Termination of employment legislation digest

Country profile – Belgium

Updated in 2007 by Angelika Muller, ILO

Sources of regulation

Dismissal is governed under Belgian law by the provisions of the Act of 3 July 1978 respecting employment contracts and by the orders relating to this Act. Some collective labour agreements, concluded under the auspices of the National Labour Council (CNT) and joint committees (CP), have restricted or modified the exercise of the legal right to terminate employment.

Special rules on collective dismissal have been laid down under Collective Labour Agreement (inter-industry) No. 24 of 2 October 1975 concluded by the CNT (as amended) and by a Royal Order of 24 May 1976 (as amended).


Scope of legislation

The Act of 3 July 1978 governs contracts of employment concluded by wage earners, salaried employees, commercial travellers and domestic servants. It also applies to workers employed by the State or by any province, town, commune, federation of communes, public establishment administered by a commune, publicly recognized institution or private educational establishment subsidized by the State, who are not subject to a public code of rules.

Secs. 2, 3, 4 and 5 of the Act of 3 July 1978 define the concepts of “wage-earner’s contract of employment”, “white-collar” and “blue-collar” contracts of employment, “commercial traveller’s contract of employment” and “domestic servant’s contract of employment”.

Please note that this country profile was last updated in 2007 and therefore might not reflect the current state of the law on termination of employment. For updated information, you are invited to consult the EPLex database.
Contracts of employment

A contract of employment may be concluded for a specified period or clearly specified piece of work or for an unspecified period. A contract of employment may not be concluded for life (sec. 7, Act of 3 July 1978).

A contract of employment concluded for a specified period or a clearly specified piece of work should be set down in writing. In the absence of a written document, the contract is subject to the same conditions as a contract concluded for an unspecified period (sec. 9, Act of 3 July 1978). Where the parties have concluded several successive contracts of employment for a specified period without their having been interrupted for any reason attributable to the worker, the parties are deemed to have concluded a contract for an unspecified period, unless the employer can establish that the contracts were justified by the nature of the work or other legitimate reason (sec. 10, Act of 3 July 1978).

Contracts of employment for white-collar and blue-collar earners, salaried employees, commercial travellers and domestic servants may contain a trial clause which must be stated in writing. The trial period for blue-collar earners may not be less than seven or more than 14 days (sec. 48(1) and (2), Act of 3 July 1978). In the case of white-collar employees, it may not be less than one month or more than three or six months, depending on the remuneration (sec. 67(1) and (2), Act of 3 July 1978). The first 14 days of domestic servants’ contracts of employment are regarded as a trial period (sec. 109, Act of 3 July 1978).

Termination of employment

Pursuant to sec. 32 of the Act of 3 July 1978, the contract may be terminated:

- by the expiry of the term;
- by the completion of the work for which the contract was concluded;
- by the will of either party, if the contract was concluded for an unspecified period; or if there is a serious cause for its termination;
- on the worker’s death; or
- by force majeure;

Sec. 33 of the Act of 3 July 1978 states that the death of the employer does not terminate the contract, exception made for cases when the death of the employer puts an end to the enterprise activities, or if the individual employment contract was concluded intuitu personae.

Dismissal

In Belgium, an employer may dismiss a worker without giving a reason for termination, provided that he or she gives notice or pays compensation as prescribed by law.
During the trial period, notice for the dismissal of blue-collar workers may be given any time after the eighth day up to the end of the trial period. Termination may occur without notice or compensation. In the case of white-collar workers, termination is possible either by notice given seven days in advance or by the payment of compensation in lieu of notice corresponding to seven days’ wages.

Where a contract has been concluded for an unspecified period, either of the parties may terminate it by giving notice. The notice of termination must be in writing and indicate the starting date and length of notice (sec. 37(1) and (2), Act of 3 July 1978).

According to sec. 35, either of the parties may terminate a contract without notice or before the expiry of its term if there is just cause for doing so. Any serious misconduct making it immediately and finally impossible for the employer and the worker to cooperate at work constitutes serious cause.

A contract may not be terminated for serious cause either without notice or before the expiry of its term if the occurrence that would have justified such termination has been known for at least three working days to the party seeking to terminate the contract.

“Improper dismissal” means the dismissal of a blue-collar worker who has been engaged for an unspecified period if the reasons for the dismissal are unrelated to his or her skills or conduct or are not based on the operational requirements of the undertaking, establishment or service (sec. 63, Act of 3 July 1978).

