Obligations when employing staff in Belgium
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Organisations employing staff in Belgium are required to comply with Belgian labour law and social security regulations.

The obligations and formalities that apply depend on the type of employment (e.g. staff subject to monthly wage withholding, staff subject to the Belgian social security scheme, temporarily seconded staff to Belgium whilst remaining subject to the home country's social security scheme, etc.).

This brochure outlines the (foreign) employer’s compulsory notification and registration duties and requirements for retaining and archiving employment documents. It also summarises Belgian labour law provisions and Belgian payroll administration requirements. When an employee is employed in Belgium and is subject to Belgian social security and/or Belgian wage withholding tax, a Belgian payroll administration must be established. This can be done in the form of a full Belgian payroll administration or a shadow payroll administration, in which the salary is paid elsewhere.

Information on how PwC Legal can assist in complying with these regulations is also outlined herein.
2.1. Dimona

All (foreign) employers in both the private and the public sector are required to file electronic notifications with the National Social Security Office (Rijksdienst voor Sociale Zekerheid/Office National de Sécurité Sociale – hereafter referred to as ‘NSSO’) upon commencement and termination of the employment of all employees. These are known as ‘DIMONA notifications’.

DIMONA is an acronym for the ‘immediate notification’ (Déclaration IMmédiate/ ONmiddelijke Aangifte) filed electronically with Belgium’s NSSO upon commencement and termination of the employment relation between an employer and an employee.

The notification commencement of employment must be made no later than the time at which the employee begins work. The notification required at the end of employment must be filed no later than the first working day following the last day of employment.

1 With the exception of certain categories of employees.
A specific employee category exists in the Dimona application called ‘Dimona without DmfA’. This allows employers to submit Dimona notifications for employees who do not appear in the quarterly electronic social security return (DmfA – “Déclaration multifonctionelle/multifunctionele Aangifte), e.g. because they are not subject to the Belgian social security scheme.

The electronic notification is linked to an electronic staff registry in which employees are listed chronologically by employment start dates.

2.2. Limosa

A foreign undertaking employing an employee temporarily or partially in Belgium must declare the employment (and its anticipated length) on the website of the Belgian NSSO before the actual start of activities in Belgium. This prior notification duty is required for any employee who will be temporarily or partially employed in Belgium and either was (or still is) habitually active in one or more countries outside of Belgium or was hired in a country outside of Belgium.

There are some exemptions from this notification requirement, e.g. for employees who come to Belgium to attend short-term business meetings (i.e. meetings of up to 20 consecutive calendar days, with a total maximum of 60 days per year).
Mandatory registration

From the moment an employer employs staff in Belgium, they must register with a number of agencies.

There are three different types of registration: 1) registration that is mandatory for employers that employ staff subject to the Belgian social security scheme, 2) registration that is mandatory for employers that employ staff subject to Belgian wage withholding taxes and 3) other mandatory registration.
3.1. Registration for staff subject to the Belgian social security scheme

National Social Security Office (NSSO)

All employers employing staff subject to the Belgian social security scheme must register with Belgium’s NSSO. This is the department responsible for collecting social security contributions.

Each quarter, the employer must file an electronic social security return (i.e. the so-called DmfA return), reporting details like hours worked and salary paid and must ensure that all social security contributions are duly paid. This concerns both the employer’s contributions at around 32% of the gross salary (for white-collar staff), disregarding any social security abatements that might apply, and the employee contributions at 13.07% of the gross salary (for white-collar staff). The employee’s social security contributions must be deducted at source by the employer from the employee’s gross salary on a monthly basis.

The percentage of the employer’s social security contributions may differ depending on the joint committee (see below) and the NSSO code in Belgium.

Industrial accident insurance

Employers are responsible for accidents occurring during the performance of work activities and accidents that occur on the way to and from work.

Each employer employing staff subject to the Belgian social security scheme therefore must take out industrial accident insurance with an accredited insurance company in Belgium.

The insurance must begin no later than the day on which the first employee starts working and a late affiliation can result in penalties. Moreover, in case of late affiliation, it is impossible to obtain actual coverage retroactively as of the start of employment.

Insurance premiums are due by the employer and the amount will depend on the employer’s total payroll and risk level to be insured against.
3.2. Registration for staff subject to wage withholding taxes

If the Belgian undertaking is deemed liable for the salary of the employees in question or if the foreign employer has a fiscal permanent establishment in Belgium, there is an obligation to retain monthly wage withholding taxes from the employees’ salaries.

