



Newsflash

Constitutional Court rules deviating notice periods for blue-collar construction workers discriminatory

With its 17 September 2015 ruling, the Constitutional Court added a new chapter to the ongoing discussion around the discrimination between blue- and white-collar workers.

Previous rulings

In 1993, the Constitutional Court had already ruled that the unequal treatment of blue- and white-collar workers could no longer be justified. On 7 July 2011, the Constitutional Court confirmed that the different rules regarding the determination of notice periods and the waiting day (*carensdag/jour de carence*) for blue- and white-collar workers violated the constitutional principle of equality. Moreover, the Court explicitly requested a legislative intervention to harmonise the existing differences by 8 July 2013.

This 2013 ruling eventually resulted in the Act of 26 December 2013 on the unified status for blue- and white-collar employees, which entered into force on 1 January 2014 (“the Harmonisation Act”). The main objective was the introduction of new and unified rules for the determination of notice periods. Nevertheless, this Act also includes a deviating scheme for sector specific blue-collar workers.

As expected, the deviating scheme for blue-collar workers in the construction industry gave rise to a new procedure before the Constitutional Court.

17 September 2015 ruling

In the case launched on 30 June 2014, several parties challenged the deviating notice periods for blue-collar workers (i) subject to specific notice periods applicable on 31

December 2013, (ii) usually working on temporary and mobile construction sites, without a fixed workplace and (iii) performing activities listed in the Harmonisation Act. These criteria mainly cover blue-collar workers in the construction industry. Furthermore, these workers are currently not entitled to a dismissal compensation indemnity due by the National Employment Office.

Analysing the legislation, the Constitutional Court specifically denounces the permanent nature of this deviating scheme. While similar deviating rules for other blue-collar workers are temporary (up to 31 December 2017) and are regarded as transitional measures, the blue-collar workers in the construction industry are excluded from the general rules on a permanent basis.

Although the Constitutional Court considers that transitional measures can be justified due to economic/financial concerns, it points out that such concerns do not justify a permanent exemption scheme, which again results in discrimination.

The Constitutional Court concludes that the articles in the Harmonisation Act containing the deviating scheme for blue-collar construction workers should be annulled (article 70 §4 and partially 97).

Nonetheless, given that an unconditional and immediate annulment of these articles would create legal uncertainty and could have significant financial consequences for the industry, the Court decided that the stipulations' consequences remain valid until 31 December 2017.

What is the practical impact of this judgement?

The 17 September 2015 ruling created a new transitional measure. Until 31 December 2017, the existing deviating scheme remains in force (unless an earlier legislative intervention occurs). All workers will then become entitled to the unified status rules, which implies a significant increase of notice periods and dismissal costs, e.g.:

- Seniority of 1,5 years
 - Deviating scheme: 5 weeks
 - Unified status: 10 weeks
- Seniority of 20 years
 - Deviating scheme: 16 weeks
 - Unified status: 62 weeks

It is clear that this ruling poses new challenges for the construction industry.

Laga's Employment, pensions and benefits team will provide updates on further developments.

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