Alliant Global Services

Global Knowledge Center – Legal & Regulatory Updates

November 2023

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Canada

Rollout of the Canadian Dental Care Plan imminent

Published 23 November 2023

On 21 November 2023, the federal government released its 2023 Fall Economic Statement which outlines the next phase of the government's strategy.

Among the many measures the government has announced that the rollout of the Canadian Dental Care Plan will start by end 2023.

Currently, more than a third of people in Canada are without dental insurance. The government has committed to make dental care affordable, and to provide dental coverage for all uninsured Canadians with an annual household income of less than CAD 90,000.

In December 2022, under the interim Canada Dental Benefit, the government started accepting applications from parents or guardians with an annual household net income of less than CAD 90,000 for children under the age of 12 years.

The tax-exempt dental care benefit of up to CAD 1,300 over two years per child, are being paid to eligible parents or gradians. As of 20 September 2023, some 370,000 children had received the dental care under the interim program, with paid dental benefits amounting CAD 315,207,000.

The government is now preparing the launch of the Canadian Dental Care Plan. Once fully implemented, the Canadian Dental Care Plan is expected to support up to nine million uninsured individuals who have an annual net household income of less than CAD 90,000 with affordable dental care, or with zero co-pay for individuals with a net household income of less than CAD 70,000.

Further information on the Canadian Dental Care Plan is expected to be communicated by Health Canada in the coming weeks.

Resources

The 2023 Federal Fall Economic Statement

The interim Canada Dental Benefit

Ontario's Working for Workers Act 2023 receives Royal Assent

Published 10 November 2023

On 26 October 2023, Bill 79, Working for Workers Act, 2023 received Royal Assent.

The Act introduces employee-friendly amendments to the Employment Standards Act, 2000 (ESA), the Occupational Health and Safety Act (OHSA) and the Employment Protection for Foreign Nationals Act, 2009 (EPFNA). Its amendments came into effect upon Royal Assent on 26 October 2023.

The Act's key amendments to the ESA include:

- Employee-friendly amendments to reservist leave provisions of the ESA;
- Measures to ensure that the employee count criteria triggering the mandatory notice period in case of layoffs is not affected by employees working remotely; and
- Empowering the government to specify the written information that an employer must provide to employees and prospective employees.

The Act also amends the OHSA to increase the maximum fines for offenses under the OHSA to CAD 2 million, up from previously CAD 1.5 million.

Lastly, the EPFNA amendments include the establishment of the highest maximum fines applicable in Canada for any employer or individual convicted of taking possession of or retaining a foreign national's passport or work permit.

ESA amendments

Reservist leave

The Act's amendments to reservist leave provisions of the ESA include:

- Providing for employment protection from day one of employment for reservists who are deployed for emergency operations inside Canada;
- Reducing the required length of service for reservist leave employment protection for all other reasons from three months to two months of service; and
- Expanding entitlement to reservist leave to include treatment, recovery or rehabilitation related to a physical or mental health illness, injury, or for a medical emergency occurring during deployment or reservist training activities.

Remote workers' layoff notices

The new Act provides that the "location at which an employer carries on business" includes an employee's private residence for certain purposes. As a result, the employee count triggering certain layoff statutory provisions remain unaffected by employees working remotely. This change is to ensure that in the event of layoffs, employees working remotely are entitled to the eight-week minimum termination notice period or payment in lieu, to which employees working on the employer's premises are entitled.

Information for New Employees

The Act authorizes the government to specify the written information that employers must provide to employees and to prospective employees, including information about pay, work location and working time.

Background

The Ontario government introduced Bill 79, Working for Workers Act, 2023, to Parliament on 20 March 2023 with the goal of enhancing protections for remote workers and precarious employees. A previous legislation – The Working for Workers Act, 2021 which received Royal Assent on 2 December 2021, had already introduced a series of employee-friendly provisions, such as banning non-compete agreements, requiring recruiters and temporary work agencies to be licensed, and requiring employers with 25 or more employees to institute policies on employees' rights to disconnect.

Belgium

Larger employers must appoint a “trusted person”, as of 1 December 2024

Published 15 November 2023

Effective 1 December 2023, employers with at least 50 employees must appoint a “trusted person” as an additional measure for preventing psychosocial risks. Failure to do so, may result in either a criminal fine of up to EUR 4,000 or an administrative fine of up to EUR 2,000 depending on the public prosecutor’s decision on whether to process the case in a criminal court or not.

Employers with less than 50 employees must appoint a trusted person, only if all trade union delegation members request it; or, in the absence of a trade union delegation, if all employees request it.

Employers with at least 20 employees who rely on an external service provider in lieu of a prevention advisor specialized in the psychosocial aspects of work are also required to appoint a trusted person.

Currently, appointing a trusted person is not mandatory, unless all staff delegates of the Committee for Prevention and Protection at Work (*Comité pour la prévention et la protection au travail, CPPT*) request it.

Trusted person’s roles and responsibilities

The appointed trusted person will assume one of the key specialized roles aimed at preventing psychosocial risks. This person can therefore be involved in the implementation of psychosocial risk analysis and collaborate with the company’s psychosocial risk prevention advisor.

