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This issue discusses the fact that employers should bear in mind that the employer social security contribution on *bridge pension indemnities* have repeatedly been increased in the past, and it could very well be that they will again be increased in the future. It also analyses the Law of 16 December 2016 on different provisions regarding the posting of employees.

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Amended employer social security contributions on *bridge pensions*

Traditionally, a number of legislative changes enter into force every 1 January. In recent years, it has also become somewhat of a tradition to amend the legislation on the regime of unemployment with company allowance (previously called *bridge pension*). Having regard to the government's policy of making early retirement more difficult or less interesting, this generally concerned changes making access to the regime more difficult or making the regime less appealing from a financial point of view.

One of the changes concerns the employer social security contribution due on the company allowance, which was modified by the Programme Law of 25 December 2016 (the Law was indeed enacted on Christmas Day). The following contributions now apply if the termination of the employment contract took place after 31 October 2016 and the regime of unemployment with company allowance starts after 31 December 2016:

Age at the start of the regime	New contribution	Previous contribution
Up to 54 (included)	142.5 %	118.75%
55 to 57 (included)	75%	62.5%
58 or 59	75%	62.5%
60 or 61	37.5%	31.25%
62 or older	31.5%	31.25%

The age to be taken into account is the age at the start of the regime of unemployment with company allowance. The percentage of the contribution remains thus the same during the whole regime, irrespective of how gradually the person approaches the age of 65.

The abovementioned percentage applies to the for-profit sector. Different, substantially lower, percentages apply to the not-for-profit sector.

The Law of 27 December 2006 stipulates the possibility of introducing different contributions by Royal Decree during the period a company is recognised by the federal Ministry of Labour as a company that is in difficulties or facing restructuring. A Royal Decree of 29 March 2010 made use of these possibilities and stipulates the following contributions:

Age at the start of the regime	Company in restructuring	Company in difficulties
50 or 51	93.75%	21.88%

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52 to 54 (included)	75%	16.88%
55 to 57 (included)	50%	12.5%
58 or 59	50%	8.13%
60 or 61	25%	4.38%
62 or older	25%	4.38%

These contributions nevertheless only apply during the period a company is recognised as undergoing difficulties or restructuring. Bearing in mind this recognition can at most be granted for a 2-year period, there is generally also a 6-month period covered by the integration indemnity (and sometimes also the period covered by the complementary indemnity in lieu of notice), and the period of recognition generally retroactively starts at the moment the collective dismissal procedure was initiated, these specific contributions at most apply during a very limited number of months.

The government announced its intention to modify these specific contributions during the period of recognition as company in difficulties or company in restructuring. At the time this article was written, no Royal Decree amending this Royal Decree of 29 March 2010 was published in the Official Journal.

Employers should thus bear in mind that the employer social security contribution on *bridge pension indemnities* have repeatedly been increased in the past, and it could very well be that they will again be increased in the future. These increases nevertheless often apply to situations where the employer could at the time of the dismissal not know the precise contributions that will apply. The amendment introduced by the Programme Law of 25 December 2016 apply for instance to a dismissal which took place at the beginning of November 2016.

Frederic Brasseur

Law of 16 December 2016 on different provisions regarding the posting of workers

The Law of 16 December 2016 on different provisions regarding the posting of employees entered into force on 30 December 2016 and transposes European Directive 2014/67/EU into national legislation. The purpose of this Directive is to prevent and fight abuse in the posting of workers by making sure provisions regarding compliance with salary and working conditions are applied more effectively. What changes does the new Law introduce in regard to the currently applicable rules?

Posting employees to a member state of the EEA or Switzerland

The aforementioned Law prescribes that employees who are posted from Belgium to another member state of the EEA or Switzerland, may not encounter any disadvantages from their employer when they start legal or administrative procedures against their employer to enforce the rights they are entitled to as posted employees.

Recognizing "posted employees" and "posting employers"

The Law also introduces two lists with elements which should allow the inspection services or the labour courts to assess whether or not they are faced with a situation of posting of workers.

The first list contains elements to check if employees are to be considered as *posted employees* and if they perform temporary activities in Belgium. The second list focuses on the recognition of employers posting employees and whether or not the employer performs substantial activities in the country of origin (and is not just a shell company). Note that both lists are non-exclusive and that elements can be added.

Liaison between employer and authorities

Belgium was one of the first countries to introduce the so called *Limosa* - notification, required of employers before posting employees in Belgium. As a result of the new Law, and to comply with the European Directive, organisations will also have to designate a person acting as a liaison between the organisation and the competent authorities before posting their employees.

The social inspection services can ask the designated person to provide them with social documents, such as:

- A copy of the employment contract of the posted employee
- Information regarding the conditions of the posting
- A summary of the working hours
- Proof of the payment of the salary

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The inspection services are allowed to ask a translation of the documents into one of the three national languages, or in English.

Joint and several liability in the construction sector

The Act provides in a joint and several liability for the direct co-contractor for the payment of the salary of employees in construction activities. This co-contractor can be the client, the contractor or the subcontractor and the joint and several liability applies to the salaries of all employees employed in Belgium, thus both normal employees and posted employees. Only if the client holds a written statement signed by himself and the contractor, he can be exempted from the joint and several liability.

Administrative and criminal fines

By the Act of 11 December 2016, a new European system (the IMI-system) is introduced for the cross-border execution of administrative and criminal fines. Besides, new sanctions are added to the Social Criminal Code for joint and several liable co-contractors who fail to pay the salary of employees, for employers who refuse to inform social inspection services of the person acting as a liaison and for employers who do not provide the social inspection services with the necessary social documents.

Toon Gabriëls

DLA Piper EPB Publications of recent months

- "Is een ontslag gelinkt aan de arbeidsongeschiktheid van een werknemer kennelijk onredelijk in de zin van cao nr. 109?, *HR Magazine* by Laurent De Surgeloose
- "Transfert d'entreprise et rémunération: quel sort réserver aux divers éléments de rémunération?", *HR Magazine* by Julie Perret

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