INTRODUCTION

Luxembourg is a leading domicile in Europe where companies appreciate to invest and to establish international activities.

There are several key factors to the success of Luxembourg, including:

- ongoing political support for the development of the financial services industry;
- opportunities to establish a company and to hire employees.

Our law firm is specialized in any kind of advice relating to Luxemburgish labour law.

Through our experience, our law firm provides a comprehensive range of services from hiring to firing.
FELTEN & ASSOCIES assists you in all administrative questions regarding the affiliation to the social security and tax questions.

Our law firm has developed networks and relations with key parties and consequently can answer all questions relating to the execution of an employment relationship and the company structure development as a group of employees.

Luxembourg labour law is compiled in a Labour Code since the law of July 31st, 2006.

Since January 1st, 2009 there have been no more differences between the health insurance system for workers and employees. Both categories are regulated by the former health insurance system intended for employees.

The former seven health insurance funds were merged into a single fund called "d’Gesondheetskees".

I. EMPLOYMENT CONTRACT

A written employment agreement has to be entered into between the employer and any employee no later than at the time the employee takes up his/her position.

Article L.121-4 of the Luxembourg Labour Code sets general information which must be contained in the employment contract:

- The identity of the parties;
- The day on which the employment contract begins;
- The workplace;
  In the absence of a fixed or dominant workplace, the principle is that the employee will be occupied in various places, and more particularly abroad and at the head office seat or, if so, the domicile of the employer.
- The nature of the employment and, possibly, a description of the functions and tasks assigned to the employee at the time of hiring and without prejudice to any subsequent new assignment to a post;
- The normal daily or weekly working time of the employee;
- The normal work schedule;
- The basic wage or salary and, where appropriate, additional wages or salaries, compensation packages, bonuses or agreed participations as well as the frequency of remuneration payment to which the employee is entitled;
- The amount of paid leave to which the employee is entitled or, if this indication is impossible at the the employment contract is entered into, the procedures for allocating and set such a leave;
- The duration of the notice period to be observed by the employer and the employee in case of termination of the employment contract, or, if this indication is impossible at the time the contract is entered into, the methods for determining such notice periods;
- The duration of the contemplated trial period;
- The exemption or additional clauses agreed on by the parties;
- Where appropriate, reference to collective agreements governing the working conditions of the employee;
- Where necessary, the existence and the nature of an additional pension scheme, the compulsory or optional nature of this regime, and the rights to benefits related thereto, as well as the possible existence of personal contributions.

Some terms may be required for the particular case of a fixed-term employment contract.

If the employee operates for more than a month out of the territory of Luxembourg, the employer is obliged to provide the employee, before his/her departure, with a written document including at least the following information:

- The duration of the employment abroad;
- The currency used for the payment of the remuneration;
- Where appropriate, the benefits in cash and in kind related to expatriation;
- Where appropriate, the conditions of the employee's repatriation.

II. THE TRIAL PERIOD

The Luxembourg Labour Code provides for that the employment contract for an indefinite period may provide for a trial clause.

A. Maximal trial period

The trial period may not be less than two weeks and may not exceed six months (Article L.121-5).

However, the maximum trial period may not exceed three months for employees whose level of professional education does not reach the level of the technical and vocational aptitude certificate of technical education.

The trial period may be extended to 12 months if the employee has a significant remuneration.

The trial period not exceeding one month must be expressed in whole weeks while the one exceeding one month must be expressed in whole months.

B. Termination of a trial contract

A trial contract cannot be terminated unilaterally during the first two weeks, except in case of gross misconduct.

The termination must be made either by registered letter with the post office or by the signature of the employee or of the employer on the double of the letter of dismissal or of resignation, being equivalent to the receipt of the notification.
The trial contract expires at the end of a notice period of not less than:

- As many days as the duration of the trial period counts weeks;
- Four days per months of trial agreed on in the contract, without being lower than 15 days and without exceeding one month.

(For example, a three-month trial period does not entail a notice period of 12 days, but a 15-day one.)

During the trial period, the special protection against dismissal, in particular, in case of incapacity of the employee (disability leave) and in case of maternity is applicable.

During the trial period, the grounds for termination do not have to be mentioned in the termination letter.

III. DISMISSAL UNDER LUXEMBOURG LAW

Companies employing more than 150 employees must organize a preliminary meeting with the employee before the dismissal.

The dismissal must be sent by recorded delivery within a prescribed time limit. Employers have to observe a notice period which increases according to the seniority of the dismissed employee. The employee can require the reasons for his/her dismissal from the employer within a fixed period of one month. The employer must answer such a requirement within one month.