The trusted person has an advisory and mediation responsibility in internal procedures, which allow to informally resolve issues in a confidential manner.

The law requires the appointed trusted person to undergo a training of at least five days within two years of their appointment.

Employer Actions

According to a law of 5 November 2023, by 1 December 2023, employers with at least 50 employees must appoint a trusted person as an additional measure of preventing work-related psychosocial risks.

Employers must ensure that the appointed trusted person undergoes a training of at least five days within two years of their appointment.

The appointment of a trusted person remains optional for employers with less than 50 employees and is only mandatory if certain conditions are met.

Failure to appoint a trusted person may result in administrative or criminal fines of up to EUR 4,000.

Underlying legislation

Law of 5 November 2023 laying down various provisions relating to work (*Loi du 5 novembre 2023 portant des dispositions diverses relatives au travail*), was published in the Official Journal (*le Moniteur belge*). The text of the law states that it will "enter into force on the first day of the month following the month in which the new legislation is published in the Official Journal".

Formula for calculating the mobility budget introduced by royal decree

Published 7 November 2023

Effective 1 January 2024, two methods for calculating mobility budgets have been set by Royal Decree.

Since 2019, employers have been able to offer a mobility budget to their employees as an environmentally sustainable alternative to a company car and are increasingly doing so. However, clarifications on how to calculate mobility budget amounts was pending a royal decree, which has now been published.

There are two mobility budget calculation methods, namely the actual cost method and flat-rate cost method.

Employers offering a mobility budget can select either method for on the one hand determining mobility payment amounts, and on the other hand assessing the value of an environmentally friendly company car i.e., one of the options available to employees for using their mobility budget.

The mobility budget

The mobility budget is a voluntary arrangement that allows employers to offer employees who receive (or are eligible to receive) a company car, the opportunity to spend the equivalent of the total cost to the company of a car (referred to as the total cost of ownership – TCO) on more environmentally-friendly commuting options. An employee's mobility budget is the TCO of the vehicle that the employee is eligible for.

In practice, this means that if an employer decides to offer the mobility budget as a benefit, an employee will be able to relinquish a company car (or their eligibility to receive one as a benefit) in exchange for a mobility budget.

It should also be noted that as of 1 January 2023, the annual mobility budget amount must range between EUR 3,000 and EUR 16,000 and may not exceed 20% of an employee's gross salary.

Mobility budget usage options are grouped under three pillars, which are subject to distinct income tax and social contribution treatments. These are:

- Pillar I, under which the employee can choose a more environmentally friendly company car, e.g., a car emitting less CO2, or an electric car. This option is subject to the same income tax and social contribution incentives as a company car benefit.
- Pillar II, allows an employee to use their income tax and social contribution exempt mobility budget in whole or in part to finance more sustainable commuting options, namely:
  - Gentle mobility (*la mobilité douce*), e.g., bicycle, dicycle, scooter, etc.),
  - Public transport,
  - Organized collective transportation (shared vehicle, carpooling, etc.), or
  - Under certain conditions, use the mobility budget towards the payment of housing expenses.

- Pillar 3, under which an employee who does not fully use their mobility budget on Pillar 1 or Pillar 2 options, can receive the remaining balance as a once-a-year lumpsum cash benefit that is subject to a special social contribution of 38.07%.

Underlying legislation

Royal decree implementing articles 8, § 5, and 12, § 5, of the law of March 17, 2019 concerning the establishment of a mobility budget, and modifying the royal decree of March 21, 2019 taken in execution of the law of March 17, 2019 concerning the establishment of a mobility budget (*Arrêté royal portant exécution des articles 8, § 5, et 12, § 5, de la loi du 17 mars 2019 concernant l'instauration d'un budget mobilité, et modifiant l'arrêté royal du 21 mars 2019 pris en exécution de la loi du 17 mars 2019 concernant l'instauration d'un budget mobilité)*, was published in the Official Journal (*le Moniteur belge*) on 29 September 2023.

New calculation methods

Effective 1 January 2024. employers will have two formulas to choose from for calculating employee mobility budget amounts and to determine the cost of a Pillar I vehicle.

In each case either of the two formulas may be selected, and the choice will remain for a period of three years. For instance, the employer may opt to use the flat-rate cost method for determining employees' mobility budgets and the actual cost method for determining the cost of a Pillar I vehicle.

The selected method for calculating employees' mobility budget must, to the extent possible, be the same across all employees. When the actual cost formula is selected, there may be cases in which there is no actual expenses to refer to, for example, for newly recruited employees, or employees becoming eligible for a company car for the first time following a promotion. In such cases, the employer may apply the flat-rate cost formula.

Furthermore, according to the provisions of the Royal Decree, the mobility budget is calculated per employee and is based on the vehicle that the employee effectively selects. However, in practice employers have been allowed to calculate the mobility budget based on a reference car, i.e., the car associated by the employer with a job category. When combined with the flat-rate method, relying on a job category reference vehicle simplifies calculations for employers. According to the report to the King that accompanied the Royal Decree, the option to use a job category reference vehicles remains possible.

Actual cost method for calculating the mobility budget

The Royal Decree provides an extensive list of allowable expenses to be included in the actual cost calculation, provided that:

- each expense item is only accounted for once (for example if vehicle maintenance expenses are included in the lease agreement of a vehicle, they cannot be accounted for separately); and
- the expense is one that is included in the employer's vehicle policy, i.e., the company rules governing the conditions for granting and using a company vehicle.

