

Belgium – new dismissal rules as of January 1, 2014

1. Key principles

By virtue of the Law of December 26, 2013, harmonizing notice periods of blue- collar and white-collar employees, a single regime of notice periods has replaced all the previous ones as of January 1, 2014. As a consequence, as of that date, there is no longer a distinction between blue-collar and white-collar employees with regard to their notice period. In addition, the trial period has been abolished and a generalization of the right to outplacement has been introduced. Finally, Collective Bargaining Agreement n° 109 of February 12, 2014, has introduced a single regime on the motivation of the dismissal as of April 1, 2014.

1. Notice periods

* **General principle**

The new law on the harmonization of employment statutes has introduced for both categories of employees fixed notice periods which are expressed in weeks. Compared to the former regime, the new notice periods are more favourable for blue-collar employees, while they are more disadvantageous for white-collar employees and particularly for those with either a rather low seniority or more than 20 years’ seniority.

The notice periods are calculated in accordance with the seniority acquired at the moment of dismissal. Since the new law, seniority has become a legal term meaning the period during which the employee remained continuously employed by the same company.

The remuneration on the basis of which the indemnity in lieu of notice is calculated, is the remuneration package of the last 12 months of employment.

* **Procedure**

Any employer who wants to dismiss an employee, has to give notice in writing, by registered mail or by bailiff notification. The notice period runs from the first Monday following the receipt of the registered mail. In case of a bailiff notification, the notice starts on the date of notification.

* **Employment contracts with entry into force as of January 1, 2014**

For employment contracts which entered into force as of January 1, 2014, the notice periods for both categories of workers will be determined as follows:

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| **Seniority** | **Termination by the employer** | **Termination by the worker** |
| 0-3 months | 2 weeks | 1 week |
| 3-6 months | 4 weeks | 2 weeks |
| 6-9 months | 6 weeks | 3 weeks |
| 9-12 months | 7 weeks | 3 weeks |
| 12-15 months | 8 weeks | 4 weeks |
| 15-18 months | 9 weeks | 4 weeks |
| 18-21 months | 10 weeks | 5 weeks |
| 21-24 months | 11 weeks | 5 weeks |
| 2-3 years | 12 weeks | 6 weeks |
| 3-4 years | 13 weeks | 6 weeks |
| 4-5 years | 15 weeks | 7 weeks |
| 5-6 years | 18 weeks | 9 weeks |
| 6-7 years | 21 weeks | 10 weeks |
| 7-8 years | 24 weeks | 12 weeks |
| 8-9 years | 27 weeks | 13 weeks |
| 9-10 years | 30 weeks | 13 weeks |
| 10-11 years | 33 weeks | 13 weeks |
| 11-12 years | 36 weeks | 13 weeks |
| 12-13 years | 39 weeks | 13 weeks |
| 13-14 years | 42 weeks | 13 weeks |
| 14-15 years | 45 weeks | 13 weeks |
| 15-16 years | 48 weeks | 13 weeks |
| 16-17 years | 51 weeks | 13 weeks |
| 17-18 years | 54 weeks | 13 weeks |
| 18-19 years | 57 weeks | 13 weeks |
| 19-20 years | 60 weeks | 13 weeks |
| 20 years | 62 weeks | 13 weeks |
| 21-22 years | 63 weeks | 13 weeks |
| 22-23 years | 64 weeks | 13 weeks |
| 23-24 years | 65 weeks | 13 weeks |
| 24-25 years | 66 weeks | 13 weeks |
| 25-26 years | 67 weeks | 13 weeks |
| etc. |  |  |

It has to be noted that with regard to the blue-collar employees, some particular sectors such as the construction industry and the diamond industry are (temporarily) entitled to deviating –this means shorter– notice periods. At the latest in 2018, the new legal above-mentioned notice periods will also apply to this particular sectors, except for the construction industry which benefits from an exception without limitation in time.