This letter has to be sent by recorded delivery and must describe the particular circumstances having led to the dismissal in a detailed way. It is the major procedural act which will establish the legality of the dismissal in the debates that may be held before the Court.

The procedure for economic redundancy follows the same rules.

A. The dismissal with notice

The dismissal with notice is governed by Articles L.124-1 et seq.

1. Form of dismissal

This dismissal is notified by registered letter to the employee.

The signature of the employee affixed on the double of the dismissal letter is worth acknowledgment of receipt of the notification.

Otherwise, the dismissal is considered as being unfair due to a procedural defect.
2. Notice period

In the context of a termination of the employment contract, the compliance with a notice period, which varies according to the seniority of the employee, is required, according to Article L.124-3.

<table>
<thead>
<tr>
<th>Seniority</th>
<th>Notice Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 5 years within the company</td>
<td>2 months</td>
</tr>
<tr>
<td>Between 5 and under 10 years</td>
<td>4 months</td>
</tr>
<tr>
<td>After 10 years</td>
<td>6 months</td>
</tr>
</tbody>
</table>

3. Severance

In accordance with Article L. 124-7 of the Luxembourg Labour Code, the employee is entitled to a legal compensation after 5 years of continuous duty. In principle, this legal compensation is paid at the end of the contract and is free of taxation. Small companies can avoid such a payment by increasing the term of the notice period. This specificity must be written in the letter of dismissal.

4. Grounds for dismissal with notice

The termination letter itself does not contain the grounds for the dismissal.

By registered letter, the employee can ask the employer the grounds for dismissal within one month of the notification of the dismissal.

By registered letter, the employer is then required to state the grounds for the dismissal precisely within one month from the receipt of the written request to be provided with the grounds. The employer has to indicate facts and dates precisely.

The grounds for dismissal are either related to the capacity or behaviour of the employee or based on the operational requirements of the undertaking, establishment or service.

In any case, the grounds must be specific, real and serious.

In case of non-compliance by the employer with these rules, the dismissal is considered to be unfair.

5. Special rules for some categories of employees

It is never allowed to dismiss employees who benefit from a special protection against dismissal in accordance with:
- Article L.121-6: Protection of employees absent due to illness;
  To benefit from this protection, the employee has to inform his/her employer about the
  occurrence of the disease that very day, and of the duration of this one. At the latest
  the third day of his/her absence, the employee has to submit a medical certificate to
  the employer.

  It should be noted that the frequent absence for disease of an employee can be a
  ground for redundancy (dismissal) when this absence is the cause of malfunction and
  disruption of the functioning of the company.

- Article L.337-1: Protection of employees absent due to maternity (except for gross
  misconduct by following a special procedure);

- Article L.415-11: Special protection for work council members and trade union
  representatives (except for gross misconduct by following a special procedure).

B. The instant dismissal

The instant dismissal is governed by Article L.124-10 of the Luxembourg Labour Code. This
dismissal is intended for faults which make it impossible to maintain the employment
relationship due to the final breakdown of confidence.

The letter of dismissal to the employee shall be notified by registered letter.
However, the signature of the employee affixed on the double of the dismissal letter is worth
acknowledgment of receipt of the notification.

An employee dismissed for gross misconduct is not entitled to any severance pay.

The employer is obliged to state the grounds precisely in the letter of dismissal itself.
Otherwise, the dismissal is automatically unfair.

The fact or facts that may justify a dismissal for gross misconduct may not be referred to
beyond a period of one month from the time the employer becomes aware of them, unless
this/these fact (s) has/have given rise to criminal prosecution within a month.

This time-limit of three month can be interrupted by a written complaint.

The one-month period is no longer applicable when the employer relies on mistakes or
misconduct in support of the facts or a new fact earlier.

It should be noted that the distinction between ordinary negligence and gross negligence is a
de facto assessment.
C. Unfair dismissal – “Licenciement abusif” (cases sub A and B sub.).

An employee who considers having been wrongfully dismissed has a three month period from the day of notification of the dismissal or the receipt of the written ground to take legal action in order to get compensation for his/her damage.

This period is interrupted by a written complaint, submitted to the employer by the employee, his/her lawyer or labour union.

This complaint implies a new time-limit of one year to take legal action.

IV. TERMINATION OF EMPLOYMENT CONTRACT BY THE EMPLOYEE: THE RESIGNATION

The employee must terminate the employment contract by registered letter at the post office.

However, the signature of the employer affixed on the double of the dismissal letter is worth acknowledgment of receipt of the notification.

The employee is required to observe a term of notice which varies according to his/her seniority in the company, except in case of gross misconduct of the employee.

