

Labour Law - Belgium

<p>Is it a legal requirement that employees must receive an employment contract?</p>	<p>There is no legal requirement to receive a written employment contract when it concerns a contract with full-time work for an indefinite period. In this case, a verbal agreement is sufficient and the mandatory provisions of the Belgian law are applicable.</p> <p>For all other employment contracts, a written employment contract is required.</p> <p>In the absence of a written contract, the employee is deemed to have been hired for an indefinite period.</p> <p>The contract must include start of employment, description of work, place of execution, work schedule, remuneration, trial period, working conditions and must be executed prior to the start of the employment for validity reasons.</p>
<p>What factors constitute a fair dismissal i.e. legally justifiable reasons to terminate employment without the need to pay compensation?</p>	<p>Employees can be dismissed in three cases:</p> <ol style="list-style-type: none"> 1. In the case of contract concluded for a definite period with a fixed term, the contract is terminated at the expiry of the agreed term, without notice letter or indemnity. 2. In the case of contract concluded for an indefinite period, the contract is terminated either by giving a notice which has to be performed by the employee or by payment of an indemnity-in lieu-of notice. 3. An employee can also be dismissed for serious cause, immediately and without notice or indemnity. A serious cause is defined as "any fault that makes any collaboration between employer and employee immediately and definitively impossible".
<p>What is good practice with regard to dismissal procedures to minimise the risk of claims for unfair dismissal?</p>	<p>A distinction must be made between blue-collar employees hired for an indefinite period and all other employees.</p> <p>The dismissal of a blue-collar worker hired for an indefinite period is considered as abusive when it is done for reasons unrelated to the capacity or conduct of the worker or when it is not based on the necessity of operation of the company. The unfair dismissal of a blue-collar worker is sanctioned by the payment of a lump-sum indemnity amounting to 6 months of remuneration.</p> <p>The dismissal of all other employees can be subject to the doctrine of abuse of right (<i>'abus de droit'</i>) or abusive dismissal. An <i>'abus de droit'</i> can be deducted from the following elements: - malice, - improper reasons, - absence of reason, - circumstances of the dismissal, misuse of the social or economic purpose of the dismissal. The burden of proof is incumbent on the person alleging the <i>'abus de droit'</i> (fault, damage and causal link).</p>
<p>If an employee is dismissed unfairly what is the financial range of compensation that can be made to employees?</p>	<p>Contrary to the unfair dismissal of blue-collar workers, the sanction of the <i>abus de droit</i>, is an indemnity determined <i>ex aequo et bono</i> by the judge. The amount of the damages can be lower or higher than six months of remuneration.</p>
<p>Do employees have the right to be members of a trade union?</p>	<p>Each employee is free to join or not to join a trade union. Moreover union delegations have to be established at the request of trade unions in each enterprise with at least 50 employees. Trade union member are legally protected against dismissal.</p>
<p>Is there any legal requirement for an employer to contribute to a pension for employees?</p>	<p>There is no legal requirement for an employer to contribute to a pension for employees. The legal pension contribution is made through the social security payments. However, the employer can contribute on a voluntary basis, i.e. through group insurance policy or extra legal pension fund.</p>
<p>What are standard</p>	<p>Various legal provisions aim to protect pregnant workers: prohibition to</p>

<p>maternity rights?; What are parental leave rights (including paternity leave)?</p>	<p>execute certain tasks, right to a parental pre- and post natal leave and legal protection against dismissal.</p> <p>Every pregnant woman is entitled to pre and post-natal leave. The duration of pre-natal leave is 6 weeks (and 8 weeks when multiple birth). Moreover from the 7th day before the expected date of childbirth, the employee must cease all activity and the employer may not, under any circumstances keep the employee at work. The post-natal leave is 9 weeks (11 weeks when multiple birth).</p> <p>The maternity leave described above can be converted into paternity leave in the following two cases: maternal death or hospitalization of the mother. In addition, the father has the right to paternity leave of 10 days. The leave must be taken within 4 months after childbirth.</p>
<p>When are employees eligible for redundancy payments?</p>	<p>When the employer decides to break the employment contract immediately and without performance of the notice, an indemnity-in lieu-of notice has to be paid by the employer. Such indemnity is a lump sum and is calculated according to the duration of the notice period and the current gross remuneration (including all the benefits paid to the employee).</p> <p>The duration of the notice period depends on the seniority of the employee and the annual remuneration.</p> <p>When the total gross salary (and benefits) does not exceed EUR 28.580 per year, the notice period must be at least three months, if the employee has less then five years service. The notice is increased by three months for each additional five-year period of service</p> <p>When the total gross salary (and benefits) is between EUR 28.580 and EUR 57.162 per year, there is a general requirement to fix by mutual agreement the notice period, which may not be less than the minimal legal notice, i.e. the three months for each five working years.</p> <p>When the total gross salary (and benefits) exceeds EUR 57.162, the parties are allowed to agree on the duration of the notice at the signature of the employment agreement.</p> <p>If no agreement can be reached between the employer and the employee regarding the notice period after the termination of the employment contract, the labour court will determine on a case-by-case basis what is the "reasonable" notice period.</p> <p>In practice, the employer often calculates the notice period on the basis of statistical formulas developed by legal commentators, out of which the most commonly used formula is the "Claeys-formula". This formula is however not binding upon the judge.</p> <p><i>Claeys-formula 2008</i></p> <p><u>$0,87 \times \text{Length of service} + (0,06 \times \text{Age}) + (0,037 \times \text{Remuneration}/1000 \times \text{index 2007}/\text{index month of dismissal}) - 1,45$</u></p> <p>A rule of thumb for the application of the Claeys formula is one month notice per year of service.</p>
<p>What are the statutory redundancy payment limits?</p>	<p>Strictly speaking, there is no statutory redundancy payment limits given that payment depends on the notice period, which in turn depends on the remuneration and the seniority.</p>
<p>Can existing employees be dismissed if you buy a</p>	<p>In case of assignment or transfer of business, all the employment contracts continue to have effect for employees and employer and therefore,</p>

business with employees?	employees can not be dismissed. However, the employer has still the right to dismiss for good reasons (serious cause), economic technical or organisation reasons for a change in the workforce.
Any other general legislation to note?	Collective labour agreements and European Directives National legislation on holidays, working time, security and health precaution at work, privacy, etc...