While the employer is not obliged to give reasons for dismissal (except for just cause or in the case of certain “protected” workers), he or she cannot act in an arbitrary manner. In the event of a contested termination of employment, the burden is on the employer to prove that the termination is not unfair and it is up to the judge to render a decision.

The applicable statutes do not define the concept of “improper dismissal” with respect to white-collar workers. According to case law, dismissal is improper if it is done in a malicious manner, with the intention of causing harm to the employee, or is effected in such a rash manner that it leaves no doubt as to the existence of bad faith.

“Collective dismissal” means any dismissal ordered for one or several reasons not attributable to the individual worker and affecting over a period of 60 days a number of workers:

- at least equal to ten in undertakings employing between 20 and 100 workers;
- at least 10 per cent of the number of workers in undertakings employing an average of between 100 and 300 workers;
- at least equal to 30 in undertakings employing an average of at least 300 workers.

There are two categories of workers who enjoy protection against dismissal: those covered by the general prohibition and those protected for particular reasons. Staff representatives on the works council of the undertaking and members of the committee on occupational safety and health may be dismissed for economic or technical reasons or for just cause only, and for no other reason. Certain other workers are protected from dismissal because of their positions or circumstances.

- A trade union delegate may be dismissed only on grounds unrelated to the exercise of his or her functions.

- A pregnant woman may not be dismissed as from the date on which the employer is informed of the state of pregnancy until the end of the month following the postnatal maternity leave, except for reasons unconnected with the physical state resulting from the pregnancy or confinement (sec. 40, Labour Act of 1971).

- A worker who is called up for service in the armed forces may be dismissed only on grounds unrelated to the worker’s fulfilment of military obligations (sec. 38(3), Act of 1978).

- An industrial doctor may be dismissed only on grounds related to his or her competence or for reasons which cause no harm to his or her technical or moral independence.

- A worker who has filed a complaint to the Inspectorate of Social Legislation, or has brought an action before the Labour Court with the object of ensuring compliance with equality of treatment between men and women with respect to conditions of employment, may be dismissed only for reasons unconnected with the complaint or action (sec. 136, Act of 4 August 1978).

- A worker holding a political office may not be dismissed, except on grounds unrelated to the fact that the worker holds a political office (sec. 5, Act of 19 July 1976).

- A worker on paid study-leave may be dismissed only on grounds unrelated to this circumstance (sec. 117, Act of 22 January 1985).

**Notice and prior procedural safeguards**

The period of notice varies depending on the category of worker. Different rules apply to blue-collar workers, white-collar workers and domestic servants.

The period of notice should be 28 days for blue-collar workers who have served for less than 20 years in the undertaking, and 56 days in the case of workers who have been employed in the service for at least 20 years (sec. 59, Act of 3 July 1978). Pursuant to sec. 60 of the Act of 3 July 1978, if the wage earner has worked in the service of the undertaking for less than six months, and if it is stated in the contract of employment, the notice period may be shortened to a minimum of seven days. Collective agreement No 75 of 20 December 2000, extended by Royal Decree of 10 February 2000, increased the terms of notice for blue-collar workers. However, the criticised inequality between
blue-collar and white-collar workers remains, as Collective agreement No. 75 does not cover all economic sectors.

The period of notice for white-collar workers is to be calculated on the basis of remuneration and the length of service completed by the white-collar worker (sec. 82, Act of 3 July 1978). Where the annual gross remuneration does not exceed EUR 27,597 (in 2006), the period of notice to be given should be at least three months if the employee has been engaged for five years; this period is increased by three months on the commencement of each further period of five years’ service with the same employer. If the employee is 65 years old, the notice period is six months.

Where the annual remuneration is over EUR 27,597 (in 2006), the periods of notice may be fixed by agreement, but such periods may not be less than those specified above. In the absence of an agreement, legal proceedings may be initiated in order to determine a “suitable period of notice”, which will be determined on the basis of age, length of service, duties and remuneration.

The provisions of sec. 59, Act of 3 July 1978, apply to domestic servants’ contracts of employment. During the trial period the employer may terminate the contract without paying compensation (sec. 117, Act of 3 July 1978). In order for dismissal with leave to be valid, it must be done in writing and state the beginning and duration of the notice period.

