

LEGAL ALERT

CRISIS PREMIUM IN CASE OF TERMINATION OF BLUE-COLLAR WORKERS: AN UPDATE

At the end of December 2009, we already informed you that blue-collar workers dismissed between 1st January 2010 and 30 June 2010 are, provided that certain conditions are fulfilled, entitled to a lump sum crisis premium of 1,666 EUR net. In this legal alert we shortly repeat the principles and give an update in the light of the recent publication of two Royal Decrees implementing the crisis premium.

I. Principles

Following the Act pertaining to various provisions of 30 December 2009, blue-collar workers¹ who are dismissed between 1 January 2010 and 30 June 2010, are, except in certain cases, entitled to a lump sum crisis premium of 1,666 EUR on top of the notice period or the corresponding indemnity in lieu of notice.

Blue-collar workers are not entitled to the crisis premium if their employment agreement is terminated for serious cause, during the trial period, in view of the retirement or early retirement or in the framework of a reorganization, provided that the blue-collar workers are able to participate in an employment cell. For part-time employees, the crisis premium is calculated by taking into account their part-time employment.

At the moment the employment agreement comes to an end, the employer must pay 555 EUR to the blue-collar employee. The balance of 1.111 EUR is paid by the National Employment Office (RVA-ONEM). On 19 February 2010, a Royal Decree was published pertaining to the payment by the RVA – ONEM. This Royal Decree also obliges the employers to submit an “enclosure-C4-crisis premium” to dismissed blue-collar workers. We explain this obligation in Chapter II.

We also informed you that there are exceptions to this general repartition key (555 – 1.111 EUR). On the one hand, the employer must pay the entire crisis premium if he failed to comply with the legally prescribed formalities, which we will explain in Chapter III.

On the other hand, an employer can in certain situations be exempted from any payment. One of these exemptions is open to employers dealing with economic difficulties, employing less than 10 employees and who obtain an exemption. The conditions an employer must fulfil to obtain this exemption are laid down in a Royal Decree published on 16 February 2010. This

¹ Under Belgian law, a distinction is still made between blue-collar and white-collar workers.

Royal Decree also determines the procedure to be complied with and the pieces of evidence to be submitted.

II. The obligation to submit an “enclosure-C4-crisis premium”

Following the Royal Decree published on 19 February 2010, employers must submit a document entitled “enclosure-C4-crisis premium”² to blue-collar workers dismissed between 1 January 2010 and 30 June 2010, except if these are not entitled to the crisis premium. Also the blue-collar workers dismissed prior to the publication of the Royal Decree should receive an “enclosure-C4-crisis premium”, as the Royal Decree sorts its effects as of 1 January 2010.

With the “enclosure-C4-crisis premium” the dismissed blue-collar worker can receive payment of 1.111 EUR or the entire crisis premium from the RVA-ONEM. The template of this document is available on the website of the RVA-ONEM.

III. Formalities to be complied with in case of dismissal

The employer has to bear the entire crisis premium if he failed to notify “the dismissal” by registered letter or by means of a bailiff’s writ. We remark that there is incongruence between the Dutch and French version of the Act: the Dutch version refers to “termination with notice” whilst the French version mentions the larger notion of “dismissal”³. This inaccuracy already appeared in the draft Act, and has not been rectified in the final version. The official comments of the Ministry of Employment and the RVA-ONEM however mention that not only the termination with notice is meant, but also the termination with immediate effect.

The consequence of this interpretation of the Act is that an employer, who wants to terminate the employment agreement of a blue-collar worker with immediate effect, must send a registered letter (or appeal to a bailiff). If the employer fails to do so (for instance if he submits a termination letter to the employee), he must pay the entire crisis premium.

It is further problematic that the fact that the registered letter sorts its effect only three days after the date of sending also applies in case of termination with immediate effect. This is contradictory to the general rule that the employment agreement immediately comes to an end in case of termination with immediate effect.

In its official information letters for employers, the RVA-ONEM nevertheless confirms that the termination “with immediate effect” only comes into effect on the third working day following the day on which the registered letter was sent. According to the RVA-ONEM, the employer who terminates the employment agreement by means of a registered letter must consequently also pay the remuneration until the registered letter sorts its effect.

² The document C4 is an official document to be delivered by the employer to the employee whenever the employment agreement comes to an end. The C4 is to be used by the employee in order to apply for unemployment benefits.

³ Dismissal is the general term for termination with notice and termination with immediate effect.

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4 March 2010 – The content of this memorandum provides general information on the subject matter and cannot be seen as binding legal advice. For more information we ask you to contact Leen Holvoet, Senior Attorney Labour and Employment or your usual Liedekerke contact person.