

New measure for critical sectors: voluntary overtime hours exempted from social security contributions



Mr. Kris De Schutter
Partner

kris.de.schutter@loyensloeff.com

On 24 June 2020, the royal decree of 5 June 2020 was published which deals with a new measure in the context of the COVID-19 outbreak. In particular, the royal decree exempts the net amounts received for the voluntary overtime hours performed in critical sectors during the second quarter of 2020 from social security contributions.

Which overtime hours are targeted?

The new regime ensures the exemption of payment of social security contributions in relation to certain overtime hours. It concerns the specific overtime hours referred to in the recent Ministerial Decree n°14 of Apr 27, 2020 ensuring the proper organization of work in critical sectors.

This Decree created the possibility for extra voluntary overtime hours. In particular, this Decree increased the number of voluntary overtime hours to 220 hours (i.e. 120 additional voluntary overtime hours).

In order to come within the ambit of these specific overtime hours, the following cumulative conditions apply:

- overtime worked by an employee on a voluntary basis;
- overtime performed during the period from 1 April 2020 through 30 June 2020; and
- overtime performed in a critical sector.

These voluntary overtime hours were in practice very easy to introduce at the workplace. The employer does not have to ask permission from the government nor from any trade union delegation. There is also no need to justify why these overtime hours are performed.

It is sufficient for the employer and the employee to conclude an addendum to the employment

contract. This simple agreement remains valid for a maximum of six months and can easily be renewed.

Which are the critical sectors?

The measure gives this new financial advantage to companies in the so-called critical sectors.

Critical sectors are in essence the crucial sectors ('cruciale sectoren'/'secteurs cruciaux') and essential services ('essentiële diensten'/'services essentiels') which are listed in the Ministerial Decision of 23 March 2020 on urgent measures to limit the spread of the coronavirus COVID-19, as updated on 3 April 2020. A list of these critical sectors can be found here.

The legislator provides an overview of specific services (health care services, transport services, ...) as well as an overview of the joint committees dealing with the relevant sectors. Through the applicable joint committee, employers can easily determine whether or which (part) of their business belong to these so-called critical sectors.

Which amounts are exempted?

It concerns all net amounts received by the employee for the 120 additional overtime hours performed.

In practice, this means that employers should look at the additional voluntary overtime hours performed in the period from 1 April 2020 through 30 June 2020. As mentioned above, these hours will be capped at a maximum of 120 hours. Please note that these voluntary overtime hours do not trigger the grant of compensatory rest periods and do not give rise to overtime payment as a supplement to the normal remuneration.

Following the new measure published this morning, the net remuneration for these 120 overtime hours will not be considered as salary. As a result, no social security contributions will be due on these amounts.

Conclusion

The Belgian legislator has decided to continue safeguarding the smooth organization of work in the critical sectors. All net amounts received by employees in these sectors for 120 additional voluntary overtime hours performed will be exempted from social security contributions. This measure enters into force retroactively on 1 April 2020 and is limited in time until the end of June 2020.

The legislator argues that this is reasonably justified in the light the economic need to support the critical sectors. This is embedded in a framework of other measures taken for the critical sectors, among which are the allowance of successive fixed-term employment contracts and the possibility for companies to post their permanent employees to employers in the critical sectors in

a flexible manner.