



## Laga Newsflash

### Risk of increased dismissal costs as of 2019?

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#### Dismissal package: two-thirds notice and one-third employability measures

The Act of 26 December 2013, which removed the differences between blue-collar and white-collar workers regarding notice periods and the so-called "waiting day" (*carenzdag / jour de carence*), provided an obligation to increase the employability of dismissed employees with a notice period or indemnity, in lieu of notice of at least 30 weeks.

The new article 39ter of the Act on Employment Agreements indeed required joint labour committees to conclude a collective bargaining agreement **by 1 January 2019** at the latest, in which a third of the notice period or corresponding indemnity is converted into measures to increase employability.

The other two-thirds still represent a notice period to be performed, or an indemnity to be paid, although the alternative measures cannot decrease the notice period to less than 26 weeks.

#### No package means additional social security contribution

The Act of 26 December 2013 also provided that if an employee is eligible for a dismissal package including employability increasing measures, but performs the entire legal notice period, or receives the entire corresponding indemnity, an additional social security contribution is due (as of 1 January 2019).

This contribution amounts to 3% at the employer's expense and 1% at the employee's expense, and should be paid on the salary paid during the one-third notice period (exceeding the 26<sup>th</sup> week).

To this point, none of the joint labour committees have concluded a collective bargaining agreement defining the 'dismissal package' for employees with a notice period or indemnity of at least 30 weeks.

In principle, it could thus be argued that currently, if an eligible dismissed employee is performing the entire notice or receives the entire indemnity, the above mentioned additional social security contributions are due, thereby increasing dismissal costs.

## Social security office: initiative with the industries

Based on a communication by the Federation of Enterprises in Belgium (VBO/FEB), the National Office for Social Security (NOSS) has taken the position that if there is no industrial collective bargaining agreement, there are no employability increasing measures to be complied with. Therefore, the contributions sanctioning employers who do not provide the dismissal package cannot be imposed.

Although the ultimate decision remains with a court judge, it seems that dismissal costs do not increase, notwithstanding the (somewhat) clear legal provision.

The Employment, Pensions & Benefits-team is readily available to assist companies in case of a contemplated dismissal, and to evaluate whether the dismissal package should include employability increasing measures or not.

**Stijn Demeestere, Advocaat-vennoot/Avocat associé**  
Tel: + 32 2 800 71 42, Email: [sdemeestere@laga.be](mailto:sdemeestere@laga.be)

**Julien Hick, Advocaat-vennoot/Avocat associé**  
Tel: + 32 2 800 70 66, Email: [juhick@laga.be](mailto:juhick@laga.be)

**Karel De Schoenmaeker, Advocaat/Avocat**  
Tel: + 32 800 71 69, Email: [kdeschoenmaeker@laga.be](mailto:kdeschoenmaeker@laga.be)

**Heleen Franco, Advocaat/Avocat**  
Tel: + 32 800 71 58, Email: [hfranco@laga.be](mailto:hfranco@laga.be)



Laga  
Gateway building  
Luchthaven Brussel Nationaal 1J  
1930 Zaventem  
Belgium

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