Registering with the Direct Taxes Office

If, due to the employment in Belgium, the employer must deduct such monthly wage withholding taxes from the employee’s salary, the undertaking must register with the Direct Tax Authorities, enabling it to file monthly or quarterly wage withholding tax returns and to remit the withheld amounts towards said Tax Authorities.
3.3. Affiliation with a payroll office

In order to calculate the above-mentioned social security contributions and/or wage withholding taxes on a monthly basis, a Belgian payroll administration must be processed. There are two possible scenarios:

Payment of the employee’s salary is made in Belgium: in this case, a full Belgian payroll must be processed, through which the payment of the salary is made and the necessary deductions are calculated and executed.

Payment of the employee’s salary is made outside of Belgium: in this case, a so-called ‘shadow payroll’ must be processed in Belgium in order to calculate the required deductions, which are subsequently taken into account in the payroll of the country where the employee’s salary is actually paid.

In order to process a Belgian (shadow) payroll, the employer who has to pay Belgian social security contributions and/or deduct and remit wage withholding taxes has to affiliate with a Belgian payroll office of its choice.

3.4. Other registration

External service provider for health and safety in the workplace

Based on the relevant Belgian regulations, every employer who employs personnel in Belgium has to instate an internal service for health and safety by appointing at least one internal prevention advisor to assist in complying with the entirety of the Belgian legislation on well-being at work (including e.g. safety measures in the workplace, preventive measures to protect staff against violence, bullying and sexual harassment at work, etc.).

However, if the (foreign) employer’s internal service for health and safety is not in a position to assist the employer in this respect, e.g. because they are not sufficiently familiar with the Belgian legislation on well-being at work or because the prevention advisors are not present in Belgium, the (foreign) employer must register with an external service provider for health and safety in the workplace to obtain such assistance.

In the case of a foreign employer employing staff in Belgium, this can in principle be an external provider in the employer’s home country, however only to the extent that said foreign external provider is actually capable of assisting the employer in complying with the Belgian legislation and is consequently sufficiently acquainted with said Belgian legislation on well-being at work. If this is not the case, the foreign employer must affiliate with a Belgian external service provider for health and safety in the workplace.

Social security fund for self-employed individuals

Each company subject to Belgian corporate taxation is legally required to register with a social insurance fund for self-employed individuals in order to pay the required annual corporate contribution, the amount of which depends on the company's total balance sheet of the previous calendar year.
In principle, each employer that employs staff in Belgium has to prepare, retain and store a number of employment documents. These documents enable the inspectorate services to examine whether the employer has properly complied with its statutory obligations. They comprise:

- work regulations dealing with salary and employment conditions that are applicable within the company;
- a staff register;
- individual accounts/Belgian salary documents.
This obligation also applies to foreign employers that only partly or temporarily employ staff in Belgium. An exemption, however, exists in this respect. By submitting a Limosa notification (see above), the foreign employer is exempt from having to draw up the above employment documents for a period of 12 months - counting from the date on which its first employee starts working in Belgium - and from appointing a social mandate holder (see below).

After the initial period of 12 months, the foreign employer must nonetheless draw up these employment documents and appoint a social mandate holder.
Work regulations

Any employer employing staff in Belgium must draw up work regulations under Belgian law. The work regulations contain all salary and working conditions applicable within the company. The compulsory content of the work regulations is determined by law.

The work regulations only need to be drawn up once. Only in the event of changes to the legislation on the compulsory content of the work regulations or in the case of changes to the undertaking’s working conditions do amendments have to be made to the work regulations.

A specific procedure must be adhered to in order to be able to instate or amend the work regulations within the undertaking whereby the employees have the opportunity to make any remarks they might have.

Individual accounts and monthly pay slips

Employers must draw up an annual individual account for each employee they employ in Belgium. For each month, quarter and the total year, this individual account gives a summary of the work done by the employee and the salary received for his or her services. For foreign workers, the individual account only has to report the salary related to the work done in Belgium.

One function of this document is to allow the inspectorate services to verify whether the mandatory provisions of Belgian law are being complied with by the employer.

However, drawing up individual accounts does not detract from the fact that the employer also must prepare monthly salary slips for their employees. These monthly salary slips form an integral part of the annual individual account. Indeed, the individual account itself in fact constitutes a summary of all the monthly salary slips that were prepared during the year in question.

Note that these documents are issued automatically in the process of operating a Belgian (shadow) payroll administration.
Staff register

Staff registers no longer need to be kept by employers that fall within the application field of the Dimona regulations. The online Dimona notification already results in an electronic file with all details of employees starting and terminating employment with them and as such acts as a substitution for the staff register.

However, employers still have to keep a general staff register when employing staff that are not covered by said Dimona regulations.

In addition, employers that simultaneously employ staff in different locations (regardless of whether they fall within the application field of the Dimona regulations) do nonetheless have to keep a special staff register at each of those places of work, except at the place where a general staff register is kept.

