

2024

WORKATION IN: BELGIUM

Overview of Mandatory Employee Protection Law



Workation in: Belgium – Mandatory employee protection law

In a connected world, mobile delivery of work performance is becoming increasingly more common. The most popular phenomenon here is probably the so-called "workation". When employers allow work from abroad, it is not uncommon for mandatory employee regulations to be ignored, regularly unintentionally and out of lack of knowledge.

However, according to Art. 8 (1) 2 and Art. 9 (1) Rome I Regulation, mandatory employee regulations must be taken into account. Usually, these concern personal occupational health and safety law enacted in the public interest for reasons of public welfare.

When allowing an employee to work temporary in **Belgium**, the following mandatory regulations are to be observed by any employer based in an EU member state regardless of the applicable laws in that state and any contractual choices of law.

The following list is only intended as an overview and cannot replace a specific case assessment.

- 1. Minimum wage** The minimum wage in Belgium is regulated nationally by the National Labour Council and sectorally by the joint committees, depending on the employer's activity. Currently, the national minimum wage is €1.994,18 per month or € 12,1104 per hour when working 38 hours per week.
- 2. Minimum paid leave** On the basis of the Laws of on the annual holidays of employed persons coordinated on 28 June 1971, the minimum leave entitlement for employees is two working days per full month worked. Therefore, in a six-day week, the employee is entitled to 24 days of leave, while in a five-day week, the employee is entitled to 20 days of leave. In addition, further days of leave may be contractually agreed. The number of holiday days is determined by the length of the employee's service in the holiday year (the calendar year preceding the year in which the holiday is to be taken). Some sectors provide for additional days of leave.
- 3. Public holidays** In principle, it is not possible to work on public holidays, according to the Act of 4 January 1974 on public holidays. However, there are strict exceptions, allowing workers to be employed on public holidays. These days are in any case paid. Furthermore, according to Art. 6 of the Act of 4 January 1974 on Public Holidays, if a public holiday falls on a Sunday or an ordinary non-working day, it shall be replaced by an ordinary working day. The replacement day then takes the place of the original public holiday. Some sectors provide for additional days off.

Name	Date	Scope of application
New Year	January 1st	nationwide
Easter Monday	Monday after easter	nationwide
Labour Day	May 1st	nationwide
Ascension Day	sixth Thursday after easter	nationwide
Pentecost Monday	Monday after 7th Sunday after Easter	nationwide
National Day	July 21 st	nationwide
Assumption Day	August 15	nationwide
All Saints' Day	November 1 st	nationwide
Armistice	November 11	nationwide
Christmas	December 25th	nationwide

4. Maximum working time

The rules on working hours do not apply to certain workers. Working hours are limited to 8 hours per day and 38 hours per week, according to the Labour Act of 16 March 1971. The 38-hour limit must in principle be respected on an annual basis. However, there are derogations at sectoral level for the maximum working time and for the reference period. It is possible to work overtime but only in specific and strict cases, in principle subject to compensatory rest and extra pay. In addition, it is also allowed under certain conditions to have voluntary overtime worked. Finally, it is in principle forbidden to work on Sundays, except in strict derogations.

5. Minimum rest periods

In principle, there must be 11 hours of rest between two work performances in accordance with the Labour Act of 16 March 1971. To these 11 hours must be added, in principle, the Sunday rest period, bringing this rest period to a consecutive duration of 35 hours. The worker is also entitled to a break during the day after 6 hours of work. The break is mostly regulated at sectoral level, but must otherwise last 15 minutes. However, derogations from these principles are possible and these rules do not apply in certain cases.

6. Occupational safety laws

The employer's obligations regarding safety and well-being at work are mainly regulated in the Act of 4 August 1996 on the well-being of workers during the performance of their work and in the Code on well-being at work. The obligations are numerous and also depend on the type of workplace and the work performed. The employer is obliged to set up a special body within the company and/or to call in a specialised external service to support him.

7. Maternity Protection provisions

The issue of maternity in the employment relationship is addressed in several regulations.

Once the pregnancy has been announced, the worker may be absent from work with continued pay for prenatal examinations if certain conditions are met. It is also forbidden to make her work overtime, except in exceptional cases. This also applies to breastfeeding mothers. The worker may not be forced to do night work eight weeks before the birth.

Maternity leave is 15 weeks (17 weeks for twins), of which at least 7 days must be taken before the expected date of delivery and 9 weeks after delivery. The remaining weeks can be split. Extensions and/or conversions are possible in some cases.

8. Protection of young people at work

Unless there are exceptions, it is only possible to work from the age of 15, when the young person is no longer subject to compulsory full-time education, in accordance with the law of 16 March 1971 on work.

Certain activities are in any case prohibited, in particular dangerous jobs. The employer also has more stringent obligations in terms of health, safety and welfare at work, in accordance with the Code on Welfare at Work.

Young people may not work more than 8 hours a day and 38 hours a week, with exceptions in certain sectors. The cases where overtime is allowed are also very limited. When the working time exceeds 4.5 hours, they are entitled to half an hour's rest. When the working time exceeds 6 hours, the rest is one hour, of which half an hour must be taken in one go. The rest time between two performances must be at least 12 hours. Finally, in addition to Sunday, the worker must have a compulsory rest day on Saturday or Monday.

Young people may not work on Sundays, public holidays and the additional day of rest, except in strictly regulated cases. Night work (between 8 p.m. and 6 a.m.) is also prohibited, except in the case of exceptions strictly provided for in the legal texts.

Finally, employment contracts with students are strongly regulated.

9. Anti-discrimination provisions

The principle of non-discrimination is covered by several pieces of legislation, including the Act of 10 May 2007 to combat certain forms of discrimination, the Act of 30 July 1981 to suppress certain acts inspired by racism and xenophobia, and the Act of 10 May 2007 on equal treatment for men and women.

The general act of 2007 to combat certain forms of discrimination prohibits discrimination on the grounds of age, sexual orientation, marital status, birth, property, religious or philosophical belief, political belief, trade union belief, language, state of health, disability, physical or genetic characteristic or social origin or condition.

The 1981 Act prohibits grounds of nationality, alleged race, skin colour, descent, national or ethnic origin.

The Equal Treatment for Men and Women Act 2007 prohibits grounds of sex, pregnancy, assisted reproduction, childbirth, breastfeeding, motherhood, family responsibilities, gender identity, gender expression, sex characteristics and medical or social transition.

A difference in treatment may in some cases be justified by a legitimate aim where the means of achieving that aim are appropriate and necessary or in some cases by an essential and determining occupational requirement

10. Reporting obligations to authorities when taking up work

The reporting requirements are more related to social security and depend on whether or not the worker is subject to Belgian social security.

11. Miscellaneous

Many other laws also remain applicable in view of their public policy nature. These include, for example, the rules on dismissal laid down in the Act of 3 July 1978 on employment contracts or the possibility of obtaining an end-of-year bonus.

Feel free to contact us if you have any questions about Belgian labour law.

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