Furthermore, in case of dismissal by the employer, an employee who has found another job may terminate the employment contract with a shorter notice period, the so-called counter notice, the duration of which depends of the employee’s seniority:

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| --- | --- |
| **Seniority** | **Counter notice by the worker** |
| 0-3 months | 1 week |
| 3-6 months | 2 weeks |
| 6-12 months | 3 weeks |
| > 12 months | 4 weeks |

Under the new legislation, aimed at enhancing job mobility, a counter notice can only be given by an employee who has found new employment.

However, it should be pointed out that contractual arrangements on an individual or collective basis between employer and employee(s) can grant longer notice periods.

* **Employment contracts with entry into force before January 1, 2014**

For employment contracts that commenced before January 1, 2014, in order to calculate the notice period, two periods will have to be distinguished: the period of the employment contract until December 31, 2013, and the one as of January 1, 2014. For both categories of employees the total notice period will be equal to the sum of the notice period applicable to the first period of the employment contract (until December 31, 2013) and the one applicable to the second period of the contract (as of January 1, 2014).

As mentioned above, the new dismissal rules apply to both categories of employees with regard to the part of their employment contract as of January 1, 2014. However, for the period of the contract until December 31, 2013, different rules apply to blue-collar and white-collar employees.

As regards blue-collar employees, the joint committees can establish their own rules regarding the duration of the notice period. If they do not, according to Collective Bargaining Agreement n° 75, the following notice periods will apply to the part of the employment contract until December 31, 2013:

|  |  |  |
| --- | --- | --- |
| **Seniority** | **Termination by the employer** | **Termination by the worker** |
| 0 - < 6 months | 28 days | 14 days |
| 6 months - < 5 year | 35 days | 14 days |
| 5 year - < 10 year | 42 days | 14 days |
| 10 year - < 15 year | 56 days | 14 days |
| 15 year - < 20 year | 84 days | 14 days |
| > 20 year | 112 days | 14 days |

However, blue-collar employees whose employment contract commenced only after January 1, 2013, will benefit from more favourable notice periods with regard to the part of their employment contract until December 31, 2013:

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| --- | --- | --- |
| **Seniority** | **Termination by the employer** | **Termination by the worker** |
| 0 - < 6 months | 28 days | 14 days |
| 6 months - < 5 year | 40 days | 14 days |

Since for the part of their employment contract until December 31, 2013, blue-collar employees still have a lower notice period than the one they would have been entitled to by application of the new dismissal rules, this difference can be compensated. The National Employment Office (RVA/ONEM) can indeed pay a dismissal compensation indemnity to blue-collar employees. This indemnity is a daily net payment by the National Employment Office covering a period equal to the difference between the total amount of the indemnity to which the employee would have been entitled if his entire seniority would have been after December 31, 2013 and the amount of the severance indemnity paid by the employer upon dismissal of the employee. In order to be entitled to such indemnity, the blue-collar employee must not only have entered into service before January 1, 2014, and be dismissed after December 31, 2013. In addition, he has to have the following seniority upon dismissal:

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| --- | --- |
| **Seniority** | **Date of dismissal** |
| > 20 years | January 1, 2014 |
| > 15 years | January 1, 2015 |
| > 10 years | January 1, 2016 |
| < 10 years | January 1, 2017 |

As regards white-collar employees, a distinction has to be made on the basis of their annual gross remuneration. On the one hand, white-collar employees with an annual remuneration of less than € 32,886 gross will, for the part of their employment contract until December 31, 2013, benefit from a notice period of 3 months per started period of 5 years seniority or any other contractual or regulatory notice applicable. On the other hand, white-collar employees with an annual remuneration of at least € 32,886 gross will be entitled to a notice period of 1 month per started year seniority, with a minimum of 3 months. A discussion is going on as to whether contractual clauses regarding notice periods for this period up to December 31, 2013, are still binding. A literal reading of the law sets these clauses aside; the preparatory parliamentary works make clear these clauses were meant to be upheld. Courts will be invited to rule on this topic.

For the period of the employment contract as of January 1, 2014, both categories of white-collar employees will benefit from the new notice periods mentioned under “Employment contracts with entry into force as of January 1, 2014”.

