the matter to the Joint Committee

Until 31 October 2020, only employees benefiting from a professional redeployment measure could invoke the nullity of their dismissal. The text has been amended to ensure that this possibility is also available to employees in the course of the redeployment procedure.

Within 15 days of the termination of the employment contract, an employee undergoing professional redeployment and an employee benefiting from a professional redeployment measure may request, by simple petition 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 he be retained or, where applicable, reinstated.

2.4.2. Link with disabled employees in the company

The 2016 reform removed the link with disabled workers in order to strengthen the employer's obligation to redeploy employees, thereby ensuring a quantitative improvement in internal professional redeployment.

Both the assimilation of redeployed employees to disabled workers and the application of the quota for disabled workers had disappeared. Employers were therefore obliged to hire a certain number of disabled employees without taking into account those who had been redeployed, and vice versa. In addition, the employer could be required to redeploy an employee as soon as the threshold of 25 employees was reached, regardless of the number of employees who had already been redeployed.

The law dated July 2020 reintroduces the old rules: an employer who, on the day the matter is referred to the joint committee, has a workforce of at least 25 and who does not employ the number of employees eligible for internal or external redeployment within the limits of the rates applicable to disabled employees is obliged to redeploy the employee internally.

For the purposes of complying with this obligation, employees who have been redeployed internally or externally are treated in the same way as disabled employees. This assimilation is accomplished by taking into account the cumulative working time of a full-time employee.

It is up to the employer to provide proof of compliance with this obligation or that he employs fewer than 25 workers. In the case of companies with multiple branches, the obligation to redeploy applies to each establishment individually.

2.4.3. Reduced working hours

The reduction in working hours available for internal redeployment has been reduced from 50% to 20%.

On the basis of a substantiated opinion from the competent occupational general practitioner, internal redeployment may entail a reduction in working hours of no more than 20% of the working hours set out in the employment contract in force prior to the first redeployment decision.

The Joint Committee decides on the reduction in working hours. It may seek the opinion of ADEM's occupational general practitioner on the reduction in working hours recommended by the competent occupational general practitioner.

However, in exceptional cases, the reduction may be increased to 75% of the initial working time by decision of the Joint Committee, on the advice of ADEM's occupational general practitioner. However, the law sets a minimum working week of 10 hours.

To this end, employers or employees must submit a substantiated request to the Joint Committee following the issue of the opinion by the competent occupational general practitioner. The requesting party must submit proof that the employee or employer has been duly informed of the filing of the claim, failing which the claim will be inadmissible. Any change in working hours or working arrangements must be submitted to the Joint Committee in advance.

2.4.4. Compensatory benefit

If the internal (or external) redeployment involves a reduction in an employee's previous salary, the employee is entitled to compensation.

The terms and conditions for setting this allowance have been clarified and adapted as set out below.

a. ADEM's new remit and new six-month deadline

The Applications for compensatory benefits shall be submitted to ADEM, rather than to the Joint Committee, within six months of the date of executing the amendment to the employment contract, failing which the application will be considered invalid.

NOTE: Until 31 October 2020, there was no time limit for claiming a compensatory benefit. Failure to comply with this time limit will result in the loss of the right.

b. Income to be taken into account

The following details apply as from 1 November 2020:

- The compensatory benefit represents the difference between the average monthly income subject to pension insurance contributions during the 12 calendar months prior to the decision to redeploy for professional reasons and the new average monthly income subject to pension insurance contributions. This compensatory benefit cannot be reduced as a result of one-off or linear legal, regulatory or contractual increases in the new monthly income. However, if ADEM finds that the new average contributory income received by the person undergoing professional redeployment exceeds the amount of the former annual contributory income, it will reduce the amount of the compensatory benefit accordingly.
- The income received prior to professional redeployment is determined on the basis of the average monthly income subject to pension insurance contributions during the 12 calendar months prior to the decision to redeploy. This consists of gross remuneration earned, including all current bonuses and supplements, gratuities, benefits in kind expressed in cash enjoyed by the employee by virtue of his/her occupation subject to pension insurance, excluding remuneration for overtime and all allowances for incidental expenses.
- The average monthly income subject to pension insurance contributions during the 12 calendar months prior to the decision to redeploy or, as the case may be, prior to the disability or award of a full accident pension, is adjusted in the event of a subsequent retroactive change in the wages and salaries declared to the Social Security Centre.

c. Reduced working hours and proportionate pay cuts

In the event of a reduction in working hours, the compensatory benefit is set by calculating the loss between the average monthly income calculated as above and the new proportionally reduced salary set by amendment to the employment contract.

In the event of a reduction in working time from full-time to half-time, for example, the employer must pay half the initial salary without being able to reduce the initial hourly wage.

d. Changing jobs

In the event of a change of job, the compensatory benefit is set by calculating the loss between the average monthly income as calculated above and the new salary paid by the employer and set by amendment to the employment contract, taking into account the employee's length of service and, where applicable, the salary scales defined by the applicable collective labour agreement.

e. Possible adjustment of the compensatory benefit

In the event of a reassessment of the redeployed employee by the competent occupational general practitioner, the Joint Committee decides on the adaptation of working conditions and an amendment to the employment contract is required. The compensatory benefit is then readjusted accordingly.

f. Checks on compensatory benefits

ADEM may carry out a check at least once a year, consisting of verifying the new average annual contributory income paid by the employer and received by the person undergoing professional redeployment, as well as overtime pay and bonuses for night work or shift work.

If ADEM finds that the new average contributory income received by the person undergoing professional redeployment exceeds the amount of the former annual contributory income, it will reduce the amount of the compensatory benefit accordingly.

If it finds that the new average contributory income, including the compensatory benefit, received by the person undergoing redeployment exceeds five times the minimum social wage for unskilled workers, it will reduce the amount of the compensatory benefit set accordingly.

In this case, amounts in excess of the above thresholds are either refunded or offset against a subsequent payment.

If ADEM finds that overtime pay and bonuses for night work or shift work have been paid, it will inform the Chairman of the Joint Committee, who will decide whether a medical reassessment is necessary.

If the competent occupational general practitioner has ruled in favour of a reduction in working hours or against night or shift work, the amount of overtime pay and night or shift premiums is either to be reimbursed or offset in a subsequent payment.

g. Compensatory benefit taken into account when calculating other allowances (unemployment, early retirement, parental leave)

Since 1 November 2020, the compensatory benefit has been clearly taken into account when calculating unemployment benefits, determining the amount of early retirement benefit and calculating the amount of parental leave benefits.

Similarly, it has been specified that payment of the compensatory benefit is suspended for the duration of full-time parental leave. The amount of the compensatory benefit is reduced proportionally in the event of half-time parental leave or split parental leave.

h. End of the compensatory benefit

Payment of the compensatory benefit is suspended for the duration of an employee's unpaid leave for professional redeployment, should the Chairman of the CNS decide to reject the employee's request for compensation, and should the Accident Insurance Association award a partial pension.

Both the employer and the employee are required to report any unpaid leave and any refusal decision issued by the Chairman of the CNS (compensation stoppage).

The compensatory benefit will cease to be paid when the entitlement to the early retirement allowance, disability pension, early old-age pension, old-age pension or termination of the employment contract arises.

i. Indexation

Since 1 November 2020, the compensatory benefit has been adjusted to take account of changes in the cost of living, in accordance with Article 11(1) of the amended Act dated 22 June 1963 determining the salaries of civil servants.

j. Ancillary professional activity

An employee benefiting from professional redeployment is obliged to inform the Joint Committee in advance of any remunerated ancillary professional activity, so that it can decide whether a medical re-evaluation is appropriate.

The Director of ADEM will immediately withdraw the compensatory benefit in the event of any exercise of an ancillary remunerated professional activity that has not been previously reported to the Joint Committee.

k. Restitution of any undue payment

Any amount overpaid will be offset against the next payment or refunded.

l. Legal remedies

Decisions to refuse, withdraw or recalculate the compensatory benefit are taken by the Director of ADEM and may be the subject of a request for re-examination by a special committee.

Requests for re-examination must be substantiated and submitted by registered letter, failing which they will be time-barred, within 40 days of notification of the decision.

2.5. External redeployment

2.5.1. Internal redeployment decision and dispensation granted by the Joint Committee

An employer who, on the day the matter is referred to the Joint Committee, has a workforce of at least 25 and who does not employ the number of employees eligible for internal or external redeployment within the limits of the rates applicable to disabled employees, is obliged to redeploy the employee internally.

For the purposes of complying with this obligation, employees benefiting from an internal or external professional redeployment shall be treated as disabled employees.

It is up to the employer to provide proof of compliance.

For companies with multiple establishments, this obligation to redeploy applies to each establishment individually.

The Joint Committee may waive the requirement for in-house redeployment if the employer submits a substantiated case to this effect and proves that such redeployment would cause serious prejudice.

In the event of dispensation granted by the Joint Committee, the latter shall decide on external professional redeployment. In this case, as soon as the decision for external professional redeployment is notified, the employer is obliged to pay the employee a lump-sum compensation which varies according to the employee's length of service as follows:

- One month's salary after at least five years' continuous service;
- Two months' salary after at least ten years' continuous service;
- Three months' salary after at least 15 years' continuous service;
- Four months' salary after 20 years' continuous service or more.

The text also specifies that length of service is assessed on the date of notification of the decision to redeploy an employee's career and provides full details regarding calculations of the compensation to be paid: this compensation is calculated on the basis of the gross salaries actually paid to the employee for the last 12 months immediately preceding that of the notification of the decision to redeploy the employee's career.

The salaries used to calculate the lump-sum payment include sick pay and current bonuses and supplements, but exclude overtime pay, gratuities and any allowances for incidental expenses incurred.

Employers can seek no reimbursement from the Employment Fund for these expenses.

2.5.2. Conclusion of a new employment contract and compensatory benefit

If a new employment contract is concluded, the compensatory benefit is only due if the redeployed employee has been assigned by the ADEM services and has been declared fit for his new job during the pre-recruitment medical examination.

A new condition has been added: the new job must involve working hours at least equal to 80% of the working hours set out in the last contract in force before the first job redeployment decision.

Should the external professional redeployment of an employee relate to several previous employment relationships, the cumulative working time of these previous jobs is taken into account to determine the new working time required in order to open the right to the compensatory benefit. The required working time may be reached by combining several jobs.

However, in exceptional circumstances, the reduction in working time may be increased to 75% of the initial working time, with a minimum of 10 hours per week, by decision of the Joint Committee, on the advice of ADEM's occupational general practitioner.

An application for compensation must be made to the National Employment Agency within six months of the date the new employment contract begins, failing which it will be time-barred.

The compensatory benefit is set according to the new terms and conditions as defined by the new law and set out above.

Any unemployment benefits paid prior to the redeployment are not taken into account when calculating the former salary.

2.5.3. Professional transitional allowance[5]

a. Reduction of the 10-year aptitude/seniority requirement to five years

The professional transitional allowance has been extended to employees undergoing professional redeployment who can show that they have been fit for the last job for at least 5 years, as certified by the occupational general practitioner, or who have at least 5 years' seniority.

b. Introduction of a six-month time limit

Applications for a professional transitional allowance must be submitted to ADEM, failing which it will be time-barred, within six months of the end of the statutory period of payment of the full unemployment benefit, including the prolongation period.

c. Withdrawal assumptions

Failure to attend three consecutive appointments will result in the permanent termination of the professional transitional allowance as from the first day the applicant failed to appear, and this person’s file will be closed out.

Compensation paid to a person who was redeployed and who has not found a job by the end of the statutory period for payment of unemployment benefits, including any prolongation periods.

5 Compensation paid to a person who was redeployed and who has not found a job by the end of the statutory period for payment of unemployment benefits, including any prolongation periods.

The temporary or permanent loss of the professional transitional allowance is approved by the Director of the ADEM.

If a beneficiary's professional transitional allowance has been terminated and that person's file has been closed out, the ADEM Director informs the Chairman of the Joint Committee with a view to withdrawing the status of person undergoing professional redeployment.

The professional transitional allowance will be terminated by decision of the ADEM Director and the beneficiary's file will be closed if the conditions on the basis of which it was granted are no longer fulfilled or if the person concerned avoids professional redeployment measures or "work of public utility". The decision to withdraw the professional transitional allowance applies from the first day of the month immediately following the month in which it was notified.

The ADEM Director informs the Chairman of the Joint Committee that the file has been closed out for withdrawal for the status of person undergoing professional redeployment.

2.6. Penalties for fraud

To bring it into line with the provisions in force for full unemployment, a provision has been added providing for criminal penalties for those who have fraudulently induced ADEM to provide compensatory benefits or professional transitional allowances that were not due or were only partially due. Attempted offences are also punishable.

Anyone who fraudulently causes ADEM to provide compensatory benefits or professional transitional allowances that were not due or were due only in part will be punished by imprisonment of between one month and six months and a fine of between €500 and €5,000 or by one of these penalties only, unless a higher penalty stems from another legal provision.

Attempted commission of this offence is punishable by a prison sentence of eight days to three months and a fine of €251 to €2,000 or both.

2.7. Adapting working hours and modifying workstations

The Labour Code now specifies that the decisions of the Joint Committee concerning the adaptation of working hours and the arrangements for adapting the workstation are binding on the employer.

If a competent occupational general practitioner finds that the reduction in working hours granted is no longer medically justified, employers have a period of 12 months from the date of notification of the decision to adapt the working hours by means of an amendment to the employment contract, provided that the working hours do not exceed those stipulated in the initial employment contract.

If it is not possible to adapt the working hours in the same position occupied by the employee undergoing internal redeployment, the employer fulfils its obligation from the moment it offers employees a similar position corresponding to their qualifications, with at least equivalent pay and provided that the employee has been declared fit for the new position by the competent occupational general practitioner.

2.8. Loss of earnings

The ADEM Director will allocate to employers in the private and municipal sectors, as well as to public bodies, a contribution towards the salary of a worker undergoing internal professional redeployment or benefiting from the status of a person undergoing external redeployment who suffers a loss of earnings upon their request, to be charged to the Employment Fund.

Salary contributions start on the day the application is submitted to ADEM.

The loss of earnings is determined on the basis of the reduction in the worker's capacity to work, the efforts made by the employer to keep the redeployed workers in employment and the nature of the work to be performed.

The assessment of this loss of performance is based on both the conclusions drawn from a study of the workstation to be occupied by the redeployed worker and on an assessment of the worker's deficits and residual capacities to be drawn up by ADEM's occupational general practitioner.

ADEM also has a standardised and objective tool for this purpose, designed to compare the skills profile of the worker concerned with the profile required for the job in question.

As before, the contribution to wages is set in proportion to the loss of earnings thus established, but may not exceed 75% of the wages paid to the worker, including the employer's share of social security contributions. However, it may be increased to 100% of the wages paid to the worker for the duration of a rehabilitation or retraining measure approved by the Joint Committee.

The loss of earnings may be reassessed periodically by the ADEM Director if adjustments are made to working hours or the workstation following a medical reassessment.

The salary contribution is adjusted or withdrawn if the reassessed loss of earnings increases, decreases or disappears, or if the employee's working conditions change.

2.9. Professional life-long learning

2.9.1. Person undergoing internal redeployment

The Joint Committee may only prescribe rehabilitation or retraining measures with a view to the internal professional redeployment of the person concerned. The person concerned must follow these measures or risk losing the compensatory benefit, as decided by the Director of ADEM.

Lifelong learning measures have also been added.

2.9.2. Person undergoing external redeployment

From 1 November 2020, ADEM will be able to provide job seekers undergoing external redeployment with continuing vocational training if they make such a request on their own initiative.

This application must be accompanied by the following documents:

- a reasoned request containing a presentation of the career plan;
- the identity of the training institute, accompanied by proof of choice of institute and a copy of ministerial approval for Luxembourg institutes;
- in the case of a foreign institute, the approval of the Minister for Education, Children and Youth;
- a detailed programme of lifelong learning training;
- the cost of lifelong learning training, including all taxes;
- the duration of the lifelong learning training, to include its start and end dates;
- where applicable, information on the diploma or certificate awarded on completion of continuing vocational training.

ADEM may require job seekers benefiting from external professional redeployment to undergo continuing professional training determined by taking into account their professional project, the similar position(s) they may occupy and their residual work capacity.

Before the start of the lifelong learning training course, the application, together with a detailed opinion from ADEM, is sent to the Minister of Labour for a decision. It contains an opinion from ADEM's occupational general practitioner certifying that the job seeker can follow the training programme in question and practise the profession to which the training is intended to lead.

The costs of lifelong learning training courses are borne by the Employment Fund.

Except for justified reasons, non-participation, refusal, abandonment or an attendance rate of less than 80% in scheduled continuing professional development courses will result in the termination of the professional transitional allowance by the ADEM director, the beneficiary’s file will be closed out and the training costs advanced by the Employment Fund shall be reimbursed.

A valid justification is one that is based on medically justified and certified reasons, or force majeure of which ADEM has been informed and which it has approved as such.

With a view to this approval, ADEM may submit the file to its occupational general practitioner for an additional opinion.

By letter, the Director of ADEM informs the Chairman of the Joint Committee to remove the status of person undergoing professional redeployment and the Minister of Labour of any unjustified non-participation, refusal, withdrawal or attendance rate of less than 80% in the training.

2.10. Work of public utility

Job seekers undergoing external professional redeployment may be assigned to “work of public utility” for the State, municipalities and municipal associations, public bodies and foundations for a period of at least four months. These entities must provide a precise description of the nature of the work envisaged and provide for the appointment of a handler to assist and supervise the job seeker in question.

The July 2020 law abolished the minimum duration of four months.

The assignment decision is taken by the Minister responsible for employment, on a proposal from ADEM, not by the Joint Committee.

2.10.1. Assignment decision

The ADEM occupational general practitioner has been given the task of identifying the person(s) undergoing redeployment who can be assigned to this type of public utility work, rather than the occupational general practitioner of the multi-sector occupational health service.

2.10.2. Leave entitlement

Persons assigned to Work of public utility are entitled to the leave arrangements applicable to their place of employment.

2.10.3. Termination of assignment at an sponsor's request and loss of protective status

At the request of the sponsor or job-seeker, the ADEM Director may terminate the work assignment on the basis of serious and compelling grounds. If these serious and compelling reasons are attributable to the job-seeker, the termination of this assignment shall give rise to an exchange of views between the job-seeker and an ADEM agent, before the job-seeker's professional transitional allowance can be withdrawn and the file closed.

If a professional transitional allowance has been withdrawn and the beneficiary’s file closed, the ADEM Director will inform the Joint Committee, which will decide on the withdrawal of the status of person undergoing external professional redeployment.

2.11. Retroactive award of a disability pension

For the period during which an insured recipient of a disability pension has also been receiving sick pay, unemployment benefits, compensatory benefits or a professional transitional allowance, the disability pension is paid to the Employment Fund, which passes on any difference to the insured.

2.12. Employees undergoing redeployment at 1 January 2016

The transitional provisions provided for in the 2016 reform have been adapted in such a way that if the competent general practitioner finds that the person concerned is "fit to occupy a post similar to his work post”[6] before the

6 Instead of "that the person concerned has recovered the necessary working capacity to enable him to occupy a post similar to his last post".

decision to redeploy him, he will refer the matter to the competent pension body, which will decide on the termination oft the payment of the professional transitional allowance.

This amendment also covers cases where consolidation of health status can be established.

This decision takes effect after 12 months' notice, starting on the date of notification.

During this 12-month notice period, the persons concerned may be offered training by ADEM, taking into account the similar position(s) they could occupy and their residual capacities. The cost of the training is borne by the Employment Fund

2.13. Transitional provisions

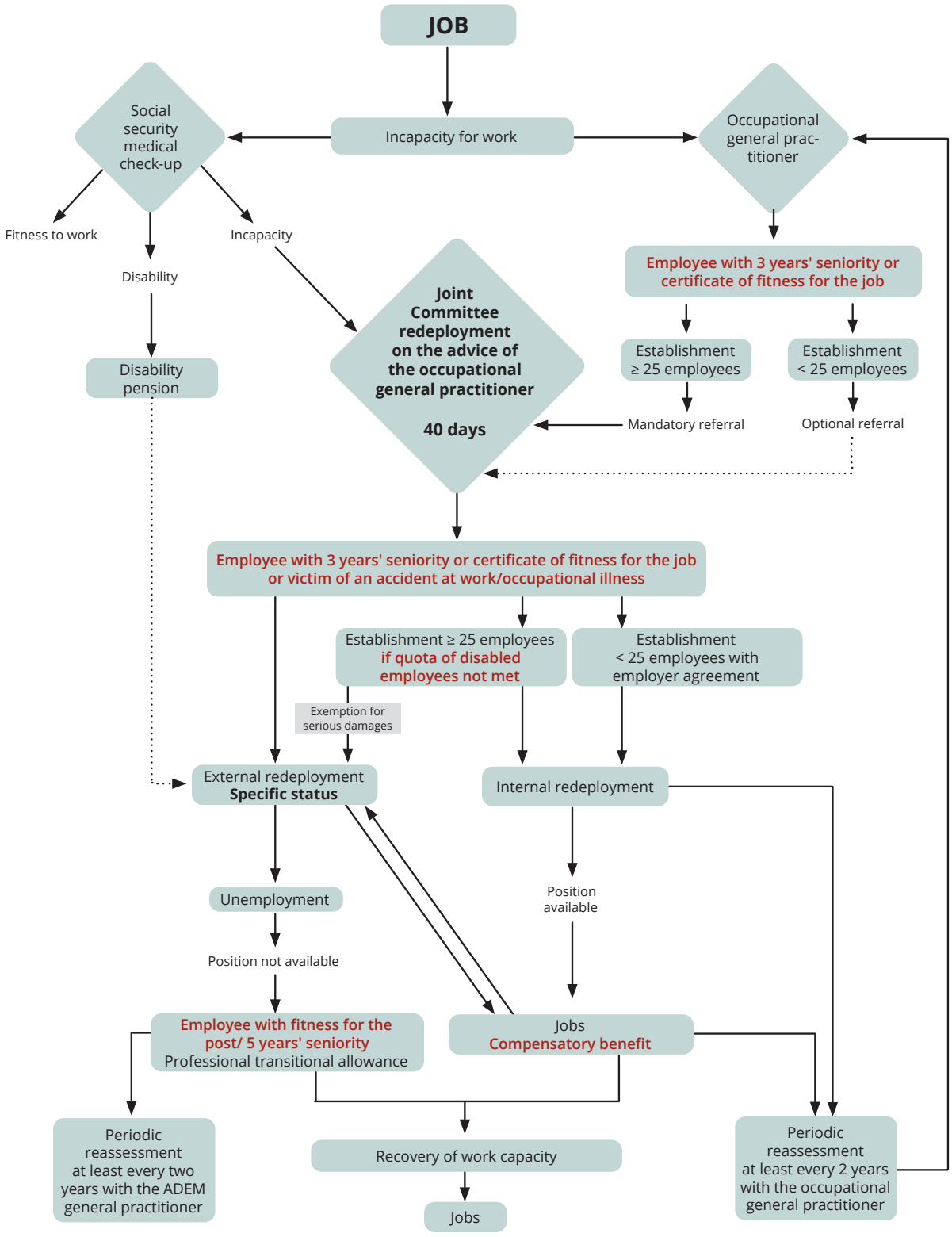
2.13.1. Recipients of the compensatory benefit

The new rules on compensatory benefits apply to all recipients of this programme, with no financial loss for those receiving compensatory benefits before 1 November 2020.