According to Article 3 of the Royal Decree, allowable expenses are the costs of rent or lease, or, if the car is purchased, the annual depreciation in value at an annual rate of one-fifth of the cost of the environmentally

friendly vehicle, to which any additional expenses are added, provided such expenses are not already included in the lease amount.

Added expenses include:

- interest on borrowed capital,
- fuel and electricity costs,
- administration costs related to fuel and charging cards,
- annual depreciation of 20% of the cost of the charging station and its installation,
- charging station maintenance and repair costs,
- charging station and charging cable management costs,
- tolls and parking costs,
- washing, maintenance and repair costs,
- replacement car costs,
- costs for making the vehicle roadworthy,
- costs for replacing, changing, and storing the tires,
- expertise costs when returning the vehicle at the end of the contract or if there is a change in the driver,
- inventoried repair costs upon return of a vehicle at the end of the contract,
- insurance costs (incl. franchise fees),
- costs of the roadworthiness test,
- costs of services management,
- vehicle registration tax,
- road tax,
- employer's CO2 solidarity social contributions,
- any non-recoverable VAT on the above listed expenses,
- tax on the non-deductible portion of the above listed expenses, and
- tax on that part of a benefit in kind constituting a disallowed expense.

Starting 1 January 2024, employees' mobility budgets will correspond to the gross annual average cost of a Pillar I vehicle, calculated over the previous four years (or less if the car was made available for less than four years); and the actual cost of a Pillar I vehicle will correspond to the current years' expenses.

The costs of an environmentally friendly company car and the related expenses within the framework of the employer's company car policy, is equal to the sum of the actual expenses listed above as they relate to a vehicle paid for by the employer.

Flat-rate cost method for calculating the mobility budget

Under the flat-rate method there is a formula for a rented or leased car that is based on the rent or leasing cost, and a separate formula for purchased cars by the employer that is based on the list price of the car.

Regardless of whether the car is purchased or rented/leased, the flat-rate mobility budget calculation entails calculating fuel expenses (provided fuel costs are not yet included in the lease price), which are as follows:

- Total distance of 6,000 kilometers for private purposes, plus two times the employees' home-to-work commuting distance, times 200 days per year; times
- Fuel cost per kilometer set at 30% of the tax-exempt flat-rate kilometer allowance at the time of the calculation of the flat-rate budget. Currently, 30% of the quarterly-adjusted flat-rate kilometer allowance (*Indemnité kilométrique avec indexation trimestrielle*) is EUR 0.128 per km, i.e., 30% of EUR 0.4259 for the fourth quarter of 2023.

The calculation of the flat-rate budget of a Pillar I vehicle is based on the cost of fuel per kilometer at the beginning of the year. The flat-rate fuel per kilometer allowance indicated above will be adjusted prior to the effective date of the new calculation methods, i.e., 1 January 2024.

The flat-rate cost calculation method of the mobility allowance for leased or rented vehicles is equal to:

- the annual rent or lease expenses, plus the average annual additional expenses that are in the employer's car policy, but not included in the vehicle's rental or lease agreement, plus
- non-deductible VAT, plus
- tax on non-deductible car expenses, plus
- CO_2 solidarity contributions, plus
- fuel expenses (according to the calculation method outlined above).

The flat-rate cost calculation method of the mobility allowance for purchased or lease-financed vehicles is equal to:

- one-fourth of the catalogue value of the vehicle (including any non-deductible taxes), plus
- CO_2 solidarity contributions, plus
- fuel expenses (according to the calculation method outlined above).

Resources

Detailed information for employers, including procedures for implementing a mobility budget as an benefit are provided on the government's official Mobility Budget website (in French and in Dutch).

France

France: AGIRC-ARCCO pension point purchase price and purchase value increased

Published 17 November 2023

Effective 1 November 2023, the AGIRC-ARCCO pension point value (*la valeur de service du point),* which serves to calculate the amount of the retirement benefit that will be paid to the insured is set at EUR 1.4159, i.e., an increase of 4.9%.

Pension benefits are calculated by multiplying the insured's lifetime pension points by the pension point value at retirement.

Effective 1 January 2024, the AGIRC-ARCCO pension point purchase price (*la Valeur d'achat du point*), which is used to convert employer and employee contributions into number of pension points accrued by an employee, will increase from EUR 18.7669 to EUR 19.6321, i.e., an increase of 4.61%.

The AGIRC-ARCCO pension point value and purchase price are annually adjusted in November. The above parameters were set by *Circulaire Agirc-Arrco 2023-10-DT* of 9 November 2023.

Resources

Pension point purchase price and pension point purchase value – Time Series (*Valeurs de service du point et salaires de référence / valeurs d'achat du point – Historique*).

