

Rules applicable to strikes



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A national day of action is being organised by a coalition of labour unions today (25 February 2021) in Belgium. We would like to remind you of the rules applicable to strikes:

- During a strike, performance of the employment contracts of the striking employees is suspended. Therefore, the employer has no obligation to pay salary to the striking employees for the day(s) of the strike.
- It is strictly forbidden for the employer to use interim employees in the event of a strike. However, this prohibition is only applicable per department or per personnel category affected by the strike. For example, if only blue-collar workers are on strike, the employer can decide to use interim workers to replace white-collar employees.
- The employer cannot discriminate against striking employees based on their participation in a strike and such participation cannot be a reason for disciplinary action or dismissal. However, certain accompanying circumstances could justify disciplinary sanctions or dismissals (e.g. sabotage).
- For employees willing to work, it is important to distinguish between (i) employees who cannot reach the workplace and (ii) employees who are able to reach the workplace.
 - (i) Employees who cannot reach the workplace due to a strike (e.g. public transport strike or the blockage of an industrial area) can benefit from guaranteed salary if they can prove fulfilment of the following conditions:
 - a. the employee was able to work at the time (s)he was going to the workplace;

- b. the action took place unexpectedly on the employee's way to work;
 - c. the delay or absence is due to a cause independent of the employee's will and the employee made sufficient efforts to reach the workplace;
 - d. the action must not be taking place within the employee's company.
- (ii) For employees who can reach the workplace, the employer is obliged to provide work, unless it can prove that circumstances prevent it from doing so. In that case, the employer does not have to pay salary to the employees. However, they could benefit from a temporary unemployment allowance, under certain strict conditions.