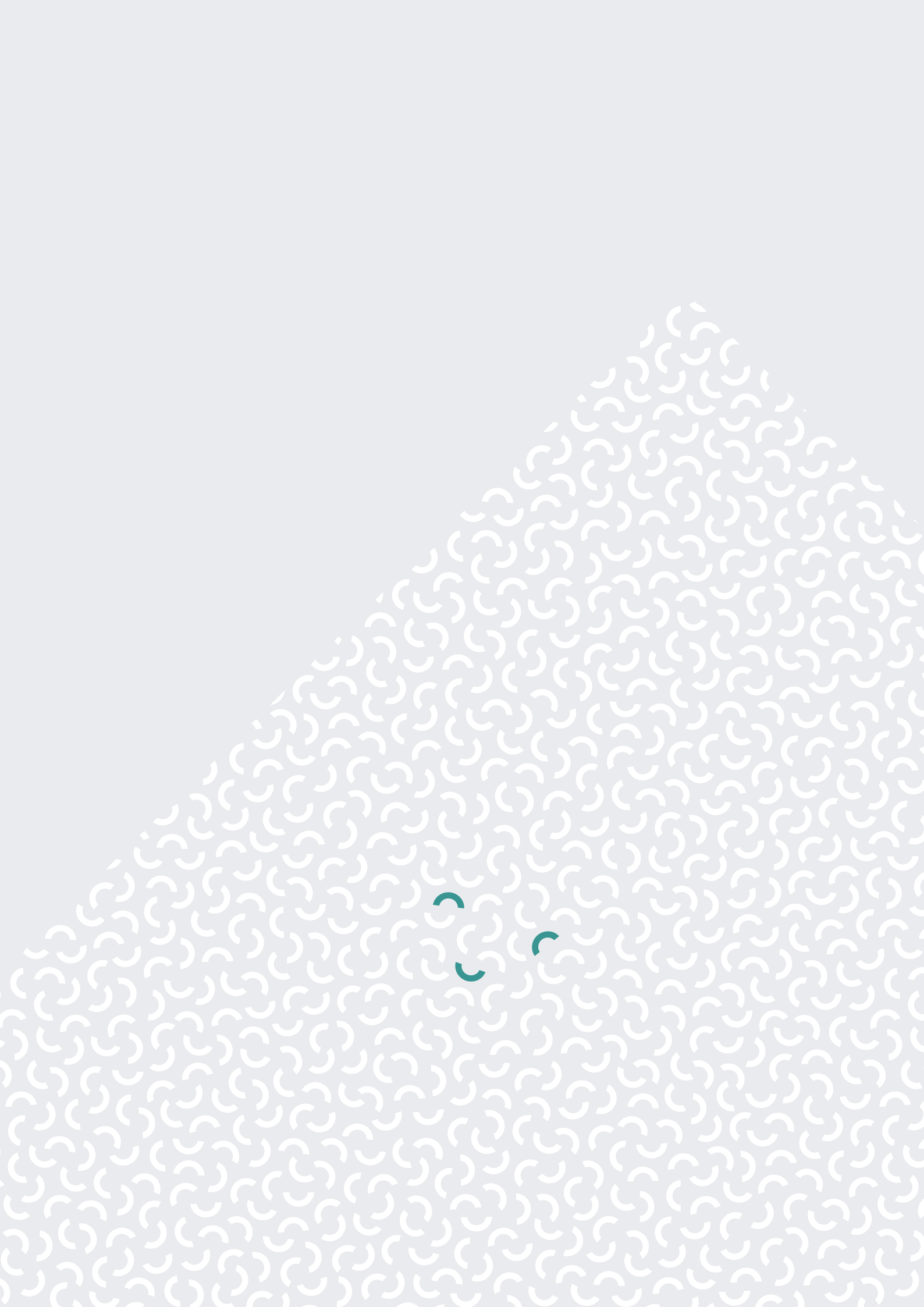
2.13.2. Career advancement by Collective Bargaining Agreement (CBA)

From 1 December 2020, salary increases resulting from career upgrades following the application of an existing collective agreement are no longer deducted from the compensatory benefit paid by the Employment Fund.

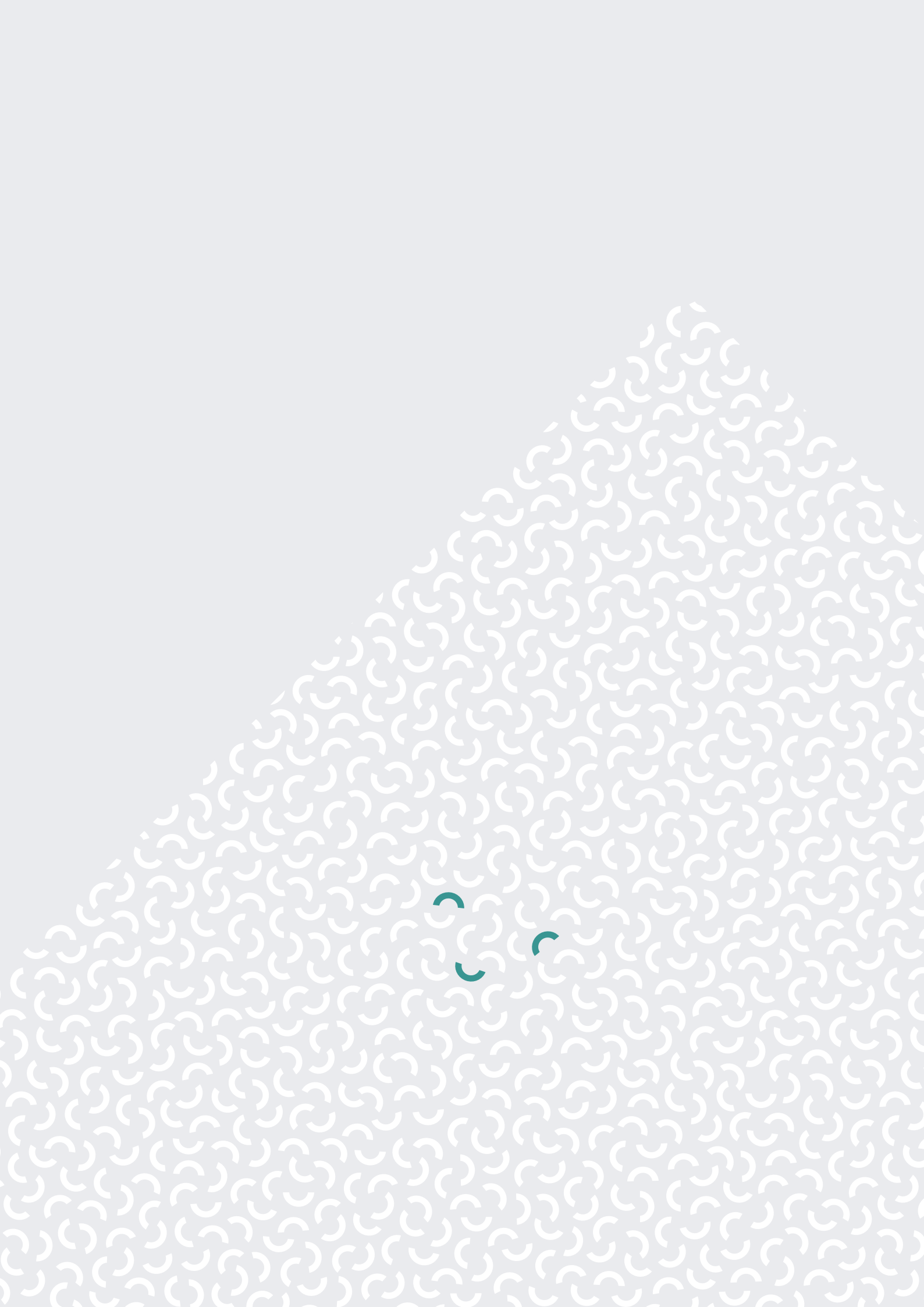
Diagram: The redeployment procedure



New products are shown in red.



III.
PRACTICAL GUIDE: AN EMPLOYEE'S ILLNESS



1. DECLARATION OF INCAPACITY FOR WORK

Employees' incapacity for work prevents them from performing their duties. However, the law has introduced mechanisms to protect employees under certain conditions. These mechanisms come into play both during the onset of an illness and during its prolongation.

1.1. Obligation towards an employer

1.1.1. An employee who is unable to work has two obligations[7]

- **On the first day of his absence**, he must notify the employer or a representative of the employer of his inability to work, so that the employer can make arrangements and be informed of the reasons for his absence.

  The employee may provide this information personally or through a third party (e.g. one's spouse, another family member or a friend).

  The information may be given in writing (e.g. by fax or text message) or orally (e.g. by telephone). It need only be clear as to its content.

  The law does not require employees to notify the employer themselves. However, they must inform their line manager or any other person delegated for this purpose by the employer. This means that employees must do more than simply notify the colleague of their choice.

  The law requires employees to give notice "on the day he is unable to work". Employees have until the company's normal closing time to inform their company. A court ruling has even extended this deadline to midnight (Court ruling of 12 March 2015, Roll no. 40824, InfosJuridiques CSL, no. 4/2015, page 6).

  In practice, employees are advised to give their employer as soon as possible, so that the employer can arrange for a replacement. Depending on the circumstances, an employee may not be in a position to give this warning within a time frame close to his starting time as provided for in his employment contract, for justified reasons that will have to be established should a dispute arise subsequently.

  It should be noted that employees must be able to prove that they have fulfilled his obligation to inform his employer. This can be proved by any means (e.g. telephone records, witness statements).

- **On the third day of absence at the latest**, the employee must have provided his employer with a medical certificate[8].

  It should be noted that it is not sufficient for employees to show that they sent the certificate to their employer within the time limit. On the contrary, they must prove that the employer received the certificate before the expiry of the three-day period. Proof may be provided by any means.

CAUTION: The three-day period within which an employee must submit his medical certificate to his employer in order to be protected against dismissal is a pre-set[9] period that cannot be extended or suspended. It does not matter whether it includes a Sunday or other public holidays (Court of Appeal, 8 October 2009, Roll no. 33834, InfosJuridiques CSL, no. 2/2010. page 10). Judges do, however, take account of days on which postal services are closed in order to excuse a diligent employee who was unable to fulfil his obligation because of postal delays.

Note that the two obligations described above must be met cumulatively.

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7 Article L. 121-6 of the Labour Code.

8 Medical certificates issued by physicians practising abroad have the same evidential value as those issued by physicians who practice in the Grand Duchy of Luxembourg (Court of Appeal, 14 July 2005, no. 29493). However, if they are not drawn up in an official administrative language of the country (German, French or Luxembourgish), they must be accompanied by a translation.

9 A pre-set time limit is a period of time granted to execute an act, on expiry of which one is subject to a time bar. In principle, the time limit cannot be interrupted or suspended.

Failure by employees to fulfil either obligation may constitute gross misconduct and justify dismissal with immediate effect.

However, the solution is different if the employee has informed his employer of his absence on the first day, but fails to deliver the medical certificate within three days.

Situations have to be assessed on a case-by-case basis. Even if the employee has not scrupulously complied with the law, dismissal is not always justified. Both parties must act in good faith. Generally speaking, judges are fairly lenient towards employees when they can prove that the employer was aware of their illness, but takes advantage of a delay in complying with one of these two obligations to dismiss them.

If the employee has fulfilled the obligations imposed on him by law, he is protected against dismissal, even for gross misconduct.

However, this protection is limited in time: employees are protected against dismissal for 26 consecutive weeks from the date of their incapacity for work.

This protection against dismissal does not preclude the expiry of a fixed-term employment contract (CDD).

If, despite the ban, the employer dismisses an sick employee, the contract is terminated [10] and may give rise to the payment of damages.

However, the ban on dismissing sick employees is not absolute. In several instances, employers may dismiss an employee despite the fact that he is ill:

- they are ill as a result of a crime or misdemeanour in which they have participated;
- they submit a medical certificate to their employer after receiving the letter of dismissal or the summons to attend a pre-dismissal meeting.

  There is one exception, however. If an employee has had to be hospitalised urgently, he has eight days in which to submit a medical certificate. If he is dismissed before he has been able to submit the certificate, the dismissal is considered null [11] and void.

  According to case law, temporary hospitalisation lasting a few hours is not to be considered as urgent hospitalisation within the meaning of Article L. 121-6 of the Labour Code.

1.1.2. Obligations of sick employees whose initial incapacity to work periods are extended

The fact that an employee has previously been ill does not automatically mean that the new absence is due to the same cause and does not exempt said employee from informing an employer of the extension of his incapacity to work due to illness.

The employee has the same two obligations as when he was initially ill: to inform an employer on the day he was to have returned to work and to submit the certificate by no later than the third day.

The Court ruled in a judgment dated 30 January 1997 (Roll nos. 18791 and 18841) that the protection period triggered by submitting an illness certificate covers this period over whole days and that the right to dismiss is only recovered on the first working day [12] following that covered by the sickness certificate.

In a dispute dated 13 July 2006 (Roll no. 29338), the fact that the employee was ill from 21 July to Friday 1 August inclusive, according to an illness certificate, was taken into account when considering that the dismissal, which took place on the Saturday, occurred during the period of legal protection against dismissal and was therefore unfair, because the employee was protected until Monday 4 August.

In the event of prolonged illness, it appears that judges tend to penalize employers who are aware that the employee is indeed ill – such as hospitalization for an operation that may have led to complications – but take advantage of the employee's failure to notify them on the first day following the end of the first illness certificate, or of non-receipt of the medical certificate within the three-day period, to dismiss the employee.

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10 Wrongful dismissal: see glossary.

11 Invalid dismissal: see glossary.

12 Under article 1260 of the New Code of Civil Procedure, any time limit that would normally expire on a Saturday, Sunday or public holiday is extended until the first following working day. Working days are therefore considered to be the days of the week from Monday to Friday inclusive

1.1.3. Employee leave and illness

If an employee falls ill during his leave, he must notify his employer and provide a medical certificate within three days if he is in Luxembourg.

If the employee is abroad, he must ensure that the certificate reaches the employer as soon as possible.

Submitting the certificate is important, as days of illness recognised as such by a medical certificate are not considered as days of leave. An employee must nevertheless return to work on the date initially agreed with the employer, provided of course that he is no longer unable to work.

1.2. Submitting certificates to the National Health Fund

In all cases where a medical certificate of incapacity for work is required, insured parties must declare the incapacity, as well their address if different from their usual address, to the National Health Fund (CNS).

To declare incapacity for work, employees use only forms issued by a general practitioner [13].

This form comprises three sections [14] and must contain the following information:

- the Luxembourg registration number of the person concerned;
- the start and end dates of the incapacity for work;
- the date on which the incapacity for work was established;
- optionally, a disease code.

The employee sends the first part of the form – i.e. the original – no later than the end of the third working day [15] of incapacity for work (as evidenced by the postmark), to the following address:

CAISSE NATIONALE DE SANTÉ
Indemnités pécuniaires
L-2980 LUXEMBOURG

As it is not always possible for frontier workers to obtain certificates of incapacity for work in the form provided for in the CNS statutes, here are a few recommendations to facilitate declaration [16] :

- French cross-border workers: the French work stoppage notice has a section to be sent to the CNS and a section for the employer;
- German cross-border workers: Since 1 October 2021. the electronic certificate of incapacity for work (eAU) has been introduced in Germany. Physicians in Germany will send German insured persons' incapacity for work directly to the German health insurance funds by electronic means. To declare their incapacity for work to the CNS, insured persons in Luxembourg who consult a practitioner in Germany must ask the practitioner to provide them with a printout of the electronic certificate of incapacity for work in duplicate. One for the employer (without diagnosis) and one for the patient (with diagnosis). The latter must also be used to declare incapacity for work to the CNS;
- Belgian cross-border workers: as most certificates have only one section, it is advisable to ask the practitioner for a duplicate to give to the employer.

13 Medical certificates issued by physicians practising abroad have the same evidential value as those issued by physicians practising in the Grand Duchy of Luxembourg (Court of Appeal, 14 July 2005, no. 29493). However, if they are not drawn up in an official administrative language of the country (German, French or Luxembourgish), they must be accompanied by a translation.

14 For certificates drawn up in the Grand Duchy of Luxembourg. For certificates drawn up in a single copy, it is the employee's responsibility to make copies.

15 Working day: see glossary.

16 Source: www.cns.public.lu

If the incapacity for work extends beyond the period initially set, part 1 of the certificate must be sent to the National Health Fund before the end of the second working day following that initially set for the return to work.

If the last day of the deadline falls on a Saturday, Sunday or public holiday, the deadline is extended until the next working day.

Employees send the second part of the certificate to their employer, who must receive it on the third day of an employee's absence. These employees must be able to prove that their employer received the certificate before the expiry of the three-day period. Proof may be provided by any means.

CAUTION: The three-day period within which an employee must submit his medical certificate to his employer in order to be protected against dismissal is a fixed period that cannot be extended or suspended. It does not matter whether it includes a Sunday or other public holidays (Court of Appeal, 8 October 2009, Roll no. 33834, InfosJuridiques CSL, no. 2/201, page 10). Judges do, however, take account of days on which postal services are closed in order to excuse a diligent employee who was unable to fulfil his obligation because of postal delays.

The third section of the certificate is kept by the insured for his or her own use.

Articles 171 and 209 of the CNS statutes

"Submitting a medical certificate is not required for incapacity to work lasting only one or two working days.

"The person subject to monitoring who exhibits the characteristics of absenteeism corresponding to a profile thread based on algorithms determined by the Board of Directors of the National Health Fund is obliged to report any absence from work due to illness or accident from the first day of absence by telephone, fax or electronic means to the National Health Fund. If the first day of absence falls on a Saturday, Sunday or public holiday, the deadline is extended to the next working day. The National Health Fund informs the employee in writing of his obligation to do so whenever he is absent from work. This obligation continues for a period of 12 months from the date of notification. The Board of Directors may extend this period to 24 months."

Digital submission of the certificate of incapacity for work to the CNS

The CNS online form [17] enables insured persons to declare incapacity for work quickly and securely.

You will find all the necessary information for using this service on the CNS website under:

www.cns.public.lu > Insured > Online services > Sickness and maternity procedures > Declaration of incapacity for work

17 https://cns.public.lu/en/assure/services-ligne/demarches-incapacite/formulaire-declaration-incapacite-travail.html

2. EMPLOYEE REMUNERATION

2.1. Continued remuneration by employers

2.1.1. Period during which an employee's remuneration is maintained

As an employee is entitled to full salary continuation, this is a genuine right to continue to receive one's salary until the end of the month in which the 77th day of incapacity for work falls, during a reference period of 18 successive calendar months [18]. A renew right to continued salary is only acquired at the beginning of the month following the month in which this limit is no longer reached.

However, once the 77-day period has been completed, employers are obliged to continue paying remuneration until the end of the current month. If the 77 days are reached on the last day of the month, the employer has fulfilled its obligations and the CNS is responsible for paying compensation for any subsequent periods of incapacity for work. If, on the other hand, the 77 days are reached on the first day of a month, the CNS does not assume responsibility for compensation until the first day of the following month.

In order to prevent the burden of compensation from shifting back from the CNS to the employer as a result of changes in the number of months included in the reference period from the month following the month in which the 77-day period was completed, the law stipulates that if the duration of continued remuneration falls below 77 days, the burden shifts back to the employer not earlier than the start of the following month.

No later than at the end of each month, employers know whether they will continue to bear the cost of continued remuneration for the whole of the following month, or whether their employee's compensation will be paid by the CNS. In the first case, the employer pays the usual monthly salary, without taking into account any incapacity that may arise before the end of the month.

Examples:

If the 77th day falls on the first day of the month, an employer will continue to pay the employee until the end of the current month. The CNS takes over on the first of the following month.

If the 77th day falls sometime during the month, an employer will continue to pay the salary until the end of the current month. The CNS takes over on the first of the following month.

If the 77th day is reached on the last day of the month, the employer is discharged on the first of the following month. The CNS takes over from that date.

NOTES:

This 77-day period is counted in calendar days [19] (not working days).

CNS draws up a cumulative statement of incapacity for work on the basis of the monthly declarations made by an employer and the medical certificates received from the employee.

The CNS notifies the employer when it must cease or resume payment of wages in the event of an employee's incapacity for work.

In the case of interrupted illness, the 77-day condition is monitored each month by the CNS.

If you change employer, the 77-day clock starts again at zero.

If the employment contract is terminated (fixed-term employment contract or assignment contract in a temporary employment relationship, redundancy in the case of a permanent employment contract), the employer is only obliged to pay a salary up until the expiry of the said contract. The right to sick allowance is maintained by CNS, provided that the employee has been affiliated for a continuous period of six months immediately preceding the dissociation(the condition of continuous affiliation is not breached by an interruption of less than eight days).[20]

18 Article L. 121-6 of the Labour Code.

19 Calendar days: see glossary.

20 Article 187 of the CNS statutes.

Example of calculating the 77-day threshold and determining the payment burden

2020												
Month	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Day of incapacity of work	3	29	31	30	15	0	2	2	1	0	1	1
Cumulative over 12 months	3	32	63	93	93	93	93	93	93	93	93	93
Payment responsibility	Company	Company	Company	Company	CNS	CNS	CNS	CNS	CNS	CNS	CNS	CNS

2021												
Month	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Day of incapacity of work	1	0	1	0	0	5	1	0	1	5	4	31
Cumulative over 12 months	93	93	93	93	93	93	90	61	31	6	10	41
Payment responsibility	CNS	CNS	CNS	CNS	CNS	CNS	CNS	CNS	Company	Company	Company	Company

The employer must ensure continued remuneration from January to April 2020, i.e. until the end of the calendar month in which the 77th day of incapacity for work for which the employer is responsible occurs during a reference period of 18 successive calendar months. The burden reverts to the employer at the beginning of September 2021, with the fund's burden ending at the end of the month in which the 77-day limit for which the employer is liable is no longer reached (i.e. in August 2021).