Calculation of AGIRC-ARCCO contributions in points (*Le calcul des points cotisés Agirc-Arrco*)

AGIRC-ARRCO national interprofessional agreement revalues pensions, and adopts measures in line with the state pension reforms

Published 17 November 2023

On 5 October 2023, social partners signed a new four-year AGIRC-ARRCO national interprofessional agreement (*Accord national interprofessionnel sur la retraite complémentaire AGIRC-ARRCO di 5 Octobre 2023*), which sets out the strategy for a pilot exercise aimed at aligning the management of AGIRC-ARRCO with the state pension reforms adopted under the Law on corrective financing of social security for 2023 (*La loi de financement rectificative de la sécurité sociale pour 2023*), which was promulgated on 14 April 2023 and came into effect on 1 September 2023.

AGIRC-ARRCO four-year national interprofessional agreement

The key measures of the national interprofessional agreement (*l'accord national interprofessionnel, ANI*) are:

- The revaluation of AGIRC-ARRCO pensions;
- Abolition of the solidarity coefficient (*coefficient de solidarité*) also referred to as *le malus,* and partial abolition of the increasing coefficient (*le coefficient majorant)* or *le bonus*; and
- Changes to the conditions for combining work and retirement.

Revaluation of AGIRC-ARRCO pensions

Effective 1 November 2023, AGIRC-ARRCO pensions increase by 4.9%.

Over the 2024 to 2026 period, the annual revaluation will be indexed to the inflation rate, reduced by a "sustainability factor" of 0.40 points.

Abolition of the bonus-malus measures

Since 1 January 2019, incentives and disincentives encouraging delayed retirement applied. Specifically, a temporary solidarity coefficient, which is a reduced AGIRC-ARRCO pensions by 10% for three years, has applied to the majority of individuals born after 1957 who receive a full state pension (certain exceptions apply, e.g., individuals with a disability, or those who delay their retirement by at least one year).

- In connection with state pension reforms, which increased the statutory retirement age, social partners have decided to:
- abolish the solidarity coefficient (*le malus*):
  - effective immediately upon retirement for members whose retirement starts on 1 December 2023; and
  - effective 1 April 2024, for members whose retirement takes effect before 1 December 2023.
- abolish the increasing coefficient (*le bonus*) for all members born on or after 1 September 1961 whose retirement from the basic social security plan takes effect on or after 1 December 2023.

However, the increasing coefficient (*le bonus*) will remain granted to members who postpone their retirement by two to four years, and who are not affected by the state pension reforms.

Combined work and retirement incentivized

The state pension reforms amended the conditions for combining employment and retirement. Previously, combining employment and retirement entailed contributing without acquiring additional pension benefit entitlements.

With the state pension reforms, when a retired individual re-enters the labor force, under certain conditions their social contributions generate new retirement benefits.

The AGIRC-ARRCO ANI aligns with the state pension reforms by adopting similar measures for supplementary retirement.

Effective 1 January 2024, full-time employed members, receiving state pension benefits at full rate from the statutory retirement age, will be entitled to additional AGIRC-ARRCO pension benefit entitlements acquired within the limit of the annual Social Security ceiling, EUR 43,992 (in 2023), i.e., a monthly ceiling of EUR 3,666.

Background

The AGIRC-ARRCO supplementary pension for private sector employees is managed by social partners – organizations representing employers and employees, who periodically negotiate the strategic agreements and ensure oversight, with the primary rule of maintaining reserves equivalent to six months of projected benefits due over a 15-year period, i.e., up to and including 2037.

Italy

2024 Budget Bill includes several employment and benefits-relate provisions

Published 17 November 2023

On 14 November 2023, the Ministry of Finance submitted the 2024 Budget Bill to the Senate, where the legislative process begins. Budget review approval by both Chambers of Parliament is due by 31 December 2024 for entry into force starting 1 January 2024.

The 2024 Budget Bill includes several employment and benefits relate provisions. Key measures are detailed below.

Employee-favorable taxation of benefits

Productivity bonus

Under the provisions of the 2024 Budget Bill productivity bonuses of up to EUR 3,000 gross per year would continue to be taxed at 5% (instead of ordinarily 10%) for those earning less than EUR 80,000.

The reduced taxation would apply to performance bonuses or to other payments related to productivity, profitability, quality, efficiency, and innovation, as well as to any profit-sharing payments.

Tax exemption of in-kind benefits

In-kind benefits, i.e., goods and services offered by employers to their employees up to EUR 1,000 per year (compares to currently EUR 258 per year), or up to EUR 2,000 per year for employees with dependent children (compares to currently EUR 3,000) would be exempt from income tax.

Incentivized parental leave through increased pay

The 2024 Budget Bill would enhance parental leave entitlements and encourage parents to take advantage of parental leave, with the additional of a month of leave paid at 60% of an employee’s salary (instead of 30% of salary).

Currently (since 2023), parents are entitled to one month of parental leave paid by the National Institute for Social Security (INPS), at 80% of their salary, and nine months of optional parental leave (formerly called optional maternity leave), paid at 30% of their salary.

The 2024 Budget Bill would introduce an additional optional month of parental leave paid at 60% of salary which could be used by either parent within the first 6 years of the child's life. The balance of eight months of parental leave would continue to be paid at 30% of the employee’s salary.

Mothers exempt from employee contributions

Mothers with at least two dependent children would be exempt from the employee's share of social security contributions in 2024, if their youngest of two dependent children is 10 years of age or less, or in cases where the mother has more than two dependent children, they would be exempt from the employee's share of social contributions until the youngest child reaches the age of 18 year.

