

Two new bills towards improvement of work-life balance

Following the governmental announcements of the Minister of Labour and the Minister of Family Affairs on 19 May 2022, Bill 8016 (the "Bill 8016") and Bill 8017 (the "Bill 8017") have been officially introduced on 2 June 2022.

I. **Bill 8016**

The purpose of this Bill is to transpose into national law the European Directive 2019/1158 of 11 June 2019 which deals with the work-life balance of parents and carers.

The main adaptations proposed by the Bill 8016 are the following:

- ❖ The introduction of **two new leaves: (i) an extraordinary leave of one day** over a twelve-month employment period for reasons of force majeure related to urgent family reasons in case of illness or accident of a family member requiring the immediate presence of the employee and **(ii) a leave of five days** over a twelve-month employment period to provide personal care or assistance to a family member (child, parent, spouse or partner) or to a person living in the same household as the employee and requiring care.
- ❖ It is clarified that the employment contract **will be maintained throughout the period of leave and that the employer will not be allowed to terminate the employment contract** on the grounds that the employee has requested or taken such leave. In this case, the termination of the contract would be null and void.
- ❖ In order to comply with the Directive's requirement to implement effective and dissuasive sanctions in the event of infringement of national provisions, the bill aims to introduce a new provision that **sanctions the refusal to grant extraordinary leave**. In such a case, the employer may be fined up to **2,500 euros**, which may be doubled in the event of a repeated offence within two years. Furthermore, the employee **may not be subject to reprisals or less favourable treatment** on the grounds that he or she has taken or benefited from an extraordinary leave provided for by the Labour Code.
- ❖ It is also worth noting that Bill 8016 introduces a modification to the application for parental leave. The new text provides that an employer who refuses to grant such a request **will henceforth be obliged to give reasons for its decision in writing**.
- ❖ Moreover, when an employer decides exceptionally **to request the postponement of the second parental leave**, he will have to propose, as far as possible, **an alternative form of parental leave** before any postponement.
- ❖ Finally, Bill 8016 provides that the employee will have the right to a meeting with the employer to request **"flexible working arrangements"**, the purpose of which is to allow the employee to arrange his or her working time in agreement with the employer, including for example the use of teleworking, flexible working hours or a reduction in working time for a fixed period of up to one year. These flexible working arrangements may be requested by **an employee who has at least six months of continuous service with the same employer and is the parent of a child who has not yet reached the age of nine, or who has to provide personal care or assistance to a family member**

or a person living in the same household who requires considerable care or assistance for medical reasons, as certified by a doctor. A specific application procedure is detailed under the Bill 8016.

II. **Bill 8017**

This second text **aims to extend the right to extraordinary leave, in the event of childbirth, to any person who would be recognised as an equivalent second parent, as well as to the self-employed.**

To this end, Bill 8017 provides for the following main changes:

- ❖ Introduction of the formula "**person recognised as an equivalent second parent by the applicable national legislation**" in Article L.233-16 of the Labour Code, which means that such a person will be entitled to ten days' paternity leave. At present, this amendment has very little effect since the Luxembourg national, living in a same-sex couple, could, given the state of Luxembourg civil law, only validly establish his or her filiation with the child through adoption. This person is therefore temporarily prevented from benefiting from paternity leave. However, the legislator is expected to remedy this shortcoming in the near future and adapt the texts on filiation.
- ❖ A clarification is made as to the taking of adoption leave, which may be taken from the day on which the child actually lives **in the same household or from the date on which the adoption takes effect.**
- ❖ A clarification is made regarding the prorating of paternity or adoption leave. Bill 8017 provides that **the hours of leave are fixed in proportion to the weekly working time** agreed in the collective agreement or in the employment contract.
- ❖ Bill 8017 also provides for the right of self-employed persons to benefit from the ten days of paternity leave in the event of the birth of a child or the adoption of a child under the age of 16 as a matter of equal treatment.

As the legislative procedure is still in its early stages, it cannot be ruled out that these initial bills may be subject to amendments, which will in any case have to comply with the minimum requirements laid down by the Directive.