Source: www.ccss.public.lu

ATTENTION: Since 1 September 2015, the right to continued remuneration by the employer ceases where a decision to refuse reimbursement [21] issued by the National Health Fund (CNS) occurs. This decision is therefore binding on the employer.

A refusal decision of CNS which is binding under employment law and automatically terminates the right to salary continuation or the right to sick pay, depending on whether the burden lies with the employer or with the National Health Fund.

CNS may take such a decision if the medical officer of the Social Security Medical Board establishes that the insured party [22] is able to work, or if there is another reason for terminating the payment of sickness benefit (e.g. the insured party's failure to undergo medical review without a valid reason).

The employer will be notified of CNS's refusal decision and ordered not to pay any further remuneration to the sick employee.

An appeal may be lodged with the Board of Directors of the National Health Fund within 40 days of notification, and then with the social security courts (Social Security Arbitration Board in the first instance and High Council of Social Security on appeal).

CNS informs the employer if the employee appeals a rejection [23].

The law states that CNS's decision to refuse coverage is final in the absence of a written objection from the insured party within 40 days of notification. This decision is notified to the employer and is binding on it.

An employer who has been informed by CNS that the employee has been declared fit to return to work from a certain date is therefore obliged to stop paying the employee's salary during the period in which his salary is continued, even if the employee has attained new sickness certificates extending beyond that date.

If an employee's appeal results in recognition of his incapacity for work, the right to full salary and other benefits under the employment contract is reinstated. The employer will be informed by CNS.

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21 This decision to reject entails the termination of the right to legal continuation of remuneration and the right to payment of sick allowance.

22 CMSS may check whether you are unable to work while your employer is continuing to pay your salary.

23 Article 47 of the CNS statutes.

The employer must pay the salaries due under the continued salary scheme retroactively. Employees whose incapacity for work is confirmed shall not suffer any loss of pay [24].

2.1.2. Amount of sick pay

Employees absent due to illness are due the same pay as if they had come to work. They shall not suffer any loss as a result of being absent for a reason beyond their control.

The period corresponding to an employee's absence due to illness is therefore to be treated as a period of actual work, in the same way as absence due to maternity leave.

Sick leave entitles employees to accumulate annual recreation leave. It should also be noted that case law of the Court of Justice of the European Communities (CJEC) [25] specifies that an employee must not be deprived of his right to annual leave if, as a result of prolonged absence due to illness, he was unable to take his leave within the statutory period (CJEC of 20 January 2009 in cases C-350/06 and C-520/06). The Court therefore confirms that an employee who is absent due to illness must be treated in the same way as an employee who is at work.

Since employees absent due to illness must be paid as if they were at work, all of the following increases in basic salary due for:

- additional work;
- work on a public holiday;
- night work;
- Sunday work.

that these persons would have received if they had actually been working, must be paid to them during the period in which their remuneration is maintained in full (Court of Appeal judgment dated 18 October 2012, Roll no. 37413, confirmed by a judgment of the Court of Cassation of 4 July 2013, no. 54/13).

The law dated 8 April 2018 [26] confirmed this case law by specifying in the Labour Code [27] what is meant by "continued remuneration" depends on the circumstances:

- Employees whose work schedule at the time of the illness is at least until the end of the calendar month covering the incapacity for work

  Such employees are due pay as if they had worked according to the pre-established schedule during the days of sickness, i.e. the basic salary for the month in question plus all current bonuses and supplements as well as the increases to which the employees would have been entitled if they had worked according to their work schedule for the period of incapacity for work.

- Employees who do not have a work schedule available at the time of the onset of the illness at least until the end of the calendar month covering the incapacity for work

  Such employees are paid a daily allowance corresponding to the average daily wage over the last six months immediately preceding the onset of the illness.

- Salaried employees on a performance or task basis, or whose salary is fixed as a percentage of sales or turnover subject to marked variations

  The average salary for the 12 months preceding the illness is used as the basis for calculating daily benefits.

- Calculation of the daily benefits payable by the employer

  - *Employees with less than six or even 12 months' seniority*

    The reference period for averaging is reduced to the actual period a person occupies a job.

24 Article L. 121-6 of the Labour Code.

25 Now the Court of Justice of the European Union (CJEU).

26 Loi du 8 avril 2018 portant modification 1) du Code du travail ; 2) de la loi modifiée du 24 décembre 1996 portant introduction d'une bonification d'impôt sur le revenu en cas d'embauchage de chômeurs ; 3) de la loi modifiée du 12 septembre 2003 relative aux personnes handicapées, Mémorial A n° 242 du 11 avril 2018.

27 Article L. 121-6 of the Labour Code.

If the six or twelve months immediately preceding the occurrence of the illness include periods of leave, sick leave, short-time work, unemployment due to bad weather, or accidental or involuntary technical unemployment, these periods shall be exempt.

» *Average daily wage*

The average daily wage is based on the employee's gross monthly wage.

It is obtained by multiplying the gross hourly wage, which is calculated by dividing the gross monthly wage by 173 hours or by the normal monthly working hours resulting from the applicable collective agreement or employment contract, by the number of hours worked per day.

» *Taking into account of legal or conventional salary increases*

If, during the reference period provided for the calculation of the sickness benefit payable by the employer or during the period of illness, there are definitive wage increases resulting from the law, the agreement or the individual employment contract, these shall be taken into account for each month in the calculation of the sickness benefit.

» *Exclusion of certain elements*

Non-periodic benefits, bonuses and performance bonuses, incidental expenses incurred in the course of work and overtime shall not be taken into account.

2.1.3. Reimbursement of the employer by the Employers' Mutual Fund

The Employers' Mutual Fund was created by the law dated 13 May 2008 introducing the single status.

The purpose of this social security institution is to protect employers against the financial cost of continuing to pay wages to employees who are unable to work, an employer obligation that has applied to all employees since 1 January 2009.

The role of the Employers' Mutual Fund is to reimburse employers up to 80%, and in some cases 100% [28], of the cost of the above-mentioned principle of continued remuneration.

All companies with employees must be affiliated to the Fund.

The Fund is also open to self-employed workers on a voluntary basis. The self-employed-assistant tandem is inseparable for membership in the Fund.

Public-sector employers (in respect of their employees, who are entitled to continued remuneration for an unlimited period) and households are exempt from affiliation.

▶ Calculating benefits

Benefits are reimbursed by the Social Security Centre (CCSS) on behalf of the Fund, by crediting a given amount to the monthly statement of account.

Employers wishing to be automatically reimbursed for a given month must send the following to the CCSS:

- the wage statement, the actual remuneration for the month in question and the working hours corresponding to this remuneration via the wage statement;
- the periods and hours of absence declared and the type of incapacity for work via the declaration of incapacity for work.

▶ Calculation method

The reference base used to calculate reimbursement is made up of the gross salary (basic salary and supplements payable monthly in cash) plus the corresponding employer's contributions for sickness, accident and pension insurance.

The employer will be reimbursed 80% of this base for periods of normal incapacity for work (caused by illness or accident).

28 Article 14 of the Employers' Mutual Association statutes.

$$\text{Reimbursement} = \frac{\text{Reference base x Number of hours unable to work}}{\text{Total hours worked for this month}} \times 0.8$$

The amount to be reimbursed is credited to the company on the monthly account statement of the Social Security Centre and offset against the contributions due. A positive balance on the account statement may be settled at the express request of the employer.

Any disputes should be referred to the Fund's Board of Directors.

▶ Full reimbursement to the employer

In order avoid subjecting companies to additional costs due to the absence of employees or apprentices during the trial period, the law provides for full reimbursement by the CNS, via the Fund, of the sums incurred by the employer for apprentices and employees who are ill during the trial period. The period to be taken into consideration includes the full calendar month during which the trial period ends or the end of the first three months of a longer trial period.

In addition, the Fund will, on behalf of the CNS, reimburse all remuneration paid (plus the employer's share of social security contributions) during the period of continued remuneration in the following cases:

- leave for family reasons;
- accompanying leave.

▶ Staff employed in private households

A simplified procedure exists for the declaration of staff employed in private households, in order to prevent a resurgence of illegal work in this sector. Households are exempt from affiliation to the Fund.

During the period in which pay is continued, the employer pays compensation for incapacity for work and will be reimbursed in full by the CNS upon written declaration. After this period, the CNS will pay the benefits directly to the insured party.

▶ Calculation of employer contributions

Fund contributions are calculated on the basis of the assessment basis for the sick allowance. However, no Fund contribution is deducted from the sick allowance itself.

Companies for which affiliation is mandatory are divided into four contribution classes according to the rate of financial absenteeism of their employees over an observation period.

A company's financial absenteeism rate is defined as:

- the numerator represents amounts reimbursed to it in respect of the incapacity to work of its employees during the observation period;
- the denominator represents the contribution base of all the company's employees for the same period.

The following are not taken into account

- incapacity for work due to illness during the trial period, up to a maximum of 3 months;
- absences due to industrial accident or occupational disease;
- absences due to maternity leave, leave to foster a child or dispensation from work for pregnant or breast-feeding women;
- absences corresponding to leave for family reasons;
- absences corresponding to accompanying leave.

The contribution rates for the four classes are set at:

Risk class	1	2	3	4
Contribution rate 2025	0.07%	0.99%	1.48%	2.64%
Contribution rate 2024	0.01%	0.01%	0.42%	1.36%
Contribution rate 2023	0.72%	1.22%	1.76%	2.84%
Contribution rate 2022	0.60%	1.13%	1.66%	2.98%
Contribution rate 2021	0.53%	1.05%	1.50%	2.88%
Contribution rate 2020	0.46%	1.07%	1.58%	2.70%
Contribution rate 2019	0.41%	1.07%	1.63%	2.79%
Contribution rate 2018	0.46%	1.16%	1.77%	2.95%
Contribution rate 2017	0.51%	1.23%	1.83%	2.92%
Contribution rate 2016	0.46%	1.21%	1.85%	2.93%
Contribution rate 2015	0.51%	1.32%	1.94%	3,04%
Contribution rate 2014	0.47%	1.25%	1.76%	2.63%
Contribution rate 2013	0.42%	1.33%	1.83%	2.64%
Contribution rate 2012	0.48%	1.42%	2.05%	2.74%
Contribution rate 2011	0.62%	1.48%	2.01%	2.38%
Financial absenteeism rate	<0.65%	<1.60%	<2.50%	≥2.50%

Source: www.mde.lu

2.1.4. Employer declarations[29]

The Social Security Centre collects contributions to finance social security benefits, which are determined on the basis of employees' remuneration.

To this end, employers are obliged to declare their actual gross earnings every month.

It should be noted that the monthly salary to be declared must be broken down into basic pay and supplementary pay, to which is added incidentals payable monthly in cash:

- basic pay is fixed pay which, under employment law, must be defined as such in the employment contract. Basic pay includes:
  - supplements whose allocation depends on the fulfilment of certain contingencies or conditions, but whose amount remains fixed from one month to the next (e.g. family allowance in the event of marriage, training bonus paid to employees who have completed certain professional training courses and responsibility bonus),
  - increases by virtue of public policy provisions concerning the minimum social wage and the automatic adjustment of remuneration to changes in the cost of living,
  - as well as the regular increases provided for in the employment contract or collective bargaining agreements.
- supplements and accessories are defined as cash remuneration elements that are payable monthly but whose amount may vary from one month to the next (e.g. performance bonuses, commissions and target bonuses). This distinguishes them from occasional salary elements such as bonuses. It should be noted that it does not matter what name the parties have given to this complement (allowance, bonus, etc.).

In addition to basic pay, supplements and accessories, the employer is obliged to provide the Social Security Centre with all other information relating to the basis of assessment for contributions.

For periods prior to 2020, the employer had to declare the number of working hours that actually corresponded to the basic remuneration (not the standard monthly average of 173 hours). This referred only to hours actually worked by the employee, excluding overtime, hours of absence due to incapacity for work at the expense of the National Health Fund, and statutory and customary public holidays on which the employee did not work or would not have worked.

29 Source: www.ccss.public.lu

From 1 January 2020, employers must declare the exact number of working hours that actually correspond to basic pay (not the standard monthly average of 173 hours). This refers to paid working hours corresponding to basic pay, statutory holidays, absences due to incapacity for work at the employer's expense and hours on legal public holidays, excluding overtime. The commercial rounding rule, transposed to working hours, holds that working hours are rounded up if the number of minutes reaches or exceeds 30 minutes and rounded down if the number of working hours is less than 30 minutes.

The hours corresponding to incapacity for work at the employer's expense and those corresponding to legal holidays also count as working hours to be declared. If the employee is granted a progressive resumption to work for therapeutic reasons under an employer's expense (very rare, as these therapeutic returns to work are normally covered by CNS), the hours worked and the corresponding hours of incapacity for work must be declared.

However, hours of absence due to incapacity for work for which the National Health Fund is responsible shall not be included in the statement of hours worked.

The working hours to be declared correspond to the company's internal working hours.

Employers must declare remuneration for unpaid overtime (100%) separately, along with the corresponding hours worked. The amount of overtime is exempt from payment of social security contributions, except for sickness (health care) and nursing care contributions. Overtime bonuses do not have to be declared. In addition, unpaid overtime that is compensated by paid time off or is recorded in a time savings account should not be reported under this heading either, but rather at the time it is paid out in the corresponding form.

Employers must also declare bonuses, profit-sharing, benefits in cash and benefits in kind. This includes all remuneration in kind and in cash that is not payable monthly. They are subject to contributions for all risks except health insurance cash benefits. Income from interest subsidies granted to employees by employers and meal allowances are not subject to contributions and therefore do not have to be declared.

Unemployment due to bad weather and cyclical unemployment, as well as the related hours, must also be declared, because these elements are subject to contributions for all risks except accident insurance.

The same applies to short-time work, which should also be declared under the heading of "bad weather/economy related unemployment". These hours are indicated under the heading "hours unemployed". This declaration is necessary so that the National Employment Agency (ADEM) can make calculations for short-time work deduction.

Information relating to the salary for a given month is collected by the Social Security Centre by means of:

- a list of salaries, which is sent to the employer or, where applicable, his authorised representative at the beginning of the following month;
- the SECUline [30] online procedure.

The salary list reproduces for each insured the information declared by the employer for the previous month.

The employer is obliged to check the accuracy of the data pre-printed on the list and to make any necessary corrections.

Completed salary lists must be returned to the Social Security Centre within ten days.

Fines for failure to declare wages are imposed quarterly by a presidential decision at a rate of €25 per missing wage report.

30 SECUline is a standardised and secure electronic communication system that can be used by any employer for all communication with the Social Security Centre. To use SECUline, you must first apply to CCSS for a SECUline identification number. For more information: www.ccss.public.lu/en/seculine

Summary table of items to be declared and contributions bases

Items to be declared by Employers	Health insurance cash benefits	Health insurance	Mutuality Fund	Pension	Accident	Long-term nursing care	Health at work
Basic remuneration	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Extra payments and accessories to compensation paid monthly in cash	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Remuneration hours excluding extra pay for these hours	No	Yes	No	No	No	Yes	No
Gratuities, shareholdings, benefits in cash and kind	No	Yes	No	Yes	Yes	Yes	Yes
Unemployment due to bad weather/ Short-time work due to cyclical economic difficulties	Yes	Yes	Yes	Yes	No	Yes	Non

Source: www.ccss.public.lu

2.2. Sick allowance paid by the National Health Fund

2.2.1. Starting point

The sick allowance starts at the end of the period during which the employer continues to pay the employee, i.e. at the end of the calendar month in which the 77th day of incapacity for work occurs during a reference period of 18 successive calendar months.

2.2.2. Insured parties must respond to any request for information, documents or exhibits from the National Health Fund (CNS) or the Social Security Medical Board (CMSS)

Sick allowance is awarded by the CNS, on the advice of the Social Security Medical Board (CMSS).

Sick allowance will not be paid by the CNS if the employee does not provide all the information, documents and evidence requested by CNS or CMSS.

This also includes the detailed R4 medical report, which is requested by the CMSS on a case-by-case basis.

The term "detailed medical report" refers to the report on prolonged incapacity for work provided for in the nomenclature of medical acts and services (R4) or any other detailed medical report sent to and accepted as such by CMSS.

Employees may also be summoned to appear before CMSS.

2.2.3. Basis for calculating compensation

For employees, the monetary indemnity is made up of the basic indemnity and, where applicable, extra payments and accessories to compensation, in the same way as remuneration.

These two elements are calculated separately on the basis of the contribution basis for the sick allowance relating to memberships in force at the time of the incapacity for work.

If a person has several different occupations simultaneously, the allowance is calculated separately for each of them.

The following are therefore accounted for separately:

- the highest basic salary received by an employee during one of the three calendar months prior to the start of the payment of the cash compensation by the CNS. Basic remuneration includes the elements of remuneration payable monthly in cash that are not considered extra payments and accessories to compensation;

- the average of extra payments and accessories to compensation, which form part of the bases for the 12 calendar months preceding the month prior to when incapacity for work arose, as being elements payable monthly in cash, the amount of which is likely to vary from one month to the next (e.g. productivity bonus), with the exception of the increases provided for by contractual, legal or regulatory provisions.

If this reference period is not fully covered by an activity subject to insurance, the average is calculated on the basis of the calendar months fully covered.

In the absence of a single month fully covered, the basic remuneration as well as the supplements and accessories are taken into account according to their value agreed in the employment contract.

CNS does not cover:

- bonuses and profit-sharing, most of which are paid annually, as well as all other benefits not paid each month (13th and 14th months, occasional benefits);
- overtime;
- remuneration in kind (company housing, company car, meal vouchers, etc.), of which benefits employees in principle continue to be entitled to during sick leave.

Pending the employer declaration of the elements used to calculate sick allowance, the National Health Fund will grant an appropriate advance at the end of each month. It recovers any overpayment resulting from the balance between the advances and the final amount by offsetting it against the pecuniary compensation or health care benefits due over the following three calendar years or by direct recovery, if necessary by enforcing such recovery.

Should no declaration be submitted by the employer by the end of the month following the month to which the sick allowance relates, insured parties may request that periods of incapacity for work not exceeding two days during which they claim to have been unable to work be taken into account without having to provide a medical certificate to justify this.

If the incapacity for work attested by the medical certificate(s) does not cover a full calendar month, basic sick allowance and any extra pay and accessories to compensation are divided by the number of days in the calendar month in question and multiplied by the number of days of incapacity for work appearing on the medical certificate(s).

Once an employer has declared the actual number of days of incapacity for work and the other data, the monetary compensation due for only part of the month may be recalculated if the insured party has a difference in income for the month in question, resulting from the application of different salary prorating methods by the employer and CNS. A detailed statement of the salary paid by the employer for the month in question must be attached to the insured party's written application.

The monthly sick allowance may not be less than the minimum social wage, unless there is a legitimate reason for exemption or reduction. In the case of part-time work, this threshold is established on the basis of the minimum hourly social wage. For apprentices, the apprenticeship allowance is the basis for calculation.

The monthly monetary compensation may not exceed five times the minimum social wage.

In the event of several activities of a different nature, whether salaried or self-employed, the various pecuniary allowances may be accumulated up to a maximum of five times the reference minimum social salary. If this ceiling is exceeded, the pecuniary allowances are reduced proportionately.

The full amount of the cash benefit is paid at the end of the month to which it relates. To this end, insured parties must provide the CNS with a bank details statement (RIB).

NOTE: If an employee's salary exceeds the ceiling of five times the minimum social wage, any employer who does not terminate the employee's employment contract after the 26-week protection period is obliged to supplement sick pay paid by CNS up to the amount of the employee's net salary, at the latest until the end of the 12 months following the month in which the incapacity for work arose [31].

31 Article L. 121-6(5) of the Labour Code.

2.2.4. Duration of compensation

Entitlement to monetary compensation is limited to a total of 78 weeks for a reference period of 104 weeks. Employees may request a breakdown of sick days from CNS.

No distinction is made according to the nature of the illness: all periods of personal incapacity for work due to illness, occupational illness or accidents at work which occurred during the reference period ending on the day before a new period of incapacity for work are taken into account.

NOTE: Periods of leave from work, maternity leave and care leave do not count towards this calculation. Leave for family reasons is calculated separately for each child.

At the start of each period of incapacity for work, it is checked for each day of that incapacity period whether the 78-week limit has been reached. To this end, the periods of personal incapacity for work entitling persons to cash benefits under the sickness or accident insurance schemes are added together. The cash benefit is no longer payable from the day on which the total duration of the periods of incapacity exceeds 78 weeks.

- Automatic termination of an employment contract

  Under Article L. 125-4 of the Labour Code, an employee's employment contract is automatically terminated on the date on which his entitlement to sick pay is depleted. Depletion of entitlement to sick pay therefore implies automatic termination of an employee's employment contract.

  It is therefore possible that an employee who is unable to work due to illness, although still protected against dismissal (26 weeks from the onset of the incapacity to work), may find his employment contract automatically terminated because he has accumulated the maximum period of coverage by the CNS.

- Permanent disability

  If CMSS determines that you are permanently disabled, your entitlement to cash benefits expires on the first day of the month following the month in which you learned of this status.

- Redeployment

  In the event of a professional redeployment (internal or external), entitlement to the sick allowance ceases on the date of notification of the decision by the Joint Committee.

- Termination of affiliation

  In the event of termination of the employment contract (fixed-term employment contract or assignment contract under a temporary employment relationship, redundancy as part of a permanent employment contract), entitlement to sick allowance is maintained provided that the employee was affiliated for a continuous period of six months immediately prior to termination. The condition of continuous membership shall not be interrupted by an interval of less than eight days [32].

32 Article 187 of the CNS statutes.

3. PROTECTION AGAINST DISMISSAL FOR EMPLOYEES WHO ARE ILL

If the employee has informed his employer on the first day and submitted a medical certificate on the third day, he is protected against dismissal, even for gross misconduct, for 26 consecutive weeks [33].

If, during this 26-week period, the employer dismisses the sick employee, the termination of the contract is deemed to be wrongful [34] and may give rise to the payment of damages.