Low earners subject to reduced contributions

On of the core measures of the 2024 Budget Bill entails continuing the reduced employee social security contributions, with the goal of increasing households' disposable income.

The 2024 Budget Bill would extend the measures applicable over the second half of 2023 and affecting some 15 million employees to continue applying through end 2014. These measures comprise a 7% reduction in social security contributions for employees earning less than EUR 25,000 and a 6% reduction for employees earning between EUR 25,000 and EU 35,000.

Legislative process

The State Budget Bill for financial year 2024 and the three-year budget plan for the period 2024-2026 (*Disegno di legge Bilancio di previsione dello Stato per l'anno finanziario 2024 e bilancio pluriennale per il triennio 2024-2026*) are submitted to the Senate for the legislative process to start unfolding. The Budget Bill must be approved by both Chambers of Parliament by 31 December to enter into force by 1 January.

Additionally, by end November 2023, the European Commission (EC) expresses its opinion on the Planned Budget Document (*Documento Programmatico di Bilancio*) from a public finance perspective.

Ireland

Employer-paid sick leave entitlement increases as of 1 January

Published 5 November 2023

Effective 1 January 2024, employees with at least 13 weeks of continuous service for their employer become entitled to a maximum of five days of employer-paid sick leave per year, up from previously three days.

The change is part of the four-year phased implementation of statutory sick pay (SSP) introduced by the Sick Leave Act 2022, which rolls out in four phases, with employees entitled to a maximum of three days of statutory sick leave in 2023, five days in 2024, seven days in 2025, and ultimately 10 days in 2026, provided they have 13 weeks of continuous service for the employer. The entitlement to sick pay started on 1 January 2023.

Employee eligibility

Since 1 January 2023, full-time and part-time employees have been eligible for statutory sick pay during their statutory sick leave days, provided they:

- have worked for their employer for at least 13 continuous weeks prior to taking sick leave,
- are certified by a general physician as being unable to work

Employees are entitled to sick pay, if they are on probation, are interns undergoing training, an apprentice, or a temporary agency worker.

Until 1 January 2023 – the date of entry into effect of the Sick Leave Act 2022, many employers paid sick leave to their full-time employees on a voluntary basis, but only rarely to their low-paid or temporary employees.

Payment during sick leave

During statutory sick leave employees are entitled to 70% of their normal daily earnings, up to EUR 110 per day. Their entitlement is calculated based on their average gross normal daily earnings over 13 worked weeks preceding the start of the sick leave.

Normal daily earnings include bonuses or allowances that are paid regularly (i.e., which do not change from week to week), but exclude overtime pay.

Exempt employers

The Sick Leave Act 2022, provides that an employer who is experiencing severe financial difficulties can apply to the Labor Court for an exemption to pay statutory sick pay. If an exemption is granted, it will be for a period of between three to 12 months.

Record keeping requirement

Employers must maintain records of all statutory sick leave taken by employees and retain such records for four years.

The records must include:

- the duration of employment of an employee who avails of statutory sick leave,
- the employee's dates and times of statutory sick leave, and
- the statutory sick leave pay amount.

Failure to maintain and/or retain accurate records may lead to employer conviction and is subject to fines of up to EUR 2,500.

Employer Actions

Effective 1 January 2024, the maximum number of mandatory employer-paid sick leave days per year increases to five days for eligible employees (up from previously three days).

Employers are advised to:

- Review their internal leave policies to ensure alignment with changes in statutory requirements;
- Ensure that their payroll departments or payroll administrators adjust their system parameters to reflect the change in the maximum number of employer-paid sick leave.
- Update communication materials to inform employees of their paid sick leave entitlements.

To avoid sanctions, including fines, employers must continue to keep records of all statutory sick leave taken by employees and retain such records for at least four years.

Underlying legislation

The Sick Leave Act 2022, was published in the Irish Statute Book on 20 July 2022. The Commencement Order for the Sick Leave Act 2022 was published on 29 November 2022, as did the related statutory instrument, the Sick Leave Act 2022 (Prescribed daily rate of payment) Regulations 2022. The employer paid leave provisions became mandatory effective 1 January 2023.

The full name of the Sick Leave Act 2022 is: The Act to provide that employees shall, subject to certain conditions, be entitled to up to and including 3 statutory sick leave days; to provide that the Minister may, subject to certain conditions, vary the number of statutory sick leave days; to provide that employees shall be entitled to payment, calculated in the prescribed manner, in respect of statutory sick leave; to make provision for the Labour Court, in certain circumstances, to exempt an employer from the provisions of this

Act; to provide for the keeping of records; to amend the Workplace Relations Act 2015; and to provide for related matters.

Resources

Citizens Information: Sick leave and sick pay

Netherlands

Timeline for transitioning to new pension system to be extended shortly

Published 11 November 2023

On 10 November 2023, the government announced the Council of Ministers' decision to provide additional time to ensure a careful transition to the new pension system introduced by the Future of Pensions Act.

Following public consultations that ended on 7 October 2023, a bill extending the transition period for future pensions now goes to the Council of State for advice.