V. SOCIAL MINIMUM WAGE AND INDEXATION OF WAGES AND SALARIES

The salary is freely set by the two parties on signing the employment contract.

However, an employer must comply with the applicable social minimum wage according to the employee’s professional qualifications.

The social minimum wage is EUR 1,814.19 (index 756.27 on 1st January 2013).

The applicable social minimum wage is increased by 20% for a skilled employee and decreased by 20% to 25% in the case of an adolescent employee.

Salaries, wages and social contribution are adjusted in line with the evolution of the cost of living.

In case of increasing or decreasing by 2.5% of the consumer price index during the previous semester, salaries are in general adjusted in the same proportion.
VI.  WITHHOLDING TAX ON SALARIES

The income tax due by the employee is deducted from the remuneration by the employer who is required to pay it to the Luxembourg Inland Revenue.

The amount of the withholding tax at source is calculated on the tax rate indicated on the tax card given by the employee to the employer each year.

On declaration and payment of the withholding tax on remunerations, it is assumed that:

- there is an employment contract between the employer and employee;
- the employee has filed his/her tax card with the employer. Failing this, the employer is required to deduct the maximum rate, namely, the rate based on tax class 1 and at a tax rate of 30%.

VII. DISTRIBUTION OF CONTRIBUTION RATES BETWEEN THE EMPLOYER AND THE EMPLOYEE

The employer retains the employee contributions on any gross monthly pay when calculating the salary.

<table>
<thead>
<tr>
<th></th>
<th>Employee’s part</th>
<th>Employer’s part</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health insurance</td>
<td>- benefits in cash: 0.25%</td>
<td>- benefits in cash: 0.25%</td>
</tr>
<tr>
<td></td>
<td>- benefits in kind: 2.80%</td>
<td>- benefits in kind: 2.80%</td>
</tr>
<tr>
<td>Pension insurance</td>
<td>8.00%</td>
<td>8.00%</td>
</tr>
<tr>
<td>Long-term care insurance</td>
<td>1.40%</td>
<td>-</td>
</tr>
<tr>
<td>Accident insurance</td>
<td>-</td>
<td>1.15%</td>
</tr>
<tr>
<td>Occupational health (STM)</td>
<td>-</td>
<td>0.11%</td>
</tr>
<tr>
<td>Mutual insurance scheme</td>
<td>-</td>
<td>Depends on the risk category of the business*</td>
</tr>
<tr>
<td>Additional premium applicable to manual workers</td>
<td>1%</td>
<td>-</td>
</tr>
</tbody>
</table>

*Risk category and contribution rate to the employer’s mutual insurance scheme

<table>
<thead>
<tr>
<th>Risk category</th>
<th>Absenteeism rate</th>
<th>Contribution rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td>&lt;0.65%</td>
<td>0.48%</td>
</tr>
<tr>
<td>Category II</td>
<td>&lt;1.60%</td>
<td>1.42%</td>
</tr>
<tr>
<td>Category III</td>
<td>&lt;2.50%</td>
<td>2.05%</td>
</tr>
<tr>
<td>Category IV</td>
<td>&gt;2.50%</td>
<td>2.74%</td>
</tr>
</tbody>
</table>
WHAT WE OFFER YOU THANKS TO OUR EXPERIENCE IN LABOUR LAW

Thanks to our experience in labour law we advise our clients on a myriad of matters ranging from the drafting and review of employment agreements and internal regulations to more specialized legal matters relating to data protection and privacy at work.

Furthermore, we share knowledge and experience to assist you in the company restructuring through the changes in terms and conditions of employment, the succession of employment contracts, among others.

Through our Litigation Department, we also assist and represent our clients in Mediation and dispute resolution relating to any kind of issues arising from labour relations between the employer and employee(s).

If you have any question or would like to obtain further information do not hesitate to contact our labour law team:

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DISCLAIMER

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About FELTEN & Associés

With 20 years of service, FELTEN & Associés is a full service corporate law firm located in Luxembourg, one of the most important banking centres worldwide. FELTEN & Associés is a human-sized firm with a multilingual team in which partners and associate lawyers with substantial experience, tax experts, paralegal assistants and officers co-operate closely.

The firm provides independent, legal and tax services including litigation to private and institutional clients in daily operations as well as in complex business transactions, both domestic and international, thanks to the resources of international co-operation networks.

We have in-depth experience in the following key areas:

- Banking & Finance
- Corporate and Commercial Law
- Dispute Resolution
- Employment and Social Security Law
- IP
- Real Estate
- Tax
Our leitmotivs are Availability - Competence - Long-Term Relationship - Responsiveness.

For further information on FELTEN & Associés, visit www.feltenlawyers.com

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A Broad Range of Practice Areas

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