However, in the event of serious misconduct on the part of the employee prior to his illness, the one-month period within which the employer may punish serious misconduct of which he is aware is suspended. The employer may therefore dismiss the employee for serious misconduct committed prior to his illness once he returns to work.

However, the ban on dismissing a sick employee is not absolute. In several cases, the employer may dismiss an employee despite the fact that he is ill, such as:

- the employee is ill as a result of a crime or misdemeanour in which he voluntarily participated. The burden of proof of the crime or misdemeanour falls to the employer;
- the employee submits a medical certificate to the employer after receiving the letter of dismissal or the summons to a pre-dismissal interview [35]. There is one exception, however. If the employee has had to be hospitalised urgently, he has eight days in which to submit the medical certificate. If he is dismissed before he has been able to submit the certificate, the dismissal is considered null and void [36], whatever the reason given. According to case law, temporary hospitalisation lasting a few hours is not to be considered as urgent hospitalisation;
- the employee has complied with his legal obligations, but his actions nullify his protection against dismissal. Sick employees must refrain from certain activities that are incompatible with their state of health (see below on monitoring sick employees).

Protection against dismissal is nonetheless limited in time. Employees are protected from dismissal for 26 consecutive weeks from the date of their incapacity for work. Once this period has elapsed, employers recover the right to dismiss an employee, provided there is just cause (see points 3.1. and 3.2.).

Since 1 September 2015, protection against dismissal can also stop before the end of these 26 consecutive weeks, when CNS decides to refuse coverage during this period:

- if the employee does not appeal the CNS decision, after the expiry of the 40-day period following notification of the CNS refusal decision, even if the employee is still within the 26-week period of protection;
- should an appeal be launched by the employee against the CNS decision, after the expiry of the 26-week period consecutive periods of illness.

In this case, the employee is protected against dismissal for 26 weeks as long as there is no final decision by the CNS Board of Directors or by either the Social Security Arbitration Board Administration or the High Council of Social Security Administrations confirming the CNS's position. If the appeal is successful, protection will cease, as at present, after the expiry of the period of 26 consecutive weeks of sickness.

CNS informs the employer if the employee appeals against the refusal decision.

33 A single day's return to work interrupts this period and opens up a new period of protection of 26 weeks.

34 Wrongful dismissal: see glossary.

35 In companies with 150 or more employees, the redundancy procedure begins with a pre-dismissal interview.

36 Invalid dismissal: see glossary.

Different end-of-contract scenarios to be taken into account:

► ***Depletion of entitlement to sick pay = automatic termination of an employee's employment contract.***

In all cases, entitlement to sick pay is limited to a total of 78 weeks for a reference period of 104 weeks [37]. An employee's employment contract is automatically terminated on the date on which his entitlement to sick pay is depleted.

For example, an employee who is unable to work due to illness, although still protected against dismissal (26 consecutive [38] weeks from the onset of the incapacity to work), may find that his employment contract is automatically terminated because he has accumulated the maximum period of coverage by the National Health Fund.

► ***End of fixed-term or permanent contract whose termination was notified before the period of sickness***

This protection against dismissal does not preclude the expiry of a fixed-term employment contract (CDD) or the end of a permanent employment contract (CDI), the termination of which was notified before the period of illness.

In this case, CNS will compensate the employee after the end of his contract up to a limit of 78 weeks out of a reference period of 104 weeks, provided that he was affiliated for a continuous period of six months immediately preceding the rupture of this affiliation. The condition of continuous membership shall not be interrupted by an interval of less than eight days.

A judgement by the Court of Appeal on 21 January 2021 (no. CAL-2019-01131 on the roll) held that "*illness is in principle a justified absence and cannot be penalised as such, as the resulting inconvenience is normally one of the risks that any employer must bear. Nevertheless, dismissal with notice becomes possible if the employee's absence becomes chronic.*

Habitual absenteeism for health reasons, characterised by long or numerous and repeated absences, constitutes a real and serious reason for dismissal with notice, where it causes considerable inconvenience to the operation of a company, with no certainty or even probability of improvement in the near future, as the employer can no longer count on a regular and effective contribution by the employee.

However, in the event of long-term incapacity to work, disruption to the company is to be presumed and it will be up to the employee to prove, if necessary, that there was no disruption."

3.1. Absence of more than 26 consecutive weeks

Protection against dismissal ends for all employees after 26 weeks of uninterrupted illness. Employers may therefore dismiss an employee in accordance with the normal rules governing dismissal.

The end of this period of protection does not exempt the employer from observing the normal notice period and severance pay if the employee has been with the company for at least five years.

In addition, the dismissal must be lawful under Article L. 124-11(1) of the Labour Code, i.e. based on real and serious grounds relating to an employee's fitness or conduct or based on the operational needs of the company. The mere fact of the employee's absence for 26 consecutive weeks does not constitute such a reason and does not authorise employers to dismiss an employee automatically.

The main criterion on which the court will base its decision is whether the 26-week absence caused a hindrance to the smooth running of the business. Some jurisprudence requires the employer to describe very precisely what organisational problems were caused. The reason given by the employer has to lie in the disruption to his business, not in the illness.

Situations must be assessed on a case-by-case basis. Both parties must act in good faith.

NOTE: If an employee's salary exceeds the ceiling of five times the social minimum wage, employers who do not terminate their employees' contracts after the 26-week protection period are obliged to supplement the sick pay paid by the CNS up to the amount of the employee's net salary, but no later than 12 months after the date of incapacity for work.

37 Not necessarily consecutive.

38 A single day's return to work interrupts this period and opens up a new period of protection of 26 weeks.

3.2. Frequent absences

Even if an employee is not absent for 26 consecutive weeks, on his return to the company he may be subject to dismissal based on the frequency of his absences.

Indeed, habitual absences for health reasons, characterised by long or numerous and repeated periods, may be grounds for termination of the employment contract when they cause an indisputable hindrance to the operation of the company.

The onus is on the employer to prove that there has been such a disruption by demonstrating, for example, that it has had to deal with customer dissatisfaction or has incurred additional costs to replace the absent employee.

Such disruption is presumed if the frequency of the employee's absences, which are not in themselves wrongful, is such that the employer can no longer rely on the employee's regular cooperation for the normal needs of the department.

3.3. Illness following an accident at work or occupational illness

It is settled case law that dismissal for habitual absences for health reasons is not justified if the illness that caused the abnormally long or frequent absences was caused by the employee's professional activity.

Similarly, while long-term absence of more than 26 weeks may constitute grounds for dismissal with notice, this is not the case if the inability to work is the result of an accident at work or an occupational illness.

However, the employer regains the right to dismiss the employee as soon as his illness is no longer causally linked to the accident at work. This is the result of a decision by the Accident Insurance Association, which will cover the accident at work only up to that date. If the employee subsequently remains ill for more than 26 consecutive weeks, the employer is entitled to dismiss him with notice.

3.4. Impact of the employee's prolonged illness on the trial period agreed as part of a permanent contract (CDI)

If an employee is unable to work during the trial period, the trial period will be extended for the duration of the absence.

If the employee is absent due to illness for less than one month, performance of the trial period is suspended during this absence and the trial period is therefore extended for the same period. If the employee is incapacitated for more than one month, the trial period is extended for a maximum of one month.

The trial period conflicts on the one hand with the principle of easy termination of the contract without giving reasons, and on the other with the principle of protection of the employee against dismissal during illness.

The prohibition on dismissal during an employee's incapacity for work period also applies during the trial period.

If the employment contract is terminated during the trial period, the notice period must fall entirely within the trial period. If this is not the case, the employment contract becomes definitive and an employer must comply with the formalities and notice periods for "normal" dismissal.

During the trial period, case law recognizes that an employer may terminate an employee's contract despite prolonged illness, but only at the very last moment, when there is a risk that the contract will be transformed into a permanent one, should neither party express its intention to terminate.

The employer should therefore make the following calculation to determine the precise date on which he can terminate the contract:

Date of dismissal = initial date of end of trial period
+ extension due to illness (maximum 1 month)
- length of notice required.

Any dismissal notified before this date would be wrongful because it would take place while the employee was ill. Any dismissal notified after this date in accordance with the simplified rules for the trial period will be irregular in form, since it should have complied with the form and time limits for "normal" dismissal, and the employer will have to justify his decision.

4. MONITORING SICK EMPLOYEES

People who are unable to work due to illness may be subject to administrative or medical checks by the National Health Fund from the first day of incapacity to work, whether or not this is justified by a medical certificate of incapacity for work.

4.1. Administrative control of sick employees

4.1.1. Definition of administrative control

Administrative control of persons unable to work means the presence of inspectors, either at home or in any place where an ill person is staying. Checks may also be carried out in public places or in places where these people receive care.

Administrative checks are carried out by sworn inspectors appointed by CNS. The inspectors carry accreditation documents and their job is to check whether the person unable to work is complying with the regulations on authorised outings.

In general, the relevant department of the National Health Fund may carry out a sickness check whenever it is informed of an employee's absence from work due to incapacity for work as a result of illness or accident.

NOTE: This check covers both periods of continued remuneration by the employer and periods for which the National Health Fund is responsible.

Administrative checks may be carried out outside the Grand Duchy of Luxembourg. In this case, the inspection is carried out either by officials of the competent authorities of the country of residence or stay or, if the applicable legal instruments so provide, also by inspectors appointed by the National Health Fund.

4.1.2. Place of stay

Persons declared unable to work must provide the National Health Fund with the exact address (place, street, number, floor, etc.) where they are staying while they are unable to work.

The country of residence indicated during the period of incapacity for work due to illness or accident cannot be not be different from the one where the person concerned is domiciled or affiliated. There are exceptions to this principle.

This rule does not apply if the incapacity for work due to illness or accident occurs during a stay abroad.

For stays in the bordering region, a person does not need to apply for a permit if the stay meets the following conditions:

- organisation of administrative control;
- the organisation of medical check-ups;
- Follow-up of medical treatment in the country of residence or in the competent country, without issuing the "S2" document required by European regulations.

In other cases, on the detailed and concurring advice of the attending general practitioner and the Social Security Medical Board, a stay in a country other than that in which the person concerned is domiciled or affiliated may be authorised during a period of incapacity for work under the conditions set out below:

- declaration of a confirmed illness as part of an disability procedure;
- death of an immediate family member abroad;
- childbirth of spouse residing abroad.

In such cases, authorisation may not exceed one working week.

In cases 2 and 3, authorisation can only be applied for and granted at the time of the effect of the event, as evidenced by death and birth certificates.

The National Health Fund may suspend the sick allowance during the period in which the insured party stays abroad without prior authorisation from the National Health Fund or is on remand.

By way of derogation, persons entitled to palliative care are authorised to stay in a country other than the one in which they are domiciled or affiliated during a period of incapacity for work. Authorisation is granted by the CNS for the duration of the entitlement to palliative care on the basis of a prior application.

Exemptions are also possible in cases of serious illness or disease.

4.1.3. Patient discharge

During the first five days of incapacity for work, as declared to the employer or the National Health Fund, persons declared unable to work may not go outside their home or place of stay they have indicated.

This ban on going out applies even if the medical certificate of incapacity for work states that going out is allowed.

Possible cases in which a person declared unable to work could be allowed to be away from their home or place of stay are as follows:

- from first day of incapacity for work:
  - for outings that are essential in order to comply with summonses from the Social Security Medical Board or to obtain treatment, diagnostic procedures, medication or medical devices, provided that the person concerned can justify this on request.

    Proof that care, diagnostic procedures, medication or medical devices were obtained during the hours when the patient was away from home or the place where he was staying at the time of the check may be provided by any means.
  - for outings necessary to take a meal, subject to prior notification of the CNS.
- from the fifth complete day of a period of incapacity for work exceeding five continuous days: for outings not medically inappropriate on the basis of the medical certificate of incapacity for work, only in the morning between 10.00 a.m. and 12.00 p.m. and in the afternoon between 2.00 p.m. and 6.00 p.m.

4.1.4. Incompatible activities

As long as the incapacity for work lasts and a person declared unable to work has not returned to work, he may not take part in sporting activities, unless they are part of a specific medical recommendation or prescription, serving to restore the causes of the incapacity for work.

Patients may not engage in any activity that is incompatible with their incapacity to work.

Similarly, they are prohibited from frequenting a public house or catering establishment, except for meals, subject to prior notification of the CNS. This incompatibility obviously does not apply to persons domiciled in such establishments.

4.1.5. Possible relaxations of these rules

In cases where the incapacity to work extends beyond a period of six consecutive weeks, the National Health Fund may, from day 43, upon written request of the person declared unable to work, waive one or more of the above restrictions on leaving work.

4.1.6. Inspection procedures

Administrative checks may take place between 8.00 a.m. and 9.00 p.m. at home or at the place indicated as the place of stay during the incapacity to work. No time restrictions apply if the check is carried out in public places or in places where the person declared unable to work is receiving care.

During an administrative inspection, a report is made of the presence or absence of the person found unable to work at the place visited by the inspector. The report, drawn up in the form of an official report, indicates precisely the place visited by the inspector as well as the date and time of his presence on the premises.

When inspectors detect an absence, they will leave a note indicating that they has been there. Wherever possible, this notice should be left in a letterbox. Failing this, it is sent to the person concerned as soon as possible.

The notice asks the person concerned to justify his absence at the time of the inspection within three working days from the date of the inspection, as evidenced by the postmark, where applicable. It includes precise instructions for the person being inspected, enabling him to justify in writing the reasons for his absence at the time of the inspection.

If the inspector is aware at the time of the inspection of a reason why the person being inspected is not at home or at the place indicated, this reason will be recorded in the file.

For duly justified reasons to be recorded in the file, inspectors are entitled to carry out several inspections of the same person on the same day.

At the request of the inspector, the person found incapable of work shall be required to produce to the inspector an official photo ID.

The person declared incapable of working has a duty to consciously avoid any circumstances that could prevent an inspector from entering into personal contact with him.

4.1.7. Inspections at an employer's request

The law of 13 May 2008 introducing the single status introduced the possibility of an administrative check at the duly substantiated written request of the employer. The employer must have informed the inspection department of the National Health Fund of the employee's absence from work. The request for an inspection is made using an application form sent by the employer to the inspection department by post, fax or electronically.

The employer receives written confirmation by fax or e-mail, together with a registration number.

The employer must immediately report any early return to work by the employee by the same means.

A new request for the same employee may be submitted by the employer at no earlier than 30 days after the last request.

4.1.8. Spot checks

Persons may be subject to an official examination if they submit a medical certificate from a practitioner whose medical certificates are issued more frequently than is reasonable or from a practitioner who has incurred a definitive disciplinary sanction.

People who submit medical certificates of incapacity for work from more than four different physicians within a period of 60 consecutive days may also be subject to administrative checks.

The same applies to persons where, in the opinion of the Social Security Medical Board, the medical diagnoses recorded in four consecutive reports of incapacity for work differ in such a way as to raise suspicion of unjustified absence from work. The same applies if an imprecise diagnosis is recorded in four consecutive medical reports.

Persons who have been subject to an ex officio administrative review may be subject to a medical examination at the request of the National Health Fund. The Social Security Medical Board sends the CNS a written opinion on the working ability of the persons concerned.

4.1.9. Penalties

The President of the National Health Fund or his delegate shall impose fines on persons who contravene the statutory rules set out above.

Fines will be imposed for the following offences:

- absence from the residence or place of stay indicated, recorded by the inspection service, when
  - the notice containing the reasons for the absence;
    - » has not been returned by the insured party,
    - » was returned outside the three working day period.
  - the reasons given in the notice or brought to the attention of the inspector do not constitute valid reasons for absence;

- failure by the insured party to comply with their obligations regarding their place of stay, outings and activities;
- failure to appear before the Social Security Medical Board in accordance with the provisions of the statutes, where such failure is not sanctioned by the withdrawal or refusal of the sick allowance.

The maximum amount of the fine is 3/30th of the basic pay used as a basis for sick pay benefits.

CNS may offset the fine against the future reimbursement of benefits in kind, the direct payment of pecuniary compensation to the same insured party or a claim that the insured party has against another social security institution.

The Board of Directors is responsible for settling objections. It may grant discharge from the fine.

The ordinary remedies provided by the Social Security Code also remain available before the social security courts.

4.1.10. Communication with the employer, the Employers' Mutual Fund or the Labour Courts

Employers are kept informed of the results of administrative checks. However, this information is only provided once the period during which an employee may justify his absence has elapsed.

In the event of a dispute before the Labour Court relating to an employee's absence due to illness, the employer, the competent Labour Court and the employee may request a statement of final decisions within the limit of the 12 calendar months preceding the date of the request.

These statements may only include decisions relating to periods to which the dispute relates.

4.2. Medical examination of sick employees

4.2.1. Medical examination of a sick employee by the employer

According to case law, the employer may ask an employee to undergo a further medical examination by a practitioner of his choice for the duration of the illness, provided that the outings are authorised on the certificate submitted by the employee.

The practitioner must be geographically close to the employee's home or place of residence. The practitioner's fees are paid by the employer.

Employees may not refuse without good reason. If an employee does not submit to this counter-inspection and does not give any explanation to his employer, his protection against dismissal disappears.

However, if the employee undergoes a second examination, the certificate drawn up by this practitioner does not prevail over the certificate produced by the employee. It does not on its own negate the value of the certificate issued by the employee's GP. The employer must seek the opinion of a third practitioner in order to decide between the other two (Court of Appeal, 13 July 2006, no. 30360).

Only if the third practitioner concludes that the employee is able to work the employer can validly dismiss with notice, without waiting for the period of protection against dismissal to elapse.

On the other hand, a ruling by the Court of Appeal on 15 July 2014 (Roll no. 39910. InfosJuridiques CSL, no. 10/2014, page 4) held that when an employee's incapacity for work, as recorded by his general practitioner, is confirmed by the medical officer of the Social Security Medical Control, it cannot be contradicted by further medical counter-examinations at the employer's request.

The law of 7 August 2015 confirmed the pre-eminence of the opinion of the Social Security Medical Board , which is binding on the employer.

4.2.2. Medical examination by the Social Security Medical Board (CMSS)

- Due to the increasing number of cases of long-term illness, the issue of systematic monitoring of long-term patients by the CMSS was regulated by two laws dated 21 December 2004 [39] and 1 July 2005 [40].

A person on sick leave for several weeks may suffer from:

- an acute illness;
- a chronic pathology;
- permanent disability or temporary disability;
- total incapacity or incapacity to work with relation to his last job.

Acute illness seems to correspond most closely to complete incapacity for work justifying compensation through sick pay.

If the acute illness is no longer reversible, i.e. the ability to work can no longer be restored by curative treatments, the sick allowance must be stopped and replaced by an disability pension.

In the case of chronic illnesses, the question is whether they correspond to total incapacity for work, or possibly incapacity for work at the last job, or incapacity for work that prevents an employee from working full-time. The employee should then be considered for internal redeployment.

Until 1 September 2015, if periods of incapacity for work reached six weeks during a reference period of 16 weeks, the National Health Fund requested the insured party by letter to return the form to be used by their GP to draw up a detailed medical report.

A detailed medical report is taken to mean the report on prolonged incapacity for work provided for in the nomenclature of medical acts and services (R4) or any other detailed medical report sent to the CMSS and accepted as such by it.

A reminder is sent by post to the sick employee at the end of the eighth week of incapacity, informing him of the consequences for him of not sending the report (non-payment of financial benefits by CNS).

As from 1 September 2015, the R4 detailed medical report is no longer sent automatically.

CMSS uses the detailed medical report more selectively, making informed decisions about the cases in which the report should be requested and/or the insured party summoned.

Before the expiry of the employee's entitlement to compensation (78 weeks out of a reference period of 104 weeks),

CMSS must refer the insured party to the appropriate care system.

a. The first alternative: work capacity

If, after reading the detailed medical report and/or summoning the employee, CMSS is of the opinion that the employee is fit to work, sick allowance is no longer paid out by CNS.

NOTE: There are other reasons for halting monetary compensation [41]:

- an employee fails to undergo a medical examination without providing reasonable justification;
- the employee stays abroad without prior authorisation from the CNS;
- the employee is on remand;
- the employee does not provide all the information, documents and evidence requested by the National Health Fund or the Social Security Medical Board.

39 Mémorial A no. 5 dated 20 January 2005, page 62.

40 Mémorial A no. 97 dated 8 July 2007, page 1718.

41 Article 16 of the Social Security Code.

- Can this CNS decision take effect during the period in which the employer continues to pay an employee's salary?

  Until 1 September 2015, such a decision was limited in scope to the termination of payment of sick allowance by the CNS.

  On the contrary, the law dated 7 August 2015 specified that the legal preservation of remuneration by the employer ceases for the same reasons for refusal as sick pay by CNS.

  CNS can now take a decision to refuse coverage, which is mandatory in employment law and automatically terminates the right to salary continuation or the right to sick pay, depending on whether the responsibility lies with the employer or the National Health Fund.

  CNS may take such a decision if the medical officer of the Social Security Medical Board establishes that the insured party is able to work [42], or if there is another reason for terminating the payment of sickness benefit (e.g. the insured party's failure to attend the medical inspection without a valid reason).

  The employer will be notified of CNS's refusal and ordered to stop paying the sick employee.

  An appeal may be lodged with the Board of Directors of the National Health Fund within 40 days of notification, and then with the social security courts (Social Security Arbitration Board in the first instance and High Council of Social Security on appeal).

  CNS informs the employer if the employee files an appeal against the refusal decision.

- When should the employer stop withholding remuneration?

  The law dated 7 August 2015 states that this decision takes effect in the absence of a written objection filed by the insured within 40 days of notification. The employer is notified of this decision and is bound by it.

  The employer, who has been informed by CNS that the employee has been declared able to return to work from a certain date, is therefore obliged to stop paying the employee's salary during the salary maintenance period, even if the employee holds new sickness certificates going beyond this date.

  If the employee's appeal results in recognition of his incapacity for work, the right to full salary and other benefits under the employment contract is reinstated. The employer will be informed by the CNS.

  The employer must pay the salaries due under the salary maintenance scheme retroactively. The employee

  whose incapacity for work is confirmed shall suffer no loss of pay.

- Is the employee obliged to return to work or not? If the employee does not return to work, would this constitute unjustified absence, enabling the employer to dismiss the employee?

  Until 31 August 2015, according to case law (Court of Appeal, 8 February 2001, no. 24716), the certificate issued by CNS's medical adviser alone was insufficient to rebut the presumption of incapacity for work arising from the certificate issued by the general practitioner.