This bill provides that the various transition dates included in the Future Pensions Act would be transferred to an Order in Council (*Algemene Maatregel van Bestuur, AMvB*), and that the final transition date would be postponed to 1 January 2028 via the Order in Council.

Background

This change had already been requested by the Senate and agreed to during Senate reviews of the Future of Pensions Act.

The Future of Pensions Act provides that pension funds have until 1 January 2027 to transition to the new system. However, the legislative process preceding its entry into force which involved the House of Representatives, and the Senate took more time than anticipated, thereby reducing the initially planned transition time for pension funds to comply.

The cabinet was to due to issue an Order in Council extending the end of the transition period by one year, i.e., from 1 January 2027 to 1 January 2028.

The amendment to the law that is now being submitted to the Council of State would remove the 1 January 2027 date mentioned in the Future of Pension Act, to mention and extend the end of the transition date in an Order in Council. Doing so ensures that the end of transition date can be more easily adjusted if needed. Other dates and deadlines currently indicated in the Futures of Pensions Act would remain unchanged.

The cabinet is expected to issue an Order in Council extending the period until 1 January 2028 soon.

Underlying legislation

Amendment to the Pension Act, the Wage Tax Act 1964 and some other laws in connection with the extension of the transition period to the new pension system (*Wijziging van de Pensioenwet, de Wet op de loonbelasting 1964 en enige andere wetten in verband met de verlenging van de transitieperiode naar het nieuwe pensioenstelsel*).

Portugal

Tax-exempt limits apply to employer-paid work from home allowances

Published 2 November 2023

Effective 2 October 2023, tax-favorable limits apply to allowances paid to employees for expenses incurred as a direct consequence of remote working.

Employer allowance payments to cover additional expenses incurred by employees as a direct consequence of working remotely will not be considered as income for tax purposes or included in the base remuneration for the calculation of employer and employee social security contributions, provided they are below the following limits:

- EUR 0.10 per day for residential electricity expenses;
- EUR 0.40 per day for internet service expenses; and
- EUR 0.50 per day for personal computer or equivalent personal IT equipment

The above limits may be increased by 50%, when the allowances to cover the employee's remote work expenses are provided for by a negotiated collective agreement.

Decree No. 292-A/2023 of 29 September 2023 which sets the above limits, explicitly stipulates that the exemptions only apply to employer payments related to the professional use of goods or services provided by the employer (either directly or indirectly). In other words, the employee is required to financially incur the costs of electricity, internet service, and/or a computer (or equivalent) under normal market conditions.

Legislative context

The government's Decent Work Agenda (*Agenda do Trabalho Digno*), Law No. 13/2023 of 3 April 2023 (*Lei No. 13/2023 de 3 de abril 2023*) which came into effect 1 May 2023, introduced a number of remote work-related measures, which included reimbursements or allowances payment by the employer to cover certain additional expenses incurred by employees working remotely.

Law No. 13/2023 stipulates that employer allowances or reimbursements paid to employees for expenses directly resulting from the acquisition or use of computer or telematic equipment required for remote work are exempt from personal income tax, including communications, energy, and maintenance costs.

The Law further stipulates that the exemption applies up to a limit set by ministerial decree.

The stated limits had not been set by the executive branch of the government until Decree No. 292-A/2023 of 29 September 2023.

Employer Actions

Effective 2 October 2023, daily allowances paid by employers to cover remote working employees' expenses related to electricity, internet services, and computers and peripheral equipment are exempt from income tax and social contributions, provided they do not exceed EUR 0.10 for electricity, EUR 0.40 for internet service, and EUR 0.50 for personal computer and peripherals.

Employers must ensure that their payroll departments or service providers adjust their systems to reflect the tax and social security contribution exemptions that apply to these allowances.

Underlying legislation

Decree No. 292-A/2023 (*Portaria No. 292-A/2023*), was published in the Official Journal (*Diário da República*) on 29 September 2023.

The government's Decent Work Agenda (*Agenda do Trabalho Digno*), Law No. 13/2023 of 3 April 2023 (*Lei No. 13/2023 de 3 de abril 2023*) was published in the Official Journal on 3 April 2023, and came into effect 1 May 2023,

Singapore

Duration of government-paid paternity leave and of unpaid infant care leave double

Published 21 November 2023

Effective 1 January 2024, the duration of unpaid infant care leave is increased from six to 12 days per year, and the duration of government-paid paternity leave is increased from two weeks to four weeks. The changes apply to children with a formal intent to adopt or who are born on or after 1 January 2024.

Although the duration of government-paid (or government-reimbursed) paternity leave will double, employees' mandatory entitlement to paternity leave remains two weeks. In other words, the additional two weeks of government-paid paternity leave remain to be offered on a voluntary basis by employers.

These changes comprise amendments of the Children Development Co-Savings Act introduced as part of the many provisions of the 2023 Budget. The 2023 Budget outlines the government's strategy for the period 1 April 2023 through 31 March 2024.

The entitlement and eligibility criteria and the specifics of these family leave benefits are detailed below.

Government-paid paternity leave

The Government-Paid Paternity Leave (GPPL) scheme provides support for fathers of newborn Singapore citizen children and encourages shared parental responsibility.

