



Newsflash

Does business relocation to Flanders equal employment documents translation?

With its recently published ruling of 13 February 2015, the Brussels Labour Court of Appeal seems to reverse its previous case law by ruling that an employer moving its business seat from the bilingual capital city Brussels to the Dutch speaking Flanders region will need to draw up all documents intended for its staff in Dutch. All documents drawn up in another language are considered null and void, including documents validly drafted in that other language before the move.

13 February 2015 ruling

A French speaking employee was hired by a company initially located in bilingual Brussels. The company subsequently moved to Flanders (in the city of Vilvoorde) in 2011.

That same year, the employee decided to resign. A notice period ending on 31 December 2011 was agreed upon. On 19 June 2012, the employee claimed the payment of a bonus for 2011.

The employer argued that the applicable 2011 bonus plan explicitly excluded employees who resigned and are no longer active on the bonus pay-out date. The employee claimed the nullity of the bonus plan, which is drawn up in English and as such violates the Flemish Community's Decree of 19 July 1973 on the use of languages in labour relations ("the Dutch Language Decree").

In its ruling, the Court refers to the Language Decree's text, where no explicit exception is made for existing social documents. It exercises a strict interpretation of the text in the Decree, stating that documents drawn up in a language other than Dutch will cease to be effective from the moment the employer relocates to the Flanders region, even if these documents have been validly drawn up in that other language before the move.

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Two important considerations by the Court should be mentioned:

1. The bonus plan was drafted in English, meaning that strictly speaking, under the Brussels language legislation applicable at that moment, it was not even valid before the move.
2. The bonus plan is renewed every year. When the company relocated to the Flanders region in January 2011, the plan for that calendar year should have been drawn up in Dutch.

The Court concludes by declaring the bonus plan null and void. Nonetheless, with reference to the principle that the annulment of a provision/document linked to the Dutch Language Decree cannot disadvantage the employee in question, the employee's claim to a bonus for 2011 is granted.

Judgement of 26 November 2004

With its 2015 ruling, the court seems to reverse previous case law stated in its ruling of 26 November 2004.

In this 2004 ruling, the Court took a much more nuanced position, ruling that the relocation of business seat to another language region did not affect existing documents correctly drafted in the language applicable before the move. In this ruling, the Court referred to, amongst others, article 2 of the Civil Code stipulating that the law only applies to future situations and does not enter into force retroactively. It also considered that an employer cannot be expected to re-conclude all ongoing employment contracts and non-compete clauses in case of a move to Belgium or a move between language regions within Belgium.

This specific case related to the validity of a non-compete clause, which was, contrary to the bonus plan in the 2015 case, correctly drawn-up in French before moving to Flanders.

Impact of decision

Since it is uncertain what importance should be given to the two considerations in the 2015 ruling (i.e. English was not the correct language before the move and the plan was renewed each year), it is unsure whether a general rule can be drawn from this ruling. It cannot be ignored though that the Court clearly ruled that all social documents must be drafted in the Dutch language after the move and thus seems to reverse its case law.

What impact does such a reversal have? Strictly speaking, employers will, going forward, be obliged to re-conclude all agreements with their staff and re-implement all employment related documents (policies, regulations, etc.) upon relocating their business seat to the Dutch speaking region.

The same conclusion applies in case of a business relocation to the French speaking region, since the Dutch and French Language Decrees provide for the same sanctions.

A more pragmatic approach could be to only translate specific sections of agreements and documents that impose obligations on the employee, restrict their rights or subject certain benefits to the fulfilment of certain conditions.

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