Written employment agreement

Aside from certain specific exceptions, a written employment agreement is not strictly required under Belgian labour law.

It is however highly advisable to draw up a written employment agreement, detailing the rights and obligations of both parties.

Moreover, a written employment agreement will be necessary for, e.g. part-time workers, a fixed-term or fixed-project agreement, employment agreements for student work or a home-working agreement.

Lastly, we would like to point out that certain clauses, such as non-competition clauses, must be contracted in writing in order to be valid.

Social mandate holder

Foreign employers that employ staff in Belgium but have no establishment in Belgium must appoint a social mandate holder - who has to be a natural person - to keep the Belgian employment documents or comparable documents (the work regulations, the staff register and the individual accounts) on behalf of the employer.

Once the foreign employer has ceased employing staff in Belgium, the social mandate holder must retain the documents for a period of five years.
In addition to the above-mentioned obligations, Belgian legislation requires a number of specific conditions to be fulfilled when a foreign employer posts an employee to work on Belgian territory. Posted employees in this respect are employees who are sent by their foreign employer to temporarily work in Belgium and were either habitually employed in one or more countries outside of Belgium or were hired in a country outside of Belgium.
5.1. Documents and information related to the posting

At the request of the Belgian inspectorate services, a foreign employer that posts employees to work on Belgian territory has to provide these inspectorate services with the below information and documents related to the posting:

• a copy of the employment agreement of the posted worker or other document of equal value;

• information regarding the foreign currency, if applicable, that will be used to pay the wages, the benefits in cash or kind that are linked to the employment in Belgium and the conditions of repatriation of the posted employee;

• overview of the daily working hours;

• proof of payment of the salaries of the posted employees;

• copy of Belgian pay slips and individual accounts (or comparable documents determined by the country of origin for the first 12 months).

Again at the request of the inspectorate services, the employer concerned must provide a translation of the above-mentioned information and documents, either into one of Belgium’s official national languages (i.e. Dutch, French or German) or into English. The documents can be provided in paper form or electronically.

After the end of an employee’s posting to Belgium, the foreign employer is still obligated to provide the inspectorate services upon request with the above-mentioned documents and information related to said posting for a period of one year.

5.2. Appointing a designated contact person in Belgium

Prior to posting an employee to Belgium, the foreign employer must appoint a designated contact person who will liaise with the appropriate inspectorate services on their behalf and must provide the latter upon request with all information and documentation related to the employment of the individuals posted to Belgium.

The designated contact person must be a natural person, whose contact details must be communicated to the Belgian authorities through the LIMOSA-notification that has to be filed for the posted employee (see section 2.2 above). Note that the designated contact person acts for the account of the foreign employer but that the latter remains ultimately legally liable for complying with the requests of the appropriate inspectorate services.
Registration and obligations for staff subject to the Belgian social security scheme

Any employer employing staff in Belgium that are subject to the Belgian social security scheme and possibly wage withholding tax must comply with a number of obligations:

- filing Dimona and/or Limosa notifications;
- registering with the National Social Security Office;
- taking out industrial accident insurance;
- if necessary, affiliation with an external health and safety service provider;
- registering with the Direct Taxes Office (if there is an obligation to deduct monthly wage withholding taxes at source);
- registering with a social insurance fund for self-employed (if the employer is subject to Belgian corporate taxation);
- drawing up work regulations;
- drawing up monthly salary slips and an annual individual account;
- maintaining and retaining a staff register, if applicable;
- drafting written employment agreements in certain cases;
- appointing a social mandate holder (if the employer has no establishment in Belgium);
- in case of posting to Belgium: keeping information and documentation related to the posting and appointing a designated contact person.
Registration and obligations for staff subject to wage withholding taxes only

For employees who are temporarily seconded to Belgium under their home country’s social security scheme or who are partly working in Belgium without being subject to the Belgian social security scheme, but for whom monthly wage withholding taxes are due, the following formalities must be complied with:

- filing Dimona without Dmi/A or Limosa notifications;
- if necessary, affiliating with an external health and safety service;
- registering with the Direct Taxes Office;
- registering with a social insurance fund for self-employed (if the employer is subject to Belgian corporate taxation);
- drawing up work regulations;
- drawing up monthly salary slips and an annual individual account;
- maintaining and retaining a staff register, if applicable;
- drafting written employment agreements in certain cases;
- appointing a social mandate holder (if the employer has no establishment in Belgium);
- retaining information and documentation related to the posting and appointing a designated contact person.
Obligations for posted staff that are not subject to the Belgian social security scheme or wage withholding taxes

- Limosa notifications;
- if necessary, affiliating with an external health and safety service;
- drawing up work regulations;
- drawing up monthly salary slips and an annual individual account;
- maintaining and retaining a staff register;
- appointing a social mandate holder (if the employer has no establishment in Belgium);
- retaining information and documentation related to the posting-secondment and appointing a designated contact person.
Labour law aspects

The labour law aspects that apply when employing staff in Belgium are primarily laid down in Belgian domestic law. These labour law regulations include all the rules on working time, the obligations of employer and employee, the documents governing the employment relationship, special protective measures for young employees, etc.²

However, on an industry level, undertakings also must comply with certain regulations adopted within that particular industry (Collective Bargaining Agreements). Each undertaking in the private sector falls within the application field of a joint committee, which is determined by the undertaking’s principal business.