Eligibility for government-paid paternity leave

Working fathers, including foreign national employees, are eligible for GPPL provided the following criteria are met:

- The employee's child is a Singapore citizen.
- The employee is or had been married to the child's mother between conception and birth.
- The employee has been continuously employed for at least three months prior to the birth of the child.

For adopted children, the father, including foreign national employees, must meet the following criteria:

- The employee's adopted child is a Singapore citizen.
- The employee has been continuously employed for at least three months prior to the date of their formal intent to adopt.

Fathers of children who are not Singapore citizens are not entitled to paternity leave. However, under the provisions of Article 87A of the Employment Act 1968 each foreign national parent is annually entitled to two days of employer-paid childcare leave.

Government-paid paternity benefit

For a child born before 1 January 2024 (or child with a formal intent to adopt dated on or after 1 January 2024), the government will reimburse the employer for two weeks of paternity leave, capped at SGD 2,500 per week or a total of SGD 5,000.

For a child born on or after 1 January 2024 (or child with a formal intent to adopt dated on or after 1 January 2024), the government will reimburse the employer for two weeks of paternity leave, capped at SGD 2,500 per week or a total of SGD 10,000. The additional two weeks of government-paid paternity leave are subject to the employer's agreement to voluntarily grant the additional leave.

Unpaid infant care leave

Currently, an employee is annually entitled to 6 days of unpaid infant care leave for a Singapore citizen child under the age of two years, provided they have at least three months of continuous service with their employer. Adoptive parents of a Singapore citizen child, become eligible only after the Adoption Order is passed. The leave is capped at a total of 12 days for any one child.

Effective 1 January 2024, an employee's annual entitlement unpaid infant care leave is increased from six days to 12 days, capped at 24 days for any one child.

The entitlement cannot be carried over to the following year; and is not transferable across parents (unchanged).

Employer Actions

Employers must align their leave policies, procedures, and practices with the new paternity leave and infant care leave provisions for eligible employees.

Employers should consider offering more than the mandatory two weeks of paternity leave to eligible fathers (and possibly all fathers), given that government-paid paternity leave benefits will be paid for up to four weeks to fathers of Singapore citizen children with a formal intent to adopt or who are born on or after 1 January 2024.

Employers who by policy offer more than the mandatory two weeks of paternity leave will, in the case of children with a formal intent to adopt or who are born on or after 1 January 2024, should ensure that their payroll departments or payroll administrators apply for reimbursement of pay during the additional weeks of paternity leave for employees eligible under the GPPL scheme.

Employers may also need to revise certain employment contracts to ensure compliance with doubling of the statutory duration of the unpaid infant care leave.

Finally, employers are advised to revise their relevant staff communication materials to ensure their eligible employees are informed of their new entitlements.

Budgetary process

The Singapore government's financial year starts on April 1 of each year and ends on 31 March of the following year.

The budgetary process led by the Ministry of Finance starts in April of each year when the executive branch of the government formulates its annual strategy and associated budget for achieving its goals. The government strategy and budget go through public consultations in December. In February the MoF delivers the Budget Statement and introduces what is referred to as the Supply Bill for Parliamentary debates. The Supply Bill provides for financing the government's annual plan and undergoes three readings by Parliament prior to being enacted.

The 2023 Budget, which included the paternity leave and infant care leave amendments, was delivered by the Minister of Finance on 14 February 2023.

Resources

- Government-Paid Paternity Leave (GPPL) Scheme
- Unpaid Infant Care Leave (UICL)

South Africa

High Court ruling extends the scope of maternity leave benefits beyond pregnant mothers

Published 8 November 2023

On 25 October 2023, the Gauteng High Court ruled maternity leave sections of the Basic Conditions of Employment Act, 1997 (BCEA) and their corresponding provisions under the Unemployment Insurance Fund Act, 2001 (UIF ACT) as unconstitutional and invalid.

The High Court ordered interim changes that subject to confirmation by the Constitutional Court, would apply until the underlying legislation is amended by Parliament.

Specifically, the High Court ruled that Sections 25, 25A, 25B and 25C of the BCEA discriminate between mothers and fathers; and between categories of parents based on whether a child is born of the mother; conceived by surrogacy; or adopted.

Similarly, the High Court found the corresponding sections of the UIF ACT (i.e., sections 24, 26A, 27 and 29A) to be invalid.

Interim provisions pending Constitutional Court confirmation

The High Court ordered interim changes that subject to confirmation by the Constitutional Court, would apply until the underlying legislation is amended by Parliament to reflect the High Court's ruling. The interim provisions are to ensure that a gender-blind approach to parental leave and related social benefits applies – one that would entitle all categories of parents to the same leave benefits.

Under the interim provisions:

- Parents of a natural birth can agree on which parent would take the entire four months of parental leave or split the four-month entitlement period between themselves. Meaning all employees, irrespective of gender would be entitled to up to four months of maternity leave, provided that the combined leave taken by both parents does not exceed four months in total; and
- Parents of an adopted child younger than the age of two years as well as parents in a surrogacy arrangement would jointly be entitled to four months of maternity leave. Currently, parents of an adopted child or a child born through surrogacy are entitled to 10 consecutive weeks of leave in total.

The interim provisions would effectively treat all parents equally (excluding those adopting a child older than two years) in terms of leave entitlements and related UIF benefits.