  Only if a third practitioner concluded that the employee was able to work, the employer could validly dismiss with notice, even before the period of protection against dismissal had elapsed.

  This case law was overturned by the Law dated 7 August 2015 amending the powers of the CMSS, since the opinion of the Social Security Medical Board now prevails and is binding on the employer.

  An employer who has been duly notified by the employee of his incapacity for work or who is in possession of a medical certificate is not authorised to notify the employee of the termination of his employment contract, even for serious misconduct, or, as the case may be, to summon him to a pre-dismissal interview for a period not exceeding 26 weeks from the date on which he became incapacitated for work.

  The law dated 7 August 2015 specified that this 26-week protection period ceases on expiry of the 40-day appeal period running from notification of the CNS's decision to refuse coverage. CNS informs the employer if the employee appeals this decision, in which case the 26-week prohibition period on notification of termination of the employment contract or summons to the prior interview remains in place.

42 The CMSS may check whether an employee is incapacitated for work during the period in which the employer continues to pay his salary.

In this case, the employee is protected against dismissal for 26 weeks as long as there is no final decision by the CNS Board of Directors, the Arbitration Board for Social Security or the High Council of Social Security confirming the employee's ability.

CNS informs the employer in the event of an appeal by the employee against the refusal decision.

The employer may therefore still terminate an employee's contract after the expiry of the period of 26 consecutive weeks of sickness.

Since 1 September 2015, protection against dismissal can stop before the end of these 26 consecutive weeks, when, during this period, there is a decision by CNS to stop continued salary payment:

- if the employee does not appeal CNS's decision, after the expiry of the 40-day period following notification of CNS's refusal decision, even if the employee is still within the 26-week period of protection;
- should the employee appeal the CNS decision, after the expiry of the 26-week period of consecutive illness.

b. The second alternative: the illness persists

CMSS may also come to the conclusion that the illness persists, resulting in the payment of sick allowance, or even its continuation under the health insurance scheme.

When an employee's incapacity for work, as established by his general practitioner, is confirmed by the medical officer of the Social Security Medical Board, it cannot be contradicted by other medical counter-examinations at the employer's request. (Court of Appeal, 15 July 2014, Roll no. 39910, InfosJuridiques CSL, no. 10/2014, page 4)

If necessary, CMSS may ask the insured party to undergo a subsequent medical examination.

In all cases, entitlement to sick pay is limited to a total of 78 weeks for a reference period of 104 weeks.

For this purpose, all periods of personal incapacity for work due to illness, occupational disease or accident at work occurring during the reference period ending on the day before a new period of incapacity for work are taken into account.

Periods during which the insured is on leave for family reasons, accompanying leave, maternity leave, dispensation from work for pregnant or breast-feeding women or foster care leave are each taken into account separately.

Periods of incapacity for work and reference periods expressed in weeks are converted into days by multiplying them by seven.

The beginning of the period corresponds to the first day not worked in whole or in part. The last day not worked prior to the day on which work resumes constitutes the end of the period and counts towards the calculation of the period. If the working day straddles two days, it is deducted in full from the first day.

It should be noted that in the event of termination of membership under a fixed-term contract, for example, entitlement to sick allowance is maintained provided that the insured party has been a member of the insurance regime for a continuous period of six months immediately prior to termination. The condition of continuous membership is not breached by an interruption of less than eight days.

Until 31 December 2018, if CMSS, in agreement with the employee and the employer, considered it appropriate to resume part-time work during a period of incapacity for work due to illness or accident, CNS informed both parties in writing. Only half of the period in question was counted as a period of incapacity for work. If the employee became completely unable to work, the period was counted in full.

A law dated 10 August 2018 [43] created the possibility of **a progressive resumption to work for therapeutic reasons**, if the return to work and the work performed are recognised as being likely to promote the improvement of the employee's state of health since 1 January 2019.

This request must be made by the employee to the National Health Fund on the basis of a medical certificate from the employee's attending general practitioner and with the agreement of the employer.

To qualify for the progressive resumption to work for therapeutic reasons, an insured person must have been unable to work for at least one month out of the three months preceding the application.

A progressive resumption to work for therapeutic reasons is granted by a prior decision of the National Health Fund taken on the basis of a reasoned opinion from the Social Security Medical Board.

Unlike the former "mi-temps thérapeutique" (therapeutic half-time), governed by the statutes of the National Health Fund, for which the hours worked were paid for by the employer, the progressive resumption to work is

43 Loi du 10 août 2018, Mémorial A 2918, n° 703 du 21 août 2018.

treated as a period of incapacity for work and will be counted as such. The insured will continue to receive sick pay and will also be covered by accident insurance.

PLEASE NOTE: Before the 78 weeks have elapsed, the employee should be referred to one of the following two routes, depending on whether he is suffering from general incapacity for work or incapacity for work to perform the duties corresponding to his last job.

c. The third alternative: disability

Definition of disability in Luxembourg [44]

An insured is considered to be disabled if, as a result of prolonged illness, infirmity or deterioration, he has suffered a loss of working capacity such that he is prevented from practising the profession he last practised or another occupation corresponding to his strength and fitness.

When CMSS establishes that an insured party is unable to work in the general labour market, it recommends that the insured party to apply for a disability pension from the relevant pension body, the National Pension Insurance Fund (Caisse nationale d'assurance pension – CNAP) in the case of salaried employees.

Disability pensions are only awarded on the basis of a formal application by the person concerned. The application form can be downloaded from www.cnap.lu and must be returned by post.

For cross-border workers whose last place of work was not in Luxembourg, it is recommended that they submit their claim to the competent body in their place of residence.

The application for a disability pension will result in a decision by the President of the National Pension Insurance Fund, against which an insured party may, if necessary, lodge an appeal with the social security courts.

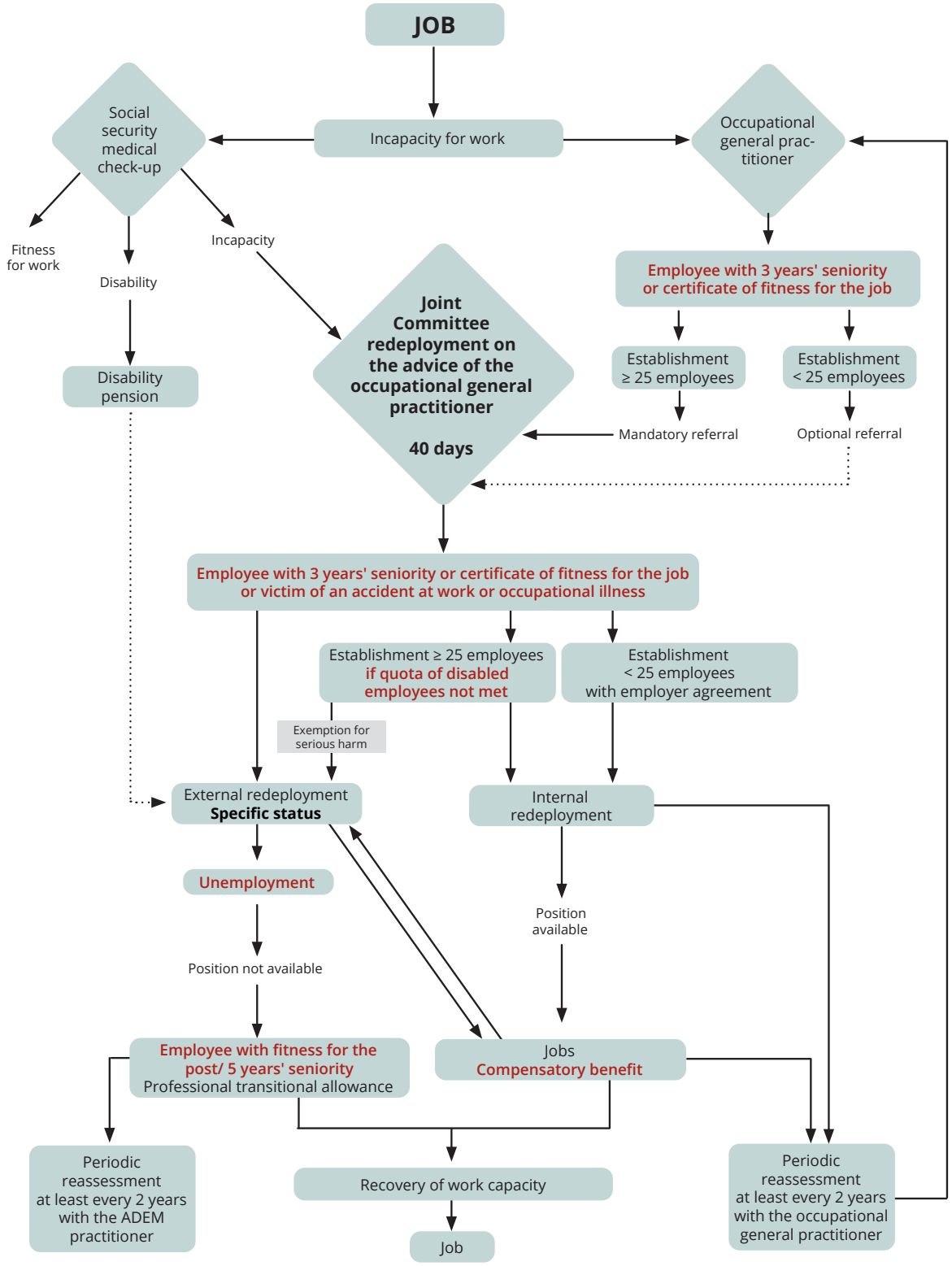
NOTE: If the illness is prolonged and there is no prospect of returning to work without the CMSS intervening, it is advisable to apply for an disability pension yourself in order to preserve your rights beyond the 78 weeks of illness.

d. The fourth alternative: a redeployment procedure

If CMSS considers that the person concerned is likely to be unable to perform the tasks corresponding to his last position, it will, in agreement with the person concerned, refer the matter to the Joint Committee and the competent occupational general practitioner.

44 Article 187 of the Social Security Code.

Diagram: The redeployment procedure



New regulations are shown in red.

5. REDEPLOYMENT PROCEDURE

For employees who have been in their last job for fewer than three years, the procedure can only be initiated if they are in possession of a certificate of fitness for the job in question, issued by the occupational general practitioner when they were recruited.

Employers are obliged to pass all new employees through a pre-hire medical examination, failing which they may be penalised.

The purpose of the pre-hire medical examination is to determine whether the applicant is fit or unfit for the intended occupation.

In addition to employees and apprentices, the pre-hire medical examination must also be carried out on students and trainees, wherever they are working in a high-risk position.

For night workers and workers in high-risk jobs, the test must be carried out before they are hired. For other positions, the examination must be carried out within two months of starting work.

Time spent by employees during working hours on the recruitment examinations is considered as working time.

There are no seniority or fitness requirements:

- beneficiaries of an disability pension when this was granted immediately following the exercise of a salaried activity if, at the time of retirement, they are incapacitated at their last place of work;
- employees who are unable to carry out the duties of their last job as a result of the after-effects of a certified accident at work or occupational disease that occurred during a period of membership entitling them to a partial accident pension or professional transitional allowance [45];
- beneficiaries of a full accident pension from salaried employment if, at the time of retirement, they held the status of incapacity at their last job.

Since 1 January 2016, there have been two ways of initiating the professional redeployment procedure:

▸ Initiating the professional redeployment procedure via the Social Security Medical Board (CMSS)

This path concerns a sick employee summoned by the CMSS, who considers that he is unable to carry out the duties corresponding to his last position.

The procedure involves the following steps:

1. visit with the occupational general practitioner;
2. medical examination of the employee by the occupational general practitioner;
3. occupational general practitioner submits an opinion to the Joint Committee;
4. decision by the Joint Committee on internal or external redeployment.

The occupational general practitioner will summon and examine the employee within three weeks.

For the medical examination, the employee must bring with him all the information that will enable the occupational general practitioner to make a decision on his case: complete medical file concerning his incapacity for work (X-rays, reports, analyses, etc.).

He must also bring:

- an identity document;
- your Luxembourg social security card;
- health or vaccination records;
- glasses or contact lenses (if applicable).

45 From 1 November 2020.

Medical examinations can be carried out in Luxembourgish, German, French and English. Employees who do not speak any of these languages must be accompanied by an interpreter of their choice. In the interests of confidentiality, it is not acceptable for a line manager to accompany the employee.

» *First scenario: Incapacity for the last position*

If the occupational general practitioner considers that the person concerned is unable to perform the tasks of his last position, he contacts the employer to discuss the various possible adaptations to the position, and then gives his opinion to the employee, the employer and the Joint Committee.

In his opinion, he will determine the employee's residual capacity for work, any reduction in working hours, any adaptation of the workstation, the temporary or permanent nature of the incapacity for work and the frequency with which the employee must undergo a medical re-evaluation.

» *Second scenario: Capacity for the last position*

If the competent occupational general practitioner considers that the person concerned is capable of performing the tasks corresponding to his last position, he will send the file to the Joint Committee within three weeks of the referral, which will reject redeployment of the person.

Once this decision has become final, it is binding in terms of social security and automatically terminates the right to sick pay or the right to a full accident pension or sick allowance, with effect from the date on which the competent occupational general practitioner determines that the employee is fit to work.

The Joint Committee will inform CMSS.

The decisions of the Joint Committee may be appealed to the Arbitration Board for Social Security within 40 days of notification of the decision.

» *Third scenario: Failure to appear when summoned by the occupational general practitioner*

If an employee refuses to undergo a medical examination by the occupational general practitioner without good reason, the latter will inform CMSS and the Joint Committee within three weeks of the referral.

The Joint Committee will reject the employee’s redeployment application.

Once this decision has become final, it is binding in terms of social security and automatically terminates the right to sick pay or the right to a full accident pension or sick allowance, with effect from the date on which the employee is summoned to see the occupational general practitioner.

► Initiating the professional redeployment procedure, although able to work, via a visit to the relevant occupational general practitioner

Who is the competent occupational general practitioner?

The occupational general practitioner of the occupational medicine department to which the company is affiliated, for persons who have an employment contract.

The ADEM practitioner for people without an employment contract or in receipt of a professional transitional allowance.

This path is for employees who, while able to work, undergo a medical examination by an occupational general practitioner (periodic examination, resumption examination, examination at the request of the employee or the employer or staff representatives).

The redeployment procedure is as follows:

- an invitation to attend a medical check-up and a medical examination by the occupational general practitioner;
- confirmation of unfitness for work;
- analysis of the position;

  To assess the employee's unfitness for work before making a decision, occupational general practitioners may carry out an analysis of the position in the presence of the employer and the employee.

- referral to the Joint Committee by the occupational general practitioner;

  Referral to the Joint Committee by the occupational general practitioner varies according to the size of the company:

  - for companies with at least 25 employees, the occupational general practitioner refers the matter directly to the Joint Committee and informs the employer and the employee.

    If, on the day the matter is referred to the Joint Committee, the employer has a total workforce of at least 25 employees and does not employ the number of disabled employees required by law, the employer must redeploy the employee internally. For the purposes of complying with this obligation, employees benefiting from internal or external redeployment are treated as disabled employees.

    The Joint Committee may waive the requirement for in-house redeployment if the employer submits a substantiated case to this effect and can prove that such redeployment would cause serious prejudice (see point 5.2.1.).

  - for company employing fewer than 25 people, until 1 November 2020, the occupational general practitioner could only refer the matter to the Joint Committee if the employee and the employer agreed in advance. In the event of disagreement, the employee was subject to the employer's discretion. As of 1 November 2020, the employer's agreement is no longer required.

    The Joint Committee decides on internal or external redeployment. However, internal redeployment is only possible with the employer's agreement.

Who is the Joint Committee?

The Joint Committee was set up by the law of 2002, reporting to the Minister for Labour and Employment. Its role is to decide on the internal or external redeployment of workers deemed unable to perform their last job by the Social Security Medical Board.

Between 1 January 2016 and 31 October 2020, it took decisions relating to the internal or external professional redeployment of employees, the status of persons undergoing professional redeployment, the professional transitional allowance, the compensation tax, the compensatory benefit and rehabilitation or retraining measures.

Since 1 November 2020, the Joint Committee only decides on the internal or external professional redeployment of employees, the professional redeployment statute, the adaptation of working hours, the compensation tax and the rehabilitation or retraining measures for people undergoing internal redeployment.

Decisions following internal or external redeployment fall within the remit of the National Employment Agency (ADEM).

Decisions to refuse to grant, to withdraw or to recalculate the compensatory benefit, decisions to refuse to grant, to recalculate, to temporarily or definitively withdraw the professional transitional allowance and decisions to refuse to grant, to withdraw, to fix and to adapt the salary contribution of workers undergoing internal redeployment or benefiting from the status of person undergoing external redeployment are taken by the Director of ADEM and may be submitted for review by a special committee.

Requests for reconsideration must be substantiated and submitted by registered letter before the expiry of a period of 40 days from the date of notification of the decision, on pain of time barring.

The Special Committee is made up of:

- two representatives representing the insured parties;
- two employers' representatives;
- a CMSS representative;
- a representative of the Health Department, Occupational Health Division;
- a representative of the Minister of Labour and Employment;
- a representative of the National Employment Agency.

Who can refer a case to the Joint Committee?

Until 31 December 2015, referrals to the Joint Committee were made solely by the Social Security Medical Board.

Between 1 January 2016 and 31 October 2020, when the occupational general practitioner declared an employee unfit for the last position following a medical examination by an occupational general practitioner, the employee could refer the matter to the Joint Committee with a view to professional redeployment under two conditions:

- the employee must have been with the company for more than 10 years;
- the employee must have been working in a high-risk job.

From 1 November 2020, the condition of occupying a high-risk post has been abolished, and all that is required is for the employee to be in possession of a certificate of fitness for the post or to have at least three years' seniority within the company.

The occupational general practitioner sends his opinion and a complete file to the Joint Committee, which now has the clear option of deciding either to redeploy internally or externally.

However, referral to the Joint Committee by the occupational general practitioner differs depending on the size of the company.

How can one appeal against a Joint Committee decision?

Decisions of the Joint Committee may be appealed to the Arbitration Board of Social Security within 40 days of their notification, by simple request to be lodged at the head office of the Arbitration Board. An appeal may be lodged with the High Council of Social Security within 40 days of notification of the ruling of the Arbitration Board of Social Security, by simple request, to be submitted to the head office of the High Council.

5.1. Protection against dismissal from the moment of referral to the Joint Committee

As soon as the redeployment procedure is launched, the employee is protected against dismissal.

Any dismissal notified by the employer or, as the case may be, the invitation to the preliminary interview with the employee, from the date of referral to the Joint Committee until the expiry of the 12th month following notification to the employer of the decision to carry out compulsory internal redeployment, shall be deemed null and void.

Within 15 days of the termination of the employment contract, an employee undergoing professional redeployment and an employee benefiting from a professional redeployment measure may petition the Chief Magistrate 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 it be maintained or, where applicable, reinstated.

The order of the Chief Magistrate of the Labour Court is provisionally enforceable. It may be appealed, by petition, within 40 days of notification by the clerk's office, to the magistrate presiding over the labour division of the Court of Appeal. The case is decided as a matter of urgency, after the parties have been heard or duly summoned.

ATTENTION: This protection does not preclude the expiry of a fixed-term employment contract or the termination of an employment contract for serious cause arising from the employee's fault or misconduct.

The provisions relating to the automatic termination of the employment contract due to the death, physical incapacity or bankruptcy of the employer and those relating to the automatic termination of the employment contract due to the depletion of the employee's entitlement to sick pay, are applicable.

In the event of an appeal by the employee against a decision to redeploy the employee's job within the Joint Committee, the employment contract is suspended until the day on which the appeal is finally settled.

Loophole: retention of the 78-week maximum benefit period and automatic termination of the employment contract

As from the time of referral to the Joint Committee, since the counter for calculating the 78 weeks of sick leave is not reset to zero, it should at least be suspended until the Committee makes a decision in order to avoid that those concerned deplete their rights to sick allowance and are no longer able to obtain internal redeployment.

If the Joint Committee needs a certain amount of time to analyse the case, possibly requesting additional documentation from the company practitioner, the employee, his practitioner or the employer, it is not fair for this to prejudice the employee and deprive him of internal redeployment and compensation.

In addition, as the 78-week maximum benefit period is not reset to zero following a decision to redeploy internally, employees who have been redeployed internally have often almost depleted their benefits. If perchance they fall ill or have an accident at work, they exceed the 78-week limit with the new period of incapacity for work, which has nothing to do with the incapacity for work for which they were redeployed.

5.2. Internal redeployment of employees

Who is eligible for internal redeployment?

Persons with an employment contract at the time of referral to the Joint Committee.

Internal redeployment means transitioning to another job and/or another working arrangement. The procedure for unilateral modification of the contract, which employers must follow when modifying an essential element of the employment contract, does not apply.

The occupational general practitioner must certify that an employee is fit for the new position. This finding that the employee is fit for the new position is deemed to be proof that the employer has fulfilled its obligation to redeploy the employee internally.

The company must inform the occupational general practitioner of the tasks that are suitable and defined for the employee, based on the opinion issued. The practitioner then rules on the employee's suitability for the internal redeployment position and issues a suitability form setting out the tasks concerned. If the position is unsuitable, the practitioner will contact the company to adapt the tasks, as the company is obliged to offer a suitable position in the event of internal redeployment due to unfitness.

5.2.1. The employer's position

Internal redeployment is compulsory for companies with at least 25 employees that do not meet their legal obligations in terms of the number of disabled and/or redeployed workers a company must take on.

Article L. 562-3 of the Labour Code

The State, municipalities, public bodies and the Luxembourg National Railroad are obliged to hire full-time employees recognised as being disabled, up to a limit of 5% of the total number of their staff employed as civil servants or employees bound by an employment contract and provided that they meet the general training and admission conditions laid down by law or regulation (unless an exemption is granted).

Any private sector employer employing at least:

- 25 employees must employ at least one employee recognised as disabled on a full-time basis;
- 50 employees is required to have 2% of its workforce working full-time with employees recognised as having a disability;
- 300 employees is required to have 4% of its workforce working full-time with employees recognised as having a disability.

where ADEM receives a sufficient number of job applications from disabled employees that meet the company's skill requirements.

For companies with fewer than 25 employees, there is no obligation to redeploy internally, although the employer may agree to do just that. If such is not the case, the employee will be redirected to external redeployment.

Employers must provide proof that they have fewer than 25 employees. In the case of multiple establishments, each establishment is considered separately.