² Examples: Annual Holidays Act, employment on public holidays, the Employment Agreements Act, the working time and rest periods legislation, etc.
7.1. Joint committee

It is essential for employers to know which joint committee is responsible for their business. A joint committee is a Belgian consultative body of employers and employees set up for each business sector with the aim of grouping together undertakings with similar business activities and developing regulations suited to their specific conditions of work.

The tasks of a joint committee are to enter into collective bargaining agreements, prevent or resolve industrial disputes, advise the government, National Labour Council and the Central Council for Business and carry out any other tasks entrusted to it.

Collective bargaining agreements (CBAs) signed within each joint committee contribute in determining the labour and wage conditions in the undertaking. For instance, a joint committee typically lays down the rules on minimum wages, year-end bonuses, transport costs, the possible granting of eco vouchers and sectoral/supplementary pensions. The applicable joint committee also has an influence on the level of the employer’s social security contributions.
7.2. Mandatory provisions

In principle, parties are free to choose which labour law will apply to the employment agreement entered into between them (or a part thereof). This choice of law can be made at the start, during the performance or upon termination of the employment agreement.

The choice of law may not, however, result in the employee losing the protection under the mandatory provisions of the labour law that would have been applicable but for the choice of law.\(^3\)

In addition, the Act of 5 March 2002 also provides that Belgian mandatory legislation carrying criminal penalties must be adhered to for employees who are posted to Belgium or are temporarily working simultaneously in Belgium and abroad. Hence, in practice, employers must virtually always comply with all more favourable mandatory provisions of Belgian labour law, regardless of the law chosen by the parties.

The term ‘mandatory provisions’ is given a very broad interpretation by the Belgian courts and authorities and includes provisions concerning:

- the rules on annual holidays and bank holidays;
- the pay protection rules (including minimum pay, indexation, end-of-year bonuses);
- all matters governed by the Employment Act of 16 March 1971 (including working time, overtime);
- the rules on well-being and safety at work;
- all collective bargaining agreements declared to be generally binding by royal decree;
- the legislation on dismissal (only in case of habitual employment in Belgium).

Taking into account the above and in the event of an employment in Belgium with choice of a foreign labour law, a comparison therefore has to be drawn between the provisions of the chosen labour law and the mandatory provisions that apply in Belgian labour law. For those instances where the latter offers the employee better protection, the chosen labour law has to be set aside.

The above-mentioned mandatory provisions of Belgian law must always be adhered to from the first day of employment in Belgium.

In this regard, we would like to point out that, although no Belgian salary documents are required to be drawn up during the first 12 months where a Limosa notification is given, the foreign salary documents must show that all the rules relative to minimum pay, end-of-year bonuses, holiday pay, indexation, etc. have been complied with.

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\(^3\) This is the country of habitual employment or, failing such, the place where the undertaking that hired the employee is established.
As detailed in this brochure, when employing staff in Belgium employers must comply with various obligations, making it advisable to seek assistance from a professional service provider to help navigate through the complex requirements.

PwC Legal has an extensive team of legal experts specialised in assisting employers in complying with the above social security and labour law formalities and in setting up a Belgian payroll administration.
We advise employers on all relevant statutory obligations and can also carry out actual procedures on behalf of employers. We take care of compulsory electronic notifications and compulsory registration of the employer with the various agencies, as explained herein. We can also assist employers in preparing and keeping employment documents and can act as a social mandate holder (and if so, also as designated contact person) for a foreign employer in Belgium.

We also have the necessary software to carry out a Belgian payroll administration (gross/net calculations, calculating social security and/or monthly wage withholdings, overtime, etc.) and draw up requisite paperwork (salary slips, individual accounts, accounting documentation, 281.10 fiscal forms, etc.). Specifically, we carry out the following tasks on behalf of employers:

- taking care of the above compulsory registrations;
- processing data concerning monthly salaries and ad hoc payments, and calculating the amounts;
- tax returns for wage withholding tax and quarterly returns and payments to the NSSO;
- preparing employment agreements, a staff register, various employment documents (salary slips, individual accounts, holidays certificates, etc.);
- and more as required.
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