The High Court's ruling remains to be confirmed by the Constitutional Court, after which the parliament will have two years to amend the underlying legislation.

Should the High Court's ruling be confirmed by the Constitutional Court, employers will have to align their family leave policies with the High Court's interim provisions, until Parliament approves legislation amending the BCEA.

Many employers top up UIF maternity benefits to ensure mothers receive 100% of their salary while on maternity leave. This practice will have implications that would need to be carefully assessed if fathers also become entitled to four months parental leave.

Details of the case

The case involved a married couple, two of four applicants to declare sections 25, 25A, 25B and 25C of the BCEA, and the corresponding sections of the UIF ACT unconstitutional and invalid on the basis that in terms of duration of leave they discriminate between the mother and father; and between various categories of parents based on whether a child is born of the mother; conceived by surrogacy; or adopted.

The couple's choice was to have the father be the primary caregiver so that the mother could return to work at the couples business. However, according to section 25 of the BCEA, the mother is entitled to four months of paid maternity leave while the father to a maximum of 10 days of unpaid paternity leave (per provisions of the UIF Act).

The married couple held that both parents should be entitled to share the four months of paid leave entitlement. The Third and Fourth Applicants (The Gender Commission, and Sonke Gender Justice – a women's rights organization) held that each parent should have four months of contemporaneous parental leave. Their respondent in the case was the Minister of Labour.

Ultimately, the father was able to arrange a longer and partially unpaid leave with his employer.

Underlying court ruling

Van Wyk and Others v Minister of Employment and Labour (2022-017842) [2023] ZAGPJHC 1213 (25 October 2023)

United Kingdom

Regulations clarifying employers' annual leave pay obligations to be in force by 1 January 2024

Published 13 November 2023

On 8 November 2023, after public consultations on statutory annual leave entitlements, the government submitted Draft Regulations – The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 to Parliament.

The Draft Regulations require the approval by resolution of each House of Parliament prior to coming into effect starting 1 January 2024, as currently intended.

Annual leave entitlements and pay provisions

Currently, employees are entitled to 5.6 weeks of paid statutory annual leave. This comprises four weeks provided by regulation 13 of The Working Time Regulations 1998 (WTR), known as EU-derived leave, (because is derived from an EU Directive), and 1.6 weeks provided in regulation 13 A , referred to as domestic or additional leave.

Primarily due to numerous EU case law, different rules govern these two components of annual leave. One such case law provides that the four weeks of EU derived leave should be paid at the employee's "normal remuneration", without defining what is meant by "normal remuneration", which in practice is generally understood to include certain types of bonuses and commission. In contrast, the 1.6 weeks of additional leave is required to be paid at the employee's "basic remuneration" and this is generally held not to include bonuses and commission.

The post-Brexit Retained EU Law (Revocation and Reform) Act 2023 eliminated EU interpretive effects. This introduced the possibility that the legal precedents determining the scope of 'normal remuneration' could be invalidated.

Calculation of annual leave payments

Public consultations of May 2023 on retained EU legislation aimed to gather stakeholder opinions on merging the four weeks of EU Directive related annual leave and 1.6 weeks of additional leave into a single annual leave entitlement of 5.6 weeks.

Based on the outcome of public consultations the Draft Regulations maintain the two distinct components of statutory annual leave with employees remaining entitled to four weeks of annual leave at normal pay and 1.6 weeks of annual leave at basic pay.

However, the Draft Regulations would amend Regulation 16 of WTR to incorporate certain principles from retained EU case law to specify the types of payments employers must include when calculating annual leave pay, with the aim of maintaining employees' annual leave entitlements.

In particular, paragraph(3ZA) of the Draft Regulations stipulates that the following types of remuneration are to be included when determining the amount of a week's pay:

- payments, including commissions, which are intrinsically related to the performance of employee's tasks as provided for by the terms of their contract;
- payments for professional or personal status relating to length of service, seniority, or professional qualifications; and
- other payments, such as overtime payments, which have been regularly paid to a worker in the latest 52 weeks.

Other proposed annual leave provisions

The Draft Regulations include other proposed annual leave-related provisions. If approved by resolution of each House of Parliament, starting 1 January 2024:

- Irregular hours and part-year workers would accrue annual leave at the rate of 12.07% of their hours worked. This proposed amendment stems from a separate January 2023 consultation on calculating annual leave entitlements for part-year and irregular hours workers, which sought input on changing the calculation of entitlements to either an average over a 52-week period, or as an accrual at the rate of 12.07% of hours worked;
- Rolled-up annual leave pay – a system according to which employers include employees' annual leave pay in their basic pay, rather than paying it when the employee takes their annual leave, would be authorized for irregular hours and part-year workers, but employers would be required to calculate the pay based on the employee's total earnings in a pay period.
- Employees would no longer accrue COVID-19 carry over leave but would be able to use previously accrued leave until 31 March 2024; and
- European Court of Justice (ECJ) rulings allowing carry over of unused annual leave due to sickness or family-related leaves would be reintroduced in UK legislation.

Resources and related documents

- Explanatory Memorandum to the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023
- List of statutory instruments related to the Retained EU Law (Revocation and Reform) Act 2023

About Alliant Global

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