If an employer with 25 or more employees refuses to redeploy within the company without being required to do so by the Joint Committee, it may be liable to pay damages to the employee and a compensation levy to the Employment Fund.

- Application for exemption by the employer on grounds of serious damage

  The employer may request a waiver of internal redeployment by submitting a reasoned application to the Joint Committee and providing evidence that such redeployment would cause it serious harm.

  The notion of "serious damage" is not defined by law.

  By serious damage, case law generally means serious financial difficulties in the event of redeployment, i.e. significant and serious damage caused by an act harmful to the employer's interests, an act likely to have serious consequences and unfortunate consequences which must be understood, in addition to the scenario of bankruptcy, in the sense of a reduction in productivity, an influence on competitiveness in the labour market, on economic competition, rationalisation and cost; a simple absence of a position corresponding to the residual faculties of an employee unable to perform in his last position is not sufficient.

  After receiving the employer's position, the Joint Committee takes a reasoned decision on whether to redeploy the employee internally or externally.

  Within 40 days of receiving the opinion of the occupational general practitioner, the Joint Committee examines the files submitted to it with a view to the internal or external redeployment of a worker. It may prescribe rehabilitation or retraining measures with a view to the internal or external redeployment of the person concerned.

  The Joint Committee's decision may be appealed to the Social Security Arbitration Board (Conseil arbitral de la sécurité sociale) within 40 days of notification of the decision.

- Penalties for non-compliance with the internal redeployment decision

  An employer who refuses to carry out internal redeployment in the absence of a waiver from the redeployment committee is required to pay a compensation tax to the Employment Fund.

  Until 31 December 2015, this tax amounted to 50% of the minimum social wage for a maximum period of 24 months.

  Since 1 January 2016, the tax has been increased by making it correspond to the average monthly income subject to pension insurance contributions achieved over the 12 calendar months preceding the decision to redeploy internally. It is payable for as long as an employer fails to meet its obligation, with a maximum duration of 24 months.

  Once it has established that the employer refuses to carry out the internal redeployment, the Joint Committee decides on the amount and duration of the compensation fee.

  Notification of an order to pay a compensation charge issued by the Joint Committee is made by registered letter.

  In the event of disagreement, the employers must submit a written objection within 15 days beginning from the date of notification of the injunction by registered letter sent to the Joint Committee.

  In the event of an objection, the Joint Committee will emit a new decision, giving reasons, in the light of the written reasoning notified to it by the employer. This decision may be appealed before the social security courts.

  In the absence of a duly notified objection, the tax becomes immediately payable upon expiry of the period open in which to express opposition.

- Impact on an employee's employment contract

  Since the employment contract remains in force, an employer must dismiss its employee, who may claim damages for wrongful dismissal.

  If the employer refuses to redeploy the employee internally, as duly noted by the Joint Committee, the employee may apply to the Joint Committee for a decision to redeploy the employee externally.

5.2.2. Possible reduction in working hours

On the basis of a reasoned opinion from the competent occupational general practitioner, in-house redeployment may involve a reduction in working hours of no more than 20% [46] of the working hours laid down in the employment contract in force prior to redeployment.

The Joint Committee decides on the reduction in working hours. It may request the opinion of ADEM's occupational general practitioner on the reduction in working hours proposed by the competent occupational general practitioner.

However, in exceptional circumstances, the reduction may be increased to 75% of the working time, with a minimum of 10 hours' work per week, on the advice of ADEM's occupational general practitioner.

To this end, the employer or employee must submit a reasoned request to the Joint Committee following the opinion of the competent occupational general practitioner. The request must be accompanied by proof that the employee or employer has been duly informed of the request.

Any change in working hours or working arrangements must be submitted to the Joint Committee in advance.

In practice, the employer and employee sign an amendment to the employment contract to specify the new work schedules.

Employees must submit a claim for compensation to ADEM within six months.

5.2.3. Compensatory benefit to offset any reduction in salary

When internal (or external) redeployment involves a reduction in a person's previous salary, employees are entitled to compensation.

The new rules on compensatory benefit applicable from 1 November 2020 apply to all recipients of compensatory benefit without any financial loss for those receiving compensatory benefit before 1 November 2020.

a. Apply to ADEM within six months

The request for a compensatory benefit must be submitted to ADEM rather than to the Joint Committee, on pain of being time barred, within six months of the date on which the amendment to the employment contract begins to run.

ATTENTION: Failure to comply with this time limit will result in loss of entitlement.

b. Income to be taken into account

The compensatory benefit represents the difference between the average monthly income subject to pension insurance contributions during the 12 calendar months prior to the decision to redeploy and the new average monthly income subject to pension insurance contributions. This compensatory benefit cannot be reduced as a result of one-off or linear increases in the new monthly income, whether legal, regulatory or agreed.

However, if ADEM finds that the new average contributory income received by a person undergoing redeployment exceeds the amount of the former annual income subject to contributions, it will reduce the amount of the compensatory benefit accordingly.

All income received prior to professional redeployment is determined on the basis of the average monthly income subject to pension insurance contributions during the 12 calendar months prior to the decision to redeploy, consisting of the gross remuneration earned, including all current bonuses and supplements, gratuities

46 This rate has been reduced from 50% to 20% since 1 November 2020.

and benefits in kind expressed in cash enjoyed by the insured party by virtue of his occupation subject to pension insurance, excluding remuneration for overtime and all allowances for incidental expenses incurred.

The average monthly income subject to pension insurance contributions during the 12 calendar months prior to the decision to redeploy or, where applicable, prior to the disability, or the award of a full accident pension, respectively, is adjusted in the event of a subsequent retroactive change in the wages and salaries declared to the Social Security Centre.

From 1 December 2020, salary increases resulting from career upgrades following the application of an existing collective labour agreement are no longer deducted from the compensatory benefit paid by the Employment Fund.

c. Changing jobs

In the event of a change of job, the compensatory benefit is set by calculating the loss between the average monthly income as calculated above and the new salary paid by the employer and set by amendment to the employment contract, taking into account the employee's length of service and, where applicable, the salary scales set out in the applicable collective labour agreement.

d. Possible adjustment of the compensatory benefit

In the event of a reassessment of the redeployed employee by the competent occupational general practitioner, the Joint Committee decides on the adaptation of the working conditions and an amendment to the employment contract is required. The compensatory benefit is then readjusted accordingly.

e. Control of the compensatory benefit

ADEM may carry out a check at least once a year, consisting of verifying the new average annual income subject to contributions that is paid by the employer and received by the person undergoing professional redeployment, as well as overtime pay and bonuses for night work or shift work.

If ADEM finds that the new average contributory income received by the person undergoing professional redeployment exceeds the amount of the former annual income subject to contributions, it will reduce the amount of the compensatory benefit accordingly.

If it finds that the new average income subject to contributions, including the compensatory benefit, received by the person undergoing redeployment exceeds five times the minimum social wage for unskilled workers, it will reduce the amount of the compensatory benefit set accordingly.

In this case, amounts in excess of the above thresholds are either refunded or offset against a subsequent payment.

f. Compensatory benefit taken into account when calculating other allowances, to include unemployment, early retirement and parental leave

The compensatory benefit is taken into account for calculating unemployment benefits, for determining the amount of early retirement benefit and for calculating the amount of parental leave benefit.

Similarly, payment of the compensatory benefit is suspended for the duration of full-time parental leave. The amount of the compensatory benefit is reduced proportionately in the event of half-time parental leave or split parental leave.

g. End of the compensatory benefit

Payment of the compensatory benefit is suspended for the duration of unpaid leave of an employee undergoing professional redeployment, in the event of a refusal decision issued by the Chairman of the CNS (halting compensation payments), and in the event of the award of a partial accident pension by the Accident Insurance Association.

Both the employer and the employee are required to report any unpaid leave and any refusal decision issued by the Chairman of the CNS (halting compensation payments).

Payment of the compensation allowance ceases when entitlement to an early retirement allowance, disability pension, early old-age pension, old-age pension or termination of the employment contract commences.

h. Indexation

Since 1 November 2020, the compensatory benefit has been adjusted to take account of changes in the cost of living.

i. Ancillary professional activity

An employee benefiting from professional redeployment is obliged to inform the Joint Committee in advance of any paid ancillary professional activity so that it can decide whether a medical re-evaluation is appropriate.

The Director of the National Employment Agency will immediately withdraw the compensatory benefit in the event of any paid secondary professional activity not previously reported to the Joint Committee.

j. Restitution of any undue payment

Any amount overpaid will be offset against the next payment or refunded.

k. Legal remedies

Decisions to refuse, withdraw or recalculate the compensatory benefit are taken by the Director of ADEM and may be the subject of a request for review by a special committee.

Requests for reconsideration must be substantiated and submitted by registered letter, failing which they will be time-barred within 40 days of notification of the decision.

5.2.4. Protection against dismissal

Following a decision to redeploy within the company, the employee is protected against dismissal until the end of the 12th month following notification to the employer of the decision to redeploy within the company.

Within 15 days of the termination of the contract, the employee may ask the Chief Magistrate of the Labour Court to declare the dismissal null and void and to order that the employee be upheld or, where applicable, be reinstated.

The order of the Chief Magistrate of the Labour Court is provisionally enforceable. It may be appealed, by petition, within 40 days of notification by the clerk's office, to the magistrate presiding over the labour division of the Court of Appeal. The case is decided as a matter of urgency, with the parties heard or duly summoned.

However, the foregoing provisions shall not prevent the expiry of a fixed-term employment contract or the termination of an employment contract for serious reasons attributable to an employee's actions or fault.

5.2.5. Internal redeployment and job loss

It should be remembered that following a decision to redeploy within the company, the employee is protected against dismissal until the end of the 12th month following notification to the employer of the decision to redeploy within the company.

If the employer refuses to redeploy the employee internally, as duly noted by the Joint Committee, the employee may apply to the Joint Committee for a decision to redeploy the employee externally.

Similarly, an employee undergoing internal redeployment who loses his or her job as a result of the employer ceasing to operate or as a result of collective redundancy is entitled to refer the matter to the Joint Committee within 20 days of the end of the employment contract with a view to external redeployment.

The Joint Committee then refers the matter to the occupational general practitioner, who sends the Joint Committee his reasoned opinion on the residual capacities of the person being redeployed.

In the event that the employee has not recovered the necessary skills to perform the duties corresponding to the last position he held prior to the decision to redeploy him internally, the Joint Committee will decide to redeploy him externally, which will entitle him to protective status.

On the other hand, if the occupational general practitioner finds that the redeployed employee has recovered the necessary work capacity to occupy a position similar to his last position prior to the decision to redeploy, the Joint Committee will reject external redeployment.

NOTE: In its ruling no. 169 dated 3 February 2022, the Constitutional Court ruled that the fact that employees undergoing internal redeployment, unlike employees undergoing external redeployment, cannot benefit from maintaining their status as employees undergoing redeployment should they lose their job for a reason beyond their control other than the cessation of their employer's activity or collective redundancy, is not in keeping with the principle of equality.

5.3. External redeployment of employees

Who is eligible for external redeployment?

People eligible for external redeployment are those who are unable to perform the tasks corresponding to their last job and:

- for whom internal redeployment has not been found to be possible;
- who have been refused an disability pension;
- from whom a temporary disability pension has been withdrawn;
- who have had an accident pension withdrawn;
- are beneficiaries of cash sickness benefits whose employment contract was terminated after the 26th week of incapacity for work for a reason other than serious misconduct or whose employment contract has been terminated for reasons beyond their control and which are not considered invalid;
- who have been awarded an internal redeployment decision, but who have lost their job as a result of their employer ceasing business operations or as a result of collective redundancy, provided that they apply to the Joint Committee within 20 days of the end of their employment contract.

The decision to redeploy automatically terminates an employment contract.

The worker is automatically registered as a job seeker with ADEM from the day following notification of the decision. They will be looked after by the service for workers with reduced capacity. Initially, they will receive unemployment benefit from ADEM for a maximum of 12 months, with the possibility of extensions.

In the event of redeployment to a job offered by ADEM where the salary is lower than the previous salary, the employee may be entitled to a compensatory benefit under the same conditions applicable to internal redeployment (see points 5.2.4. and 5.3.4.).

Failing this, once they have exhausted their entitlement to unemployment benefit, they will have to apply for a professional transitional allowance (see point 5.3.2.) using a form issued by ADEM.

This transitional allowance is paid until the redeployed employee finds another job or reaches pensionable age.

The Joint Committee may prescribe rehabilitation or retraining measures with a view to the internal or external redeployment of the person concerned. Persons concerned must follow these measures, failing which they will lose their status as a person undergoing professional redeployment by decision of the Joint Committee.

5.3.1. Lump-sum compensation payable by the employer

An employer who, on the day the matter is referred to the Joint Committee, has a workforce of at least 25 and who does not employ the number of employees eligible for internal or external redeployment within the limits of the rates applicable to disabled employees, is obliged to redeploy the employee internally.

For the purposes of complying with this obligation, employees benefiting from an internal or external professional redeployment shall be considered to be ineligible are treated in the same way as disabled employees.

It is up to the employer to provide proof of compliance.

For companies with multiple establishments, this obligation to redeploy applies to each establishment separately.

The Joint Committee may waive the requirement for in-house redeployment if the employer submits a reasoned case to this effect and can prove that such redeployment would cause serious prejudice.

Should the Joint Committee dispense with external redeployment, the employer is required to pay employees a lump-sum compensation which varies according to the employee's length of service as follows:

- One month's salary after at least five years' continuous service;
- Two months' salary after at least ten years' continuous service;
- Three months' salary after at least 15 years' continuous service;
- Four months' salary after 20 years' continuous service or more.

Length of service is assessed as at the date of notification of the decision to redeploy an employee's career and provides full details of the calculation of the compensation to be paid: this compensation is calculated on the basis of the gross salaries actually paid to the employee for the last 12 months immediately preceding that of the notification of the decision to redeploy an employee's career.

The salaries used to calculate the lump-sum payment include sick pay and current bonuses and supplements, but exclude overtime pay, gratuities and any allowances for incidental expenses incurred.

On the other hand, if the employer has a total workforce of less than 25 employees on the day the matter is referred to the Joint Committee, he may not be obliged to redeploy the employee internally. If the employee is redeployed externally, employers with fewer than 25 employees must pay this compensation, which will be reimbursed by the Employment Fund upon written request with supporting documents. The request must be submitted, failing which it will be time barred, within six months of the date of notification of the Joint Committee's decision.

5.3.2. Protective status for employees undergoing external professional redeployment

Since 1 January 2016, a specific status of "person undergoing external professional redeployment" has been created, in order to prevent employees undergoing external professional redeployment from refusing to take up a new position, due to the risk of losing the rights linked to the redeployment decision with the termination of the new employment contract.

This status guarantees the beneficiary of an external professional redeployment decision the maintenance of the rights resulting from the decision taken by the Joint Committee as long as the beneficiary has not recovered the necessary working capacity to perform the tasks corresponding to his last position prior to the professional redeployment decision.

- External redeployment and job loss

  An employee undergoing external professional redeployment who loses his new job for a reason beyond his control retains his status as a person undergoing professional redeployment provided that, within 20 days of the end of the employment contract, he registers as a job seeker with ADEM.

- External redeployment without a job

  For unemployed people undergoing external professional redeployment, continued status is subject to continued registration as a job seeker with ADEM and availability for the job market.

- Internal redeployment and job loss

  An employee undergoing internal redeployment who loses his or her job as a result of the employer ceasing to operate or as a result of collective redundancy is entitled to refer the matter to the Joint Committee within 20 days of the end of the employment contract with a view to external redeployment.

  The Joint Committee then refers the matter to the occupational general practitioner, who sends the Joint Committee his reasoned opinion on the residual capacities of the person being redeployed.

  In the event that she has not regained the necessary abilities to perform the duties corresponding to the last position she held prior to the decision to redeploy her job internally, the Joint Committee will decide to redeploy her job externally, which will entitle her to protective status.

  On the other hand, if the occupational general practitioner finds that the redeployed employee has recovered the necessary work capacity to enable him/her to occupy a position similar to his/her last position prior to the decision to redeploy, the Joint Committee will refuse the external professional redeployment.

5.3.3. Transitional professional allowance

At the end of the statutory period for payment of unemployment benefit, including any extensions, if an employee has not found a new job, he will receive a professional transitional allowance.

The professional transitional allowance is suspended if the employee receives the transitional pension following an accident at work/commuting accident or an occupational disease.

For the duration of the transitional allowance, the beneficiary must remain registered as a claimant ADEM and be available for the job market.

▸ Terms and conditions

The claimant must have been fit for the last job for at least five years, as certified by the occupational general practitioner, or have at least five years' seniority. This finding of at least five years' fitness for the last position may result from medical examinations carried out by the occupational general practitioner during the performance of the employment contract, not just at the time of recruitment [47].

Applications for a professional transitional allowance must be submitted to ADEM, failing which time barring will set in, within six months of the end of the statutory period of payment of full unemployment benefits, including the extension period.

Failure to attend three consecutive appointments will result in the permanent withdrawal of the professional transitional allowance from the first day of non-attendance and the close-out of the beneficiary's file.

The temporary or permanent loss of the professional transitional allowance is decided by the Director of ADEM.

If the professional transitional allowance is withdrawn and the beneficiary's file is closed, the ADEM Director will inform the Chairman of the Joint Committee with a view to withdrawing the status of a person undergoing professional redeployment.

The professional transitional allowance will be withdrawn by decision of the Director of ADEM and the beneficiary's file will be closed if the conditions for which it was granted are no longer fulfilled, if the person concerned avoids professional redeployment measures or work of public utility.

The decision to withdraw the professional transitional allowance applies from the first day of the following month immediately after the one during which it was notified.

The Director of ADEM informs the Chairman of the Joint Committee of the close-out of the file for withdrawal of the status of persons undergoing redeployment.

▸ A replacement income separate from any pension logic

Before 1 January 2016, the amount of the transitional allowance corresponded to the disability pension to which an employee would have been entitled. In order to make it subject to contributions, the reform has detached it from any pension logic.

This has given it the characteristics of a replacement income paid as a continuation of unemployment.

Since 1 January 2016, this professional transitional allowance has amounted to 80% of the average monthly income subject to pension insurance contributions during the 12 calendar months prior to the decision to redeploy or, where applicable, prior to the disability or award of a full accident pension, subject to the same ceiling as for unemployment.

It is subject to the social security and tax charges applicable to salaries and will therefore be taken into account when calculating the pension. It is index-linked.

Half of the cost is borne by the pension fund and half by the Employment Fund, whereas until 31 December 2015 only the pension fund was responsible.

47 Arrêt N° 14/2022 de la Cour de cassation du 3 février 2022, n° CAS-2021-00008 du registre.

- No maximum payment period

  The granting of the professional transitional allowance is subject to the condition that the person concerned renounces any professional activity other than an insignificant one in Luxembourg or abroad [48].

  Any continuous or temporary activity generating income in Luxembourg or abroad which, spread over a calendar year, does not exceed one third of the minimum social wage per month is considered to be an insignificant activity.

  Payment of the professional transitional allowance ceases when entitlement is acquired, in Luxembourg or abroad, to the early retirement allowance, disability pension, early old-age pension or old-age pension.

5.3.4. Compensatory benefit in the event of new employment

In the event of external redeployment, a compensatory benefit may be paid to the employee under the same conditions applicable to internal redeployment (see point 5.2.4.), provided that the position has been offered by ADEM and that an employee has been declared fit for the new position during the pre-recruitment medical examination.

NOTE: When employees find a new job, they will be summoned to an occupational health check-up to assess their suitability for the new position.

If the employee is being examined in an occupational health department other than the one in which the notice of unfitness was issued, it is important that the employee attends the appointment with a copy of this notice.

The compensatory benefit payable in the event of external redeployment is linked to a working time condition: the new job must involve working time at least equal to half the working time fixed in the last contract. This requirement has been increased to 80% from 1 November 2020.

In the event that the external professional redeployment of an employee relates to several previous employment relationships, the cumulative working time of these previous jobs is taken into account to determine the new working time required in order to gain eligibility for the compensatory benefit. The required working time may be reached by combining several jobs.

However, in exceptional circumstances, the reduction in working time may be increased to 75% of the initial working time, with a minimum of ten hours per week, by decision of the Joint Committee, on the advice of ADEM's occupational general practitioner.

An application for compensation must be made to the National Employment Agency within six months of the date of performance of the new employment contract, failing which it will be time-barred.

The compensatory benefit is set according to the new terms set out above.

Any unemployment benefits paid prior to the redeployment are not taken into account when calculating the former salary.

5.3.5. Work of public utility

Job seekers undergoing redeployment may be assigned to work of public utility with the State, local authorities and associations, public bodies and foundations.

Interested promoters can submit a reasoned request to the Department for Employees with Reduced Working Capacity.

The reasoned request must contain a precise description of the nature of the work under consideration and provide for the appointment of a tutor to assist and supervise the job seeker undergoing redeployment for the duration of the work.

It is analysed by ADEM, which selects potential candidates from among job seekers with the status of persons undergoing redeployment.

ADEM's occupational general practitioner will determine the persons undergoing external professional redeployment who can be allocated to the work of public utility in question.

48 Under article 184, paragraph 3 of the Social Security Code.

The allocation decision is taken by the Minister for Employment, on the recommendation of ADEM.

Exemption from work will be granted by the person's tutor, to enable the person undergoing redeployment to apply for jobs offered by the relevant ADEM department.

Persons assigned to work of public utility are entitled to the holiday plan applicable to their place of employment.

The Director of ADEM may, at the request of the promoter or job seeker, terminate the assignment to work of public utility on serious and convincing grounds. If these serious and convincing reasons are attributable to the job seeker, the termination of the assignment, before it can be the subject of a withdrawal of the professional transitional allowance and the close-out of the file, gives rise to an adversarial debate between the job seeker and an official of the National Employment Agency. In the event of withdrawal of the professional transitional allowance and close-out of the file, the Director of the National Employment Agency will inform the Joint Committee, which will decide on the withdrawal of the status of persons undergoing external professional redeployment.

The assignment will end as soon as the job seeker in question has found a job or, on the advice of the competent occupational general practitioner, or, at the latest, when he loses his status as a person undergoing professional redeployment.

5.4. Penalties for fraud

Anyone who fraudulently causes ADEM to provide compensation or professional indemnities for expectations that were not due or were due only in part will be punished by imprisonment of between one month and six months and a fine of between €500 and €5,000 or by one of these penalties only, unless a higher penalty results from another legal provision.