Works councils, trade unions or joint committees must be informed of or consulted on the dismissal of protected workers.

- The works councils must be consulted for the dismissal of an employee over 60 years of age. The union delegation must be informed of the dismissal of employees over 60 years or of a trade union delegate for serious cause.
- The trade union organization must be informed of the dismissal of a trade union delegate on any grounds.
- The competent joint committee is to be informed of the dismissal on economic and technical grounds of members of the works councils and members of the committee on occupational safety and health.

For unprotected workers there is no information or consultation obligation, nor is there a requirement for the existence of an agreement with the bodies representing the staff.

Where an employer who intends to order a collective dismissal gives written notice to the workers’ representatives, he or she must give notice of the fact, by registered letter, to the director of the regional department of the National Employment Office (secs. 6 and 7, Royal Order of 24 May 1976). The notice must indicate:

- the name and address of the undertaking;
- the nature of the undertaking’s activities;
- the competent joint committee for the undertaking;
- the number of workers employed;
the reasons for the dismissal;

- the number of workers to be dismissed, classified by sex, age group, occupational category and department;

- the period over which the dismissals are to become effective; and

- the consultations held with the workers’ representatives in accordance with Collective Labour Agreement No. 24.

The employer must provide the workers’ representatives with a copy of the notice, and they may submit their comments, if any, to the director of the regional department of the National Employment Office (sec. 8, Royal Order of 24 May 1976).

Collective dismissal is subject to a period of 30 days’ notice after the date on which the employer notified his or her intention of ordering a collective dismissal (sec. 9, Royal Order of 24 May 1976).

Further to the Renault case (related to the sudden announcement of the closure of the Renault plant in Vilvoorde in 1997), some changes to the procedure for collective dismissals were introduced by the promotion of Employment Act of 13 February 1998 clarifying the obligation of employers to consult with workers’ representatives and creating an obligation on employers to analyse and formally respond to any proposals from workers’ representatives. In addition, sanctions for non-compliance are strengthened to include the reimbursement of any subsidies paid by the federal Government to the employer to create jobs.

Severance pay

In the event of collective dismissal, workers are entitled to compensation from the employer (sec. 7, Collective Labour Agreement No. 10 of 8 May 1973). The amount of compensation is equivalent to one-half of the difference between the net basic remuneration, which is limited up to a certain ceiling, and the unemployment benefits which the worker can claim. Such compensation is due for a period of four months (sec. 11, Collective Labour Agreement No. 10 of 8 May 1973).

Avenues for redress

In the event of a dispute, it is possible to appeal to the Labour Court, which is comprised of three judges, a professional magistrate, a workers’ representative and an employers’ representative. In the case of dismissal for serious cause, the party initiating the dismissal must bear the burden of proof of the reason cited, and in the case of unjustified dismissal, the employee who is claiming compensation must prove the existence of an invalid reason.

When a blue-collar worker is wrongfully dismissed, the employer must pay compensation corresponding to six months’ remuneration, in addition to notice or compensation in lieu of notice (sec. 68, Act of 3 July 1978). In the case of white-collar workers, the employer must pay compensation in lieu of notice plus damages.
In the event of unjustified dismissal, the worker is entitled to compensation in lieu of notice corresponding to the duration of the notice period plus compensation assessed at a flat rate (Order No. 1387 of 15 May 1990 concerning compensation for dismissal).

If notice or dismissal without notice is annulled, the worker is entitled to compensation in lieu of notice, which is equal to the remuneration corresponding to the duration of the notice period to which he or she is entitled (or the difference between the notice given and the period due). If the notice of dismissal does not mention the starting date and length of notice, the employer is required to pay compensation in lieu of notice.

In the event of premature termination of a contract of employment for a specified period, without serious cause, the employer is obliged to pay compensation equivalent to the outstanding remuneration up to the expiry of the contract. This amount should not exceed twice the remuneration corresponding to the duration of the notice period which should have been respected if the contract had been concluded as one of unspecified duration.

There is no entitlement to reinstatement, except for members of the works council and the committee on occupational safety and health, who may request reinstatement if wrongfully dismissed. If the employer refuses to reinstate them, he or she must pay them special compensation.

Further information

* ILO NATLEX _Belgium_

* Site du Service public fédéral « Emploi, travail et concertation sociale » (in French)