1. Abolition of the trial period

The new law has abolished the trial period. This means that as of January 1, 2014, it is no longer possible to conclude an employment contract including a trial period clause. The impact of this abolition is triple: firstly, the employer is allowed to dismiss an employee after a period of employment of less than one month, provided that he observes the statutory 2 weeks’ notice, whereas under the former legislation, the employment contract of white-collar employees could not be terminated during the first month of employment. Secondly, in the case of dismissal after an employment of, for instance, 9 months, the employer will have to observe a notice period of 7 weeks instead of 7 days under the former legislation. As a consequence, in the case of a dismissal after an employment of several months, the abolition of the trial period involves a higher dismissal cost for employers. Thirdly, contrary to the rules as applicable until December 31, 2013, employment contracts of definite duration can be terminated with a notice period as applicable to contracts of indefinite duration. Henceforth, employment contracts of definite duration can be terminated during its first half, insofar as this half does not exceed 6 months.

There are two exceptions to the general principle of abolition of the trial period. Firstly, contracts for temporary work and contracts for students can still include a trial period under the new legislation. Secondly, existing trial periods which commenced before January 1, 2014, are still considered as valid.

1. Right to outplacement

The new law introduces a generalization of the right to outplacement, which means that all employees, regardless of their age, who are entitled to a notice period of at least 30 weeks will benefit from outplacement support increasing their employability on the labour market. However, in order to guarantee the current rights of employees of 45 years or more, a dismissed employee of this age group who, however, is not entitled to a notice period of at least 30 weeks, will still benefit from the right to outplacement in accordance with Collective Bargaining Agreement n° 82.

The outplacement package has a duration of 60 hours and a fixed value of 4 weeks’ remuneration, with a maximum of 5,500 €. The employer will be able to deduct this amount equal to 4 weeks’ remuneration from the indemnity in lieu of notice.

Until December 31, 2015, employees will have the choice to either benefit from an outplacement package (and consequently see their notice period respectively indemnity in lieu of notice reduced with 4 weeks’ respectively 4 weeks’ remuneration), or to not accept the outplacement offer and to benefit from the entire notice period or indemnity in lieu of notice.

As of January 1, 2016, the indemnity in lieu of notice will in any case be calculated on the basis of the notice period reduced with 4 weeks, whether the employee accepts the outplacement or not.

As of 2019, if the obligation to provide an outplacement package is not observed, sanctions will be applied in the form of special social security contributions of 3% at the expense of the employer respectively 1% at the expense of the employee.

1. Motivation of the dismissal

Collective Bargaining Agreement n° 109 of February 12, 2014, has introduced a single regime on the motivation of the dismissal. This Collective Bargaining Agreement will enter into effect on April 1, 2014, and will apply to the dismissals which are implemented are notified as from this date.

According to this CBA, employees with at least 6 months’ seniority will have the right to know the concrete reasons which have led to their dismissal. If the employer will not have communicated these reasons in writing on his own initiative, the employee will be able to request the employer to provide him therewith. The employee will have to address his request to the employer by registered mail. In the case of termination with immediate effect, the registered mail will have to be sent within two months after the end of the employment contract. In the case of termination with observance of a notice, the registered mail will have to be sent within 6 months after the notification of the notice and at the latest 2 months after the end of the employment contract. If the employer does not communicate the concrete reasons for dismissal or does not communicate them within 2 months after receipt of the request, he owes, in addition to the notice period or the indemnity in lieu of notice, a lump-sum civil fine equal to two weeks’ remuneration.

If the employee does not accept the concrete reasons for his dismissal, the judge can be asked to determine whether or not it concerns a so-called manifestly unreasonable dismissal. A dismissal is considered as unjustified if, at the one hand, it does not relate to the employee’s capability or behaviour nor to the course of business of the company, and, at the other hand, a normal and reasonable employer would never have proceeded thereto. If the judge admits the manifestly unreasonable character of the dismissal, he can sentence the employer to a compensation equal to minimum 3 weeks’ remuneration and maximum 17 weeks’ remuneration, in function of the degree of the unreasonableness of the dismissal.

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