Attempted commission of this offence is punishable by a prison sentence of between eight days and three months and a fine of between €251 and €2,000 or one of these penalties only.

5.5. Adapting working hours and modifying workstations

The decisions of the Joint Committee concerning the adjustment of working hours and workstation arrangements are binding on the employer.

If the competent occupational general practitioner finds that the reduction in working hours granted is no longer medically justified, the employer has a period of 12 months from the date of notification of the decision to adapt the working hours by means of an amendment to the employment contract, provided that the working hours do not exceed those stipulated in the initial employment contract.

If it is not possible to adapt the working hours in the same position occupied by the employee undergoing internal redeployment, the employer fulfils its obligation from the moment it offers the employee a similar position corresponding to his qualifications, with at least equivalent pay and provided that the employee has been declared fit for the new position by the competent occupational general practitioner.

5.6. Continuing professional training

5.6.1. Person undergoing internal redeployment

The Joint Committee may prescribe rehabilitation, retraining or continuing vocational training measures with a view to the internal professional redeployment of the person concerned.

The person concerned must follow these measures or risk losing the compensatory benefit, as decided by the Director of ADEM.

5.6.2. Persons undergoing external redeployment

It is ADEM that can provide job seekers undergoing external professional redeployment with continuing vocational training if they make such a request on their own initiative.

This application must be accompanied by the following documents:

- a reasoned request containing a presentation of the career plan;
- the identity of the training institute, accompanied by proof of the choice of this institute and a copy of the ministerial authorisation if it is a Luxembourg institute;
- in the case of a foreign-based institute, the opinion of the Minister for Education, Children and Youth;
- the detailed programme of continuing professional training;
- the cost of continuing professional training, including all taxes;
- the duration of the continuing professional training, as well as its start and end dates;
- where applicable, information on the diploma or certificate awarded on completion of continuing professional training.

ADEM may require job seekers benefiting from external professional redeployment to undergo continuing professional training determined by taking into account their professional project, the similar position(s) they may occupy and their residual work capacity.

Before the start of the continuing professional training course, the application, together with a detailed opinion from ADEM, is sent to the Minister of Labour for a decision. It contains an opinion from ADEM's occupational general practitioner certifying that the job seeker can follow the training in question and practise the profession to which the training is intended to lead.

The costs of continuing professional training are borne by the Employment Fund.

In the absence of valid justification, non-participation, refusal, withdrawal or an attendance rate of less than 80% in the planned continuing vocational training will result in the withdrawal of the professional transitional allowance by the Director of ADEM, closure of the file and reimbursement of the training costs advanced by the Employment Fund.

A valid justification is one that is based on medically justified and certified reasons, or force majeure of which ADEM has been informed and which it has approved as such.

With a view to this approval, ADEM may submit the file to its occupational general practitioner for an additional opinion.

By letter, the Director of ADEM informs the Chairman of the Joint Committee for the withdrawal of professional redeployment status and the Minister of Labour of any unjustified non-participation, refusal, withdrawal or attendance rate of less than 80% in the training.

5.7. Periodic reassessment of redeployed employees

The 2016 reform of the redeployment procedure introduced regular medical monitoring of redeployed employees. Employees must be seen by the occupational general practitioner at least every two years, unless the restrictions on their ability to work are permanent.

The occupational general practitioner will carry out a medical reassessment of the person undergoing redeployment, either at the intervals set out in his initial opinion, or at the request of the Chairman of the Joint Committee. He will inform the Joint Committee of this in a reasoned opinion.

If, at the time of this periodic reassessment, the competent occupational general practitioner finds that a reduction in working hours is no longer wholly or partly justified on medical grounds, he refers the matter to the Joint Committee, which decides on the adjustment of working hours. This decision shall take effect after six months' notice, starting from the date of notification. The decisions of the Joint Committee concerning the adaptation of working hours and the arrangements for adapting the workstation are binding on the employer. If the competent occupational general practitioner finds that the reduction in working hours is no longer medically justified, the employer has a period of 12 months from the date of notification of the decision to adapt the working hours by means of an amendment to the employment contract, provided that the working hours do not exceed those stipulated in the initial employment contract. If it is impossible to adapt the working hours in the same position occupied by the employee undergoing internal redeployment, the employer fulfils its obligation from the moment he offers an employee a similar position corresponding to his qualifications, with at least equivalent pay and provided that the employee has been declared fit for the new position by the competent occupational general practitioner.

If, at the time of this periodic reassessment, the competent occupational general practitioner finds that an employee undergoing professional redeployment has recovered the necessary working capacity to perform tasks similar to those corresponding to his last position prior to the decision to redeploy, he refers the matter to the Joint Committee, which decides on the loss of the specific status and informs the Director of the National Employment Agency, who decides on the cessation of payment of the compensatory benefit or the professional transitional allowance. These decisions take effect after six months' notice starting from the date of notification of the loss of status.

Any person undergoing professional redeployment who fails to undergo this medical reassessment and refuses to accept a proposed position will have their status as an employee undergoing external professional redeployment withdrawn, by decision of the Joint Committee referred to by the competent occupational general practitioner. The Joint Committee will inform the ADEM Director, who will decide to stop payment of the compensatory benefit or the professional transitional allowance. These decisions take effect on the date of notification of the loss of status.

This reassessment also applies to employees who were externally redeployed before 1 January 2016, enabling them to acquire the status of person undergoing professional redeployment.

People receiving a transitional allowance are subject to a medical reassessment.

Physicians appointed by the Director of ADEM are responsible for carrying out these medical re-assessment examinations.

The competent practitioner will summon and examine the person concerned.

If the competent practitioner finds that the person concerned is still unable to perform his last job or work arrangement, the transitional allowance will continue to be paid. In his opinion, the competent practitioner shall determine the frequency with which the employee must undergo medical reassessment.

A person who is unable to carry out his last position or work regime acquires the status of a person undergoing professional redeployment.

If the competent practitioner establishes that the person concerned is fit to occupy a post similar to the last post he held prior to the decision to redeploy him, he will refer the matter to the competent pension body, which will decide to cease payment of the transitional allowance. This decision takes effect after 12 months' notice, starting from the date of notification. During the 12 months' notice period, the person concerned may be offered training by ADEM, taking into account the similar position(s) that he may occupy and his residual capacities. The costs of training during the 12-month notice period are borne by the Employment Fund.

Any person who fails to undergo the medical reassessment provided for above shall have his professional transitional allowance withdrawn by decision of the competent pension body referred to it by the competent practitioner. This decision takes effect on the date of notification.

5.8. Aid granted to employers who redeploy employees [49]

Employers who redeploy an employee internally, either voluntarily or after being obliged to do so by a decision of the Joint Committee, are entitled to certain types of aid. The same aid is available to any employer who takes on an employee who has been redeployed externally.

The employer benefits in particular from the provisions of the law dated 24 December 1996 introducing an income tax bonus (see point 5.8.1.), aid in the form of a financial contribution to the salary of the employee undergoing professional redeployment (see point 5.8.2.) and bonuses for adapting workstations (see point 5.8.3.).

In addition, the employer may be eligible for aid for the recruitment of disabled employees. However, this aid cannot be combined with the aforementioned aids.

5.8.1. Income tax bonus

An employer who redeploys an employee internally or hires an employee to be redeployed externally may be entitled to a monthly tax credit equivalent to 10% of an employee's gross monthly remuneration for a period of 12 months, which may be deducted as a business expense, provided that the contract continues during this period.

49 www.adem.public.lu

To be eligible for aid, the employment contract offered to an employee must be:

- a permanent employment contract (CDI);
- a fixed-term contract for a minimum of 18 months (CDD);
- a fixed-term contract to replace parental leave (specified in the employment contract).

The employee must work at least 16 hours a week. Applications for tax relief should be sent to ADEM's Employers Department using a form and must always be accompanied by a copy of the employment contract.

5.8.2. Financial contribution to the salary of an employee undergoing professional redeployment

The Director of ADEM will, at their request, allocate to employers in the private and municipal sectors, as well as to public bodies, a contribution towards the salary of a worker undergoing internal professional redeployment or benefiting from the status of a person undergoing external redeployment who suffers a loss of earnings, to be charged to the Employment Fund.

Salary contributions start on the day the application is submitted to ADEM.

The loss of earnings is determined on the basis of the reduction in the worker's capacity to work, the efforts made by the employer to keep the redeployed workers in employment and the nature of the work to be performed.

The assessment of this loss of performance is based both on the conclusions drawn from a study of the workstation to be occupied by the redeployed worker and on an assessment of the worker's deficits and residual capacities to be drawn up by ADEM's occupational general practitioner.

ADEM also has a standardised and objective tool for this purpose, designed to compare the skills profile of the worker concerned with the profile required for the job in question.

The salary contribution is set in proportion to the loss of performance thus established, without being able to exceed 75% of the salary paid to the employee, including the employer's share of social security contributions.

However, it may be increased to 100% of the salary paid to the worker for the duration of a rehabilitation or retraining measure approved by the Joint Committee.

The loss of earnings may be periodically reassessed by the Director of ADEM in the event of an adjustment to working hours or the workstation following a medical reassessment.

The salary contribution will be adjusted or withdrawn if the reassessed loss of earnings increases, decreases or disappears, or if the employee's working conditions change.

In order to benefit from this financial assistance, employers must send their request for a financial contribution to salary to ADEM's Employers Department.

The decision to refuse to grant, to withdraw, to fix or to adjust the financial participation in the salary is taken by the Director of ADEM and may be the subject of a request for reconsideration submitted by the employer by registered letter to the special reconsideration committee.

Requests for reconsideration must be substantiated and submitted by registered letter, failing which they will be time-barred, within 40 days of notification of the decision.

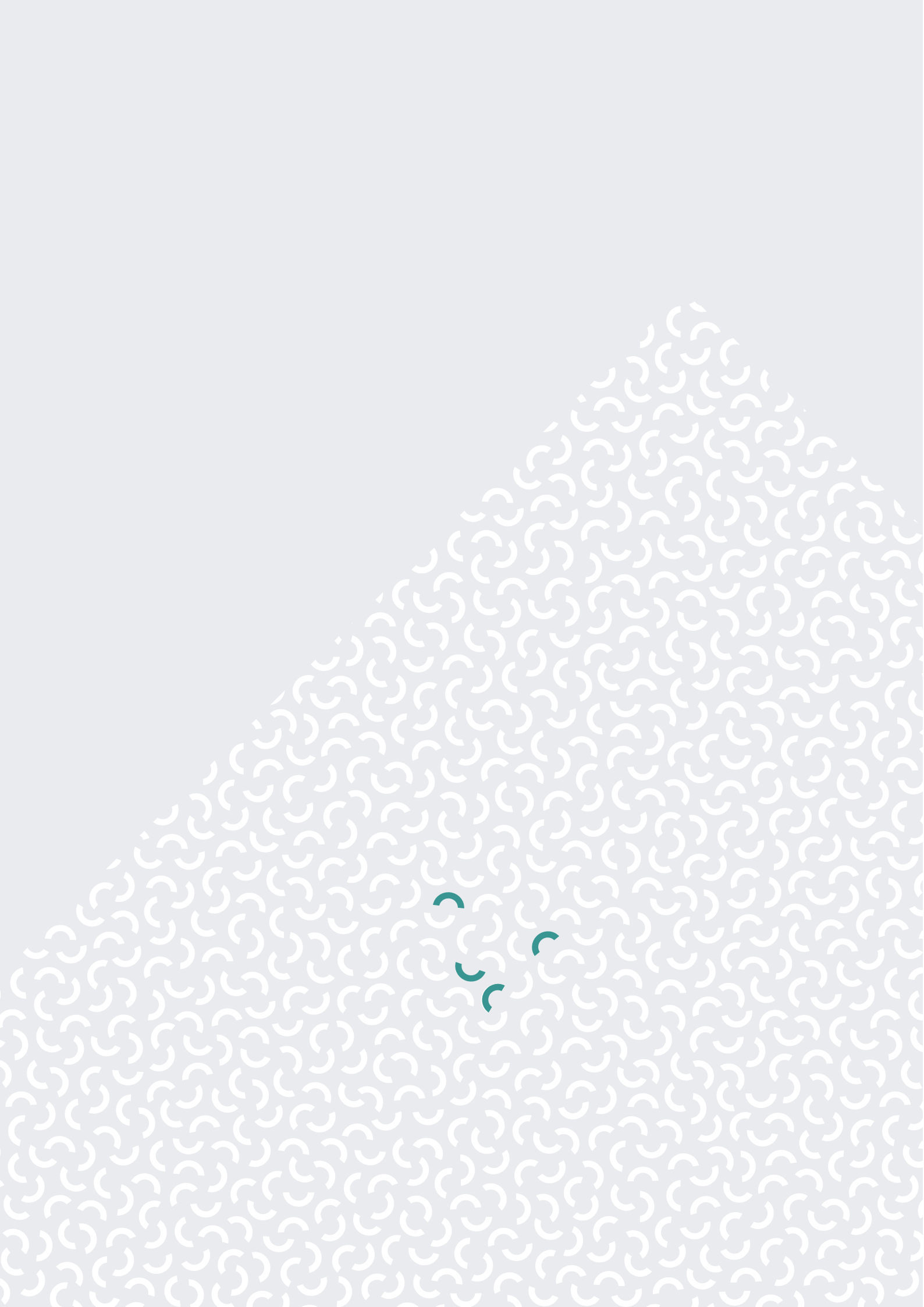
5.8.3. Premium for the adaptation of workstations

To ensure the success of any redeployment, the Employment Fund may pay for all or part of the following costs related costs, in particular:

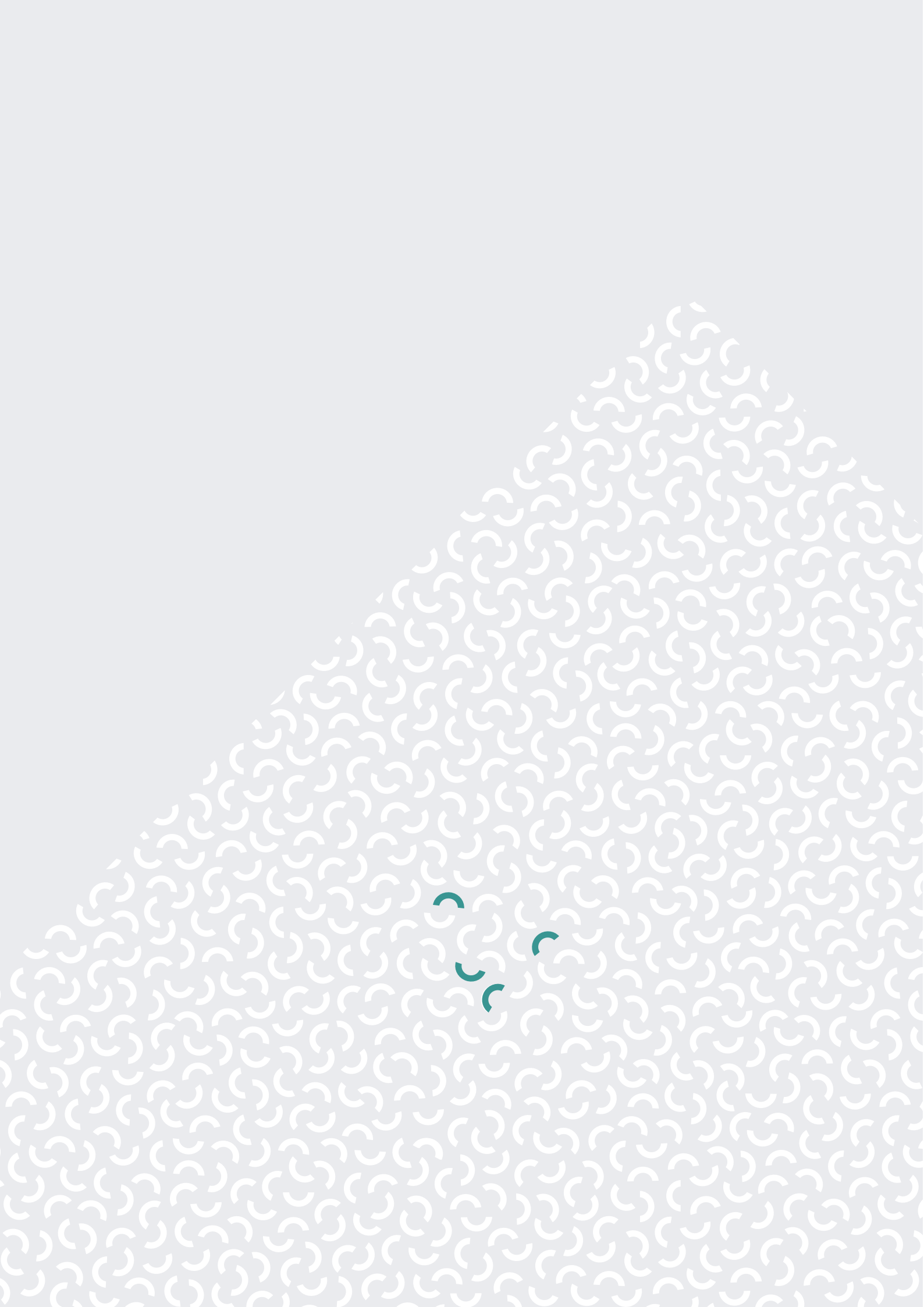
- the design of workstations;
- the acquisition of professional equipment and teaching materials;
- transport costs to and from work.

To monitor these measures, a representative of ADEM's Disabled Employees Department or another relevant department will ensure that the measures to be taken are carried out on site and will monitor the technical progress in collaboration with the employer and the relevant occupational general practitioner.

Requests for reimbursement should be sent to ADEM's Employers Department, together with an estimate of the costs to be incurred.



IV.
APPENDICES



1. GLOSSARY

A

Accident Insurance Association (AAA):
Organisation responsible for managing accident insurance.

Accident insurance:
Insurance providing benefits in the event of an accident at work or occupational illness.

ADEM:
The National Employment Agency (ADEM) is Luxembourg's public employment service.

B

Benefits in kind:
Healthcare covered by the CNS.

C

Calendar days:
Every day of the year, from Monday to Sunday, including public holidays.

Case law:
A legal solution suggested by a body of court rulings on legal issues.

Cash benefits:
Sickness, maternity pay and funeral benefits paid by the CNS.

CNS Board of Directors:
The Board of Directors manages the fund in all matters not delegated to another entity by law or the regulations. In particular, it is responsible for representing the fund in and out of court and for taking individual decisions regarding benefits. The President of the National Health Fund or his delegate may take a decision on any matter of individual concern to an insured party in respect of sickness and maternity insurance, and must do so at the insured party's request. The decision is final unless the person concerned lodges a written objection within 40 days of notification. The objection is set aside by the Board of Directors.

The termination of the right to statutory retention of remuneration and the right to payment of sick pay may be approved by the President of the National Health Fund or his delegate and must be done at the request of the insured party. The decision is final unless the insured party objects in writing within 40 days of notification. The Board of Directors will rule on any objections. These decisions of the National Health Fund are notified to employers for information purposes.

Compensatory benefit:
When internal (or external) redeployment involves a reduction in a person’s previous salary, this person is entitled to compensation.

D

Days worked:
Days actually worked in the company.

Detailed medical report:
Report in the event of prolonged incapacity for work, as provided for in the nomenclature of medical acts and services (R4), or any other detailed medical report sent to the Social Security Medical Board and accepted as such by the latter.

Disability:

An insured party is considered to be disabled if, as a result of prolonged illness, infirmity or debilitation, he has suffered a loss of working capacity such that he is prevented from pursuing the occupation he last practised or another occupation corresponding to his strength and fitness.

Disability pension:

Replacement income for an active person who suffers from a temporary or permanent disability and can therefore no longer practise any profession.

E

Employers' Mutual Fund:

Created by the law of 13 May 2008 introducing the single status, the purpose of this social security institution is to protect employers against the financial cost of continuing to pay wages to workers who are unable to work, an employer obligation that has applied to all employees since 1 January 2009. Its role is to reimburse employers up to 80%, and in some cases 100%, of the costs incurred by the principle of continued remuneration. All companies with employees must be affiliated to the Fund.

External redeployment:

Redeployment on the general labour market in the event of inability to perform the tasks corresponding to his last job.

Fixed-term employment contract (CDD):

The special feature of fixed-term contracts is that they are concluded for a limited period (maximum 24 months) and for the performance of a specific, non-permanent task.

G

Grand-Ducal regulation:

Act issued by the Grand Duke in execution of a law.

H

Health insurance:

Insurance providing cash benefits and benefits in kind in the event of an insured party's illness.

High Council of Social Security (Conseil supérieur de la sécurité sociale – CSSS):

An appeals court in social security matters, it hears all appeals against first instance rulings by the Arbitration Board of Social Security. Its registered office is in Luxembourg City. The appeal must be lodged, on pain of time barring, within 40 days of the date of notification of the decision of the Arbitration Board by simple request on plain paper to be deposited at the registered office of the High Council of Social Security. The use of a lawyer is not compulsory. The employee may appear alone or with his representative, who may be the representative of his professional or trade union organisation.

I

Indexation:

Cost-of-living adjustments.

Insured party:

The term "insured" refers to employees or former employees in their relationship with social security bodies.

Internal redeployment:

Redeployment within the company of an employee who is unable to perform the tasks corresponding to his last job, in another job or under another work regime suited to his residual capacities.

Invalid dismissal:

One case in which dismissal is null and void is where an employee is hospitalised urgently, preventing him from fulfilling his statutory obligations. The termination of employment contracts is annulled and this employee is reinstated.

J

Joint Committee:

This body, which reports to the Minister of Labour and Employment, decides on the internal or external redeployment of employees, the status of persons undergoing external redeployment, the adaptation of working hours and any compensation tax and rehabilitation or retraining measures for persons undergoing internal redeployment.

L

Labour Code:

The body comprising all the legal rules applicable to employment law, particularly between an employee and his employer.

Labour Court:

The Labour Court is a chamber of the Magistrate's Court. There are three: one in Luxembourg City, one in Esch/Alzette and one in Diekirch. The court's territorial jurisdiction is determined by an employee's place of work. The Labour Court hears disputes relating to employment contracts, apprenticeship contracts and supplementary pension schemes.

Cases may be brought before the Labour Court by filing a simple application on plain paper with the court registry. The use of a lawyer is not compulsory. Judgements handed down at first instance by Labour Courts may be appealed by the parties within 40 days of notification of the judgement, by writ of summons, i.e. by a bailiff. It is compulsory to consult a lawyer in bringing cases to the Court of Appeal.

N

National Health Fund (Caisse nationale de santé – CNS):

Competent body for all insured parties in the private sector (employees and self-employed persons) as well as for State workers, for both health insurance and long-term care insurance, for the payment of benefits in kind (reimbursement of health care costs incurred by insured parties); benefits in cash (lump-sum maternity benefit, cash illness benefit after continuation of remuneration, funeral allowance, etc.) and long-term care insurance benefits.

National Pension Insurance Fund (Caisse national d'assurance pension – CNAP):

The pension insurance body responsible for employees.

O

Occupational general practitioner:

A practitioner working for occupational health services, which are supervised by the Occupational Health Division. His role is essentially preventive, and he checks the worker's fitness for the job, particularly at the time of recruitment and periodic examinations, as well as when he is called upon to redeploy a worker.

P

Permanent employment contract:

This type of contract is characterised by the fact that the duration of the employment relationship is not fixed in advance. The contract remains in force until either the employer or the employee decides to terminate it.

Professional transitional allowance:

Compensation paid to an employee undergoing external professional redeployment who has not found a job by the end of the statutory period for payment of unemployment compensation, including any extension periods.

Progressive resumption return to work for therapeutic reasons:

It has replaced part-time work on a therapeutic basis since 1 January 2019. See explanations on page 58.

S

Sick pay:

Compensation paid by the CNS to compensate employees for loss of income from work or non-professional accident due to incapacity for work due to illness.

Social security:

All schemes providing protection for the entire population against the various social risks: sickness - maternity - disability - old age - dependency - death - accidents at work and occupational illnesses - family responsibilities.

Social Security Arbitration Board (Conseil arbitral de la sécurité sociale – CASS):

The first instance court has jurisdiction over all social security disputes that may arise between insured parties and social security bodies. Its registered office is in Luxembourg City. Appeals must be lodged, failing which it shall be time barred, within 40 days of notification of the contested decision, via a simple request by letter to be submitted to the Arbitration Board. Engaging a lawyer is not mandatory. The employee may appear alone or with his representative, who may be the representative of his professional or trade union organisation.

Social Security Centre (Centre commun de la sécurité sociale – CCSS):

Body responsible for organising the computerisation, collection and processing of computerised data on behalf of the various social security institutions, as well as the registration of insured parties, the determination, collection and recovery of contributions, and the accounting and distribution of these contributions between the various bodies.

Social Security Code:

The body containing all the normative rules applicable to social security, particularly between an insured party and a social security organisation.

Social security courts:

The Social Security Arbitration Board (Conseil arbitral de la sécurité sociale – CASS) in first instance and the High Council of Social Security on appeal (Conseil supérieur de la sécurité sociale – CSSS).

Social Security Medical Board (Contrôle médical de la sécurité soiale – CMSS):

State administration under the authority of the Ministry of Social Security, whose main tasks are:

- determining incapacity for work and, where appropriate, its temporary or definitive extent in relation to normal capacity for work;
- verification and periodic monitoring of illnesses or disabilities giving entitlement to benefits or subsidies;
- medical opinions and examinations for priority and disability cards.

Status of person undergoing professional redeployment:

This status guarantees the beneficiary of an external professional redeployment decision who accepts a new job, the maintenance of the rights resulting from the decision taken by the Joint Committee as long as he has not recovered the necessary work capacities enabling him to occupy the tasks corresponding to his last job prior to the professional redeployment decision.

Statutes of the Employers' Mutual Fund:

Statutes adopted by the Board of Directors of the National Health Fund on 2 October 2008 and approved by ministerial decree on 17 December 2008.

Statutes of the National Health Fund (Caisse nationale de santé – CNS):

Statutes adopted by the Board of Directors of the National Health Fund applying to persons benefiting from sickness and maternity insurance instituted by Book 1 of the Social Security Code.

T

Trial period:

Clause whose purpose is to allow the employee to check whether the work is suitable for him. It offers employers the opportunity to assess the employee's professional qualities.

W

Working days:

Days reserved for work and professional activities. In principle, these are calendar days, except Sundays and public holidays.

Wrongful dismissal:

Dismissal that is contrary to the law or that is not based on real and serious grounds relating to the employee's fitness or conduct or based on the operational requirements of the company, establishment or service is unfair and constitutes a socially and economically abnormal act. The Labour Court orders the employer to pay the employee damages and interest in respect of the loss suffered by him as a result of his dismissal.

2. LEGAL BASES*

CODE DU TRAVAIL (Extraits) - LABOUR CODE (Extracts)

Livre Premier - Relations individuelles et collectives de travail : Art. L. 121-6

Livre III - Protection, sécurité et santé des salariés : Art. L. 326-1 à L. 327-2

Livre V - Emploi et chômage : Art. L. 551-1 à L. 552-4

LOI DU 23 JUILLET 2015 PORTANT MODIFICATION DU CODE DU TRAVAIL ET DU CODE DE LA SÉCURITÉ SOCIALE CONCERNANT LE DISPOSITIF DU RECLASSEMENT INTERNE ET EXTERNE

Art. IV

CODE DE LA SÉCURITÉ SOCIALE (Extraits) - SOCIAL SECURITY CODE (Extracts)

Livre 1er - Assurance maladie-maternité : Art. 9 à Art. 16, Art. 47

Livre 2 - Assurance accident : Art. 95, Art. 105 à 107, Art. 111 à 114, Art. 121 à 123, Art. 127

Livre 3 - Assurance pension : Art. 186 à 194

RÈGLEMENT GRAND-DUCAL DU 16 DÉCEMBRE 2008 CONCERNANT L'ASSIETTE DE COTISATION POUR L'INDEMNITÉ PÉCUNIAIRE DE MALADIE ET FIXANT LA VALEUR DES RÉMUNÉRATIONS EN NATURE PRISE EN COMPTE POUR L'ASSIETTE DES COTISATIONS EN MATIÈRE DE SÉCURITÉ SOCIALE

STATUTS DE LA CNS - STATUTES OF THE CNS

Troisième partie - Les indemnités pécuniaires au titre de l'assurance maladie-maternité et de l'assurance accident : Art. 168 à 217

STATUTS DE LA MUTUALITÉ DES EMPLOYEURS - STATUTES OF THE EMPLOYERS' MUTUAL FUND

* The legal texts are only available in the original French language.

3. USEFUL WEBSITES

CHAMBER OF EMPLOYEES

www.csl.lu

JUSTICE

www.justice.public.lu

LABOUR AND MINES INSPECTORATE

www.itm.public.lu

NATIONAL EMPLOYMENT AGENCY

www.adem.public.lu

OCCUPATIONAL MEDICINE

www.stm.lu

SOCIAL SECURITY INSTITUTIONS

www.ccss.public.lu

www.cns.public.lu

www.mde.public.lu

www.secu.lu

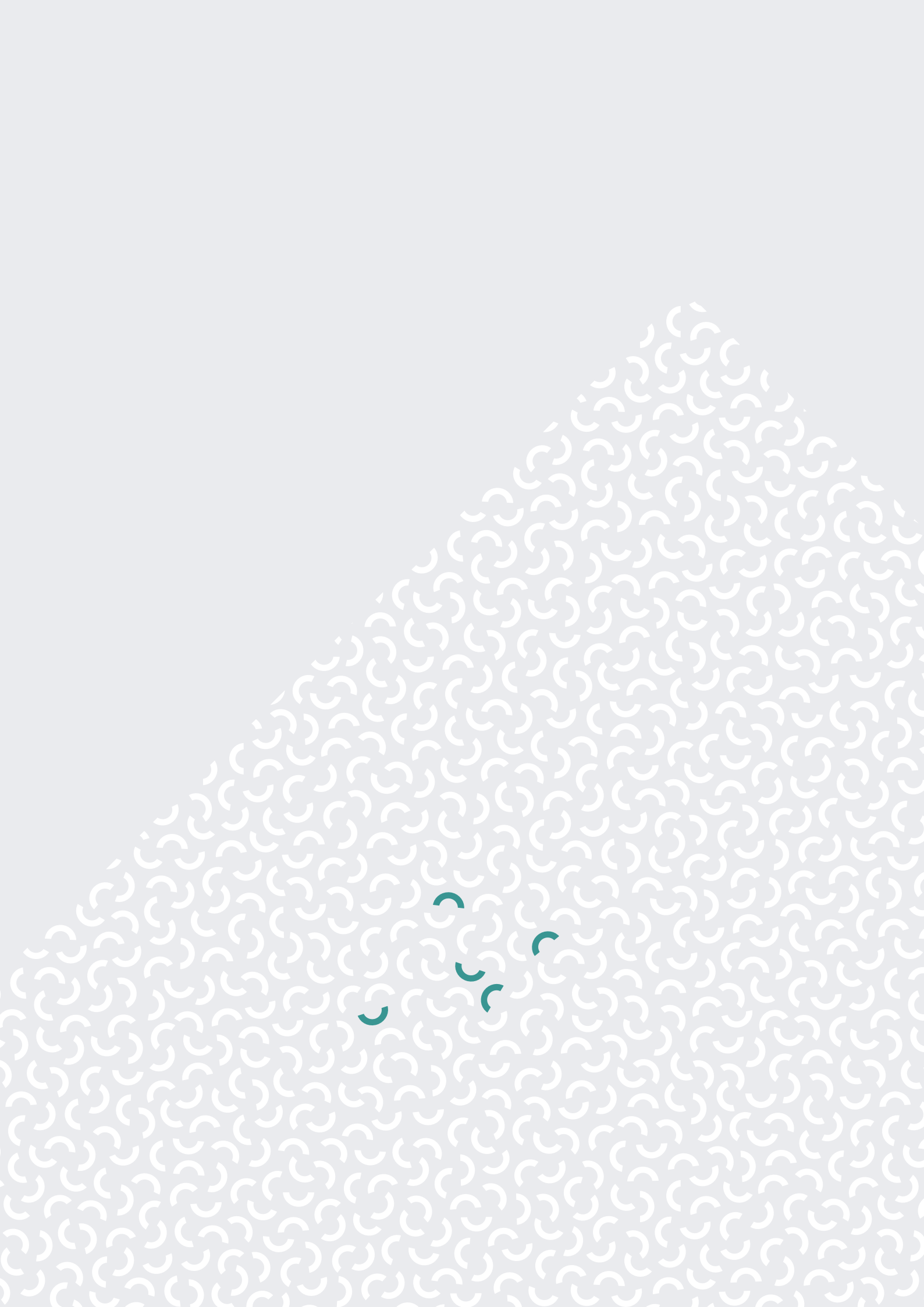
UNIONS

www.aleba.lu

www.lcgb.lu

www.ogbl.lu

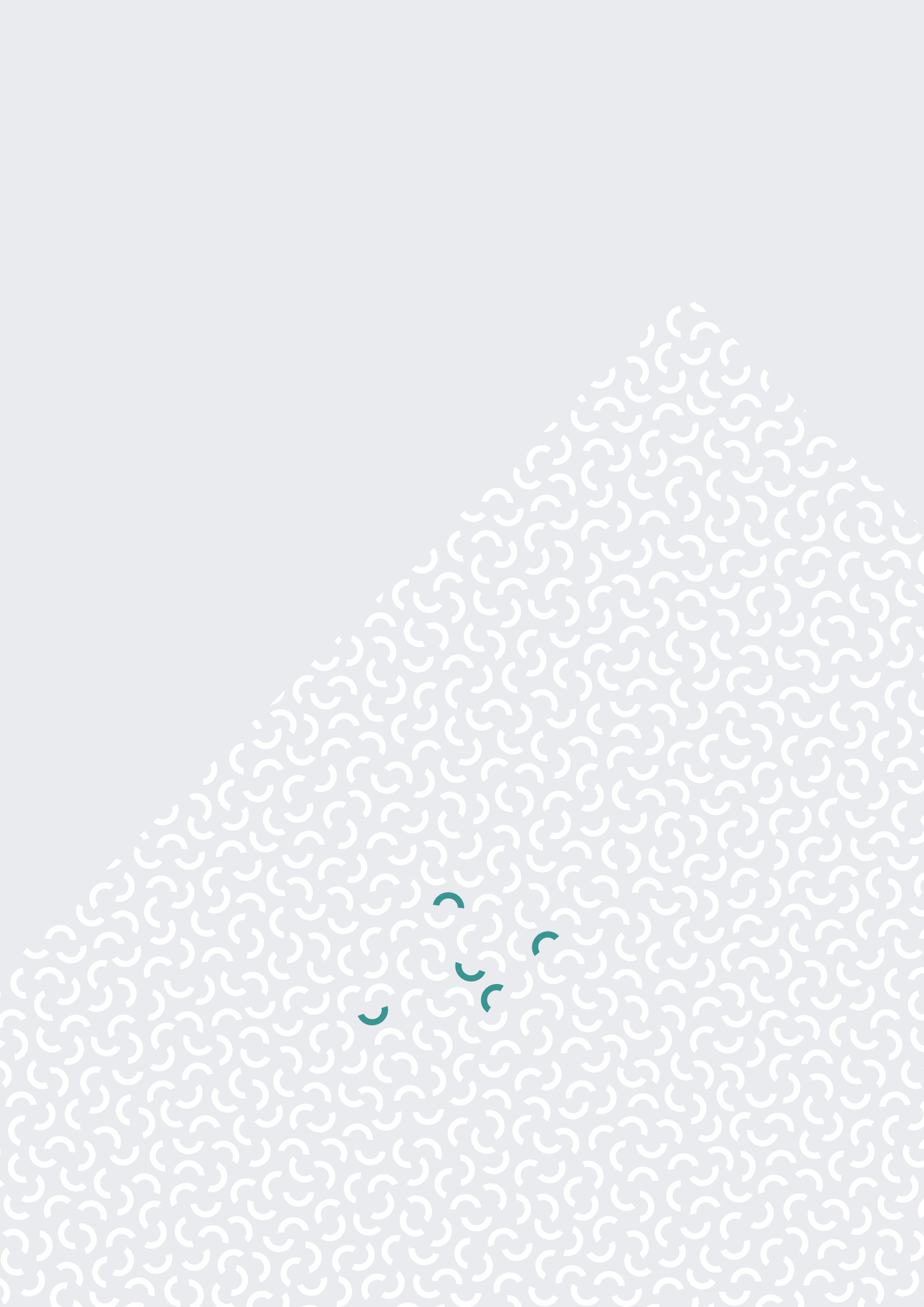
www.syprolux.lu



V.
ANSWERS TO THE PRELIMINARY QUIZ

The test and its answers are a simplified summary of the information detailed in Part III "Practical Guide" of this book.

It is essential to read this part III for a complete and accurate understanding of the answers you checked.



ANSWERS TO THE PRELIMINARY QUIZ

N°1 Obligation of sick employees

On the first day of his absence, he must:

- ▶ notify the employer or a representative of the employer of his incapacity for work ■
- ▶ provide a medical certificate justifying their state of health □

This obligation must be fulfilled:

- ▶ from the start of the working day □
- ▶ on the morning of day 1 □
- ▶ during the day (until midnight) ■

This can be done in a number of ways:

- ▶ by phone ■
- ▶ by text message ■
- ▶ by email ■
- ▶ by fax ■
- ▶ by the employee ■
- ▶ by someone close to the employee ■

This information must be sent to:

- ▶ the employer itself, or ■
- ▶ the employee's supervisor ■
- ▶ any of the employee's colleagues □

The employer has not heard from the employee on first day:

- ▶ may dismiss an employee with notice □
- ▶ may dismiss this employee with immediate effect □
- ▶ must wait ■

A dismissal would be:

- ▶ wrongful* ■
- ▶ null and void** □

On the third day of absence, the employee must have:

- ▶ send a medical certificate □
- ▶ scanned a medical certificate □
- ▶ submit a medical certificate ■
- ▶ his employer ■
- ▶ to the National Health Fund ■
- ▶ the Social Security Medical Board □
- ▶ to the Chamber of Employees □
- ▶ to the Accident Insurance Association □

* Wrongful dismissal is only compensated by damages, with the contract will still be terminated.
** In the event of wrongful dismissal, the employee must be reinstated once the competent court has reversed the termination of the contract.

N°2 Prolonged illness

The employee must inform his employer:

- before the end of the period covered by their first medical certificate ☐
- the day they were scheduled to return to work ■
- the third day after the planned resumption of work ☐

The certificate must be given to the employer:

- the day after the planned resumption ☐
- the third day of the planned resumption ■
- as soon as possible ☐

The certificate must be submitted to the National Health Fund:

- the day after the planned resumption ■
- the third day of the planned resumption ☐
- as soon as possible ☐

N°3 Protection against dismissal

Once these two obligations have been fulfilled (informing entities on the first day and submitting of certificates to employers on the third day), employees are protected against dismissal for:

- 26 consecutive weeks ■
- 26 non-consecutive weeks ☐
- 52 non-consecutive weeks ☐
- 78 non-consecutive weeks ☐

Dismissal despite this prohibition is:

- null and void* ☐
- wrongful** ■

After this period, the employer may:

- dismiss with notice if company activities are disrupted ■
- dismiss him with immediate effect ☐
- keep an employee in the company ■

* In the event of wrongful dismissal, employees must be reinstated once the competent court has annulled termination of the contract.

** Wrongful dismissal is only compensated by damages, while the contract will still be terminated.

N°4

Remuneration of employees who are ill

Employees continue to receive their pay from:

- his employer ■
- the National Health Fund ■
- the Accident Insurance Association □

Employees are entitled to continue to receive their full salary by his employer for:

- 77 days □
- Three months □
- until the end of the month in which the 77th day of illness occurs during an 18-month reference period ■
- 18 months □

Continuation of salary by the employer

Employers must pay employees who are ill:

- their basic salary ■
- extra pay for overtime work ■
- extra pay for working on a public holiday ■
- extra pay for night work ■
- extra pay for Sunday work ■

An employer is reimbursed:

- at the rate of 0% □
- 80% in most cases ■
- in full for employees during the trial period (three months),leave for family reasons and support leave ■
- by the Accident Insurance Association □
- by the National Health Fund □
- by the Employers' Mutual Fund ■

Sick allowance paid by the National Health Fund

The sick allowance takes into account:

- basic salary ■
- all payments and accessories to compensation □
- only payments and accessories to compensation payable monthly in cash ■
- benefits in kind □
- 13th and 14th months □
- bonuses □
- overtime □

... N°4 Compensation paid to sick employees by the employer and by the Caisse nationale de santé

Employees are entitled to compensation during:

- 26 consecutive weeks ☐
- 78 consecutive weeks ☐
- 26 weeks over a 52-week reference period ☐
- 78 weeks over a 104-week reference period ■

After this period, permanent work contracts:

- are cancelled ☐
- can be terminated by the employer ☐
- automatically cease ■

Sick allowance paid by the National Health Fund

Even before the 78-week mark, the National Health Fund may stop compensating insured parties who:

- fails to undergo a medical examination without good reason ■
- fail to respond without good reason to a summons from the company practitioner as part of a redeployment procedure ■
- stays abroad without prior authorisation from the National Health Fund ■
- are in police custody ■
- fail to provide all the information, documents and evidence requested by the National Health Fund or the Social Security Medical Board including a detailed medical report ■
- the Social Security Medical Board issues an opinion on fitness to work ■

N°5 Monitoring sick employees

During their incapacity for work, employees may be subject to:

- an administrative check ■
- a medical check-up ■

Administrative controls can be carried out:

- at the employer's request ■
- at the request of the Social Security Medical Board ☐
- at the request of the National Health Fund ■

- while your employer continues to pay you ■
- while receiving compensation from the National Health Fund ■

...
N°5

Medical checks may be carried out:

- at an employer's request, with a practitioner of its choice ■
- at the request of the Social Security Medical Board ■
- at the request of the National Health Fund □

- while your employer continues to pay you ■
- while receiving compensation from the National Health Fund ■

Medical examination at the employer's request by a practitioner of its choice

If the practitioner (chosen by the employer) considers the employee fit:

- the employer must continue to pay him ■
- the employer can stop paying him □
- protection against dismissal ends □

If two physicians (other than the Social Security Medical Board) consider the employee fit for work:

- the employer must continue to pay him □
- protection against dismissal ends ■
- the employer can stop paying if the employee does not return to work ■

Medical examination at the request of the Social Security Medical Board

If the Social Security Medical Board considers the employee fit:

- the National Health Fund stops compensating the employee ■
- the employer must continue to pay him □
- the employer can stop paying him ■
- protection against dismissal ends immediately □
- protection against dismissal ends after 40 days if the employee fails to appeal the fitness decision ■
- protection against dismissal ends after 26 consecutive weeks if the employee appeals the fitness decision ■

N°6

Redeploying the employee

Cases may be referred to the Joint Committee by:

- ▶ the Social Security Medical Board ■
- ▶ the employer □
- ▶ the employee □
- ▶ the employee's GP □
- ▶ the occupational general practitioner ■

Referral to the Joint Committee has the following consequences:

- ▶ suspension of the 78-week time limit □
- ▶ suspension of the employee's employment contract □
- ▶ protection against dismissal of the employee ■
- ▶ referral to the occupational general practitioner ■

Internal redeployment is compulsory for:

- ▶ any employer □
- ▶ any employer with more than 25 employees ■
- ▶ any employer who does not employ the number of disabled employees required by law ■

An employee who is redeployed internally can benefit from:

- ▶ a compensatory benefit ■
- ▶ a professional transitional allowance □
- ▶ periodic reassessment by the occupational general practitioner ■
- ▶ specific protective status □

An employee who has been redeployed externally can benefit from:

- ▶ a lump-sum payment depending on seniority ■
- ▶ a compensatory benefit when they return to work ■
- ▶ a professional transitional allowance ■
- ▶ periodic reassessment by the occupational general practitioner ■
- ▶ specific protective status ■

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The Chamber of Employees (CSL) has decided to reissue this publication to inform its members about the current rules regarding illness and professional reintegration.

To begin with, readers can test their knowledge with a preliminary multiple-choice questionnaire. The answers can be found on the last pages of the publication.

After an overview of the changes, a practical guide explains in greater detail the rights and obligations of employees on sick leave (notification of incapacity for work, protection against dismissal, remuneration), as well as the rights and obligations of employers (administrative and/or medical checks, internal reintegration, termination of the employment contract).

Finally, an appendix includes a glossary with definitions of more specific terms, the applicable legal provisions, and a list of relevant websites.

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