Laga

Belgium | 26 October 2018

Laga Newsflash

Constitutional Court confirms the validity of termination clauses entered into with higher-earning white-collar employees before 1 January 2014

The Constitutional Court examined a question regarding valid agreements on notice periods (termination clauses) concluded before 1 January 2014 with higher-earning white-collar employees. The court's assessment considered the **Unified Employment Status Act** (Act of 26 December 2013), which introduced a unified status for blue-collar and white-collar employees regarding notice periods, the 'waiting day' (*carensdag / jour de carence*) and accompanying measures.

In an 18 October 2018 judgment (140/2018), the Constitutional Court gave the green light for such termination clauses and finally clarified a point of endless controversy.

Background: harmonisation of notice periods

Following the Unified Employment Status Act, the notice periods for blue-collar and white-collar employees were harmonised in Belgium. In parallel, important transitional measures were introduced for employees who entered into service before 1 January 2014. For these employees, the notice period must be calculated in two steps. The first step relates to the length of service accrued up to and including 31 December 2013, and the second relates to the length of service accrued from 1 January 2014.

For the first step, the notice period is calculated in accordance with the *statutory, regulatory and contractual rules* that were in force on 31 December 2013.

However, an exception applies for **higher-earning white-collar employees** (employees whose gross monthly salary exceeded EUR 32,254 on 31 December 2013). For this segment, the first part of the notice period is fixed at 1 month per commenced year of service, with a minimum of three months.

For the second step, the Unified Employment Status Act provides for harmonised notice periods, depending on the length of service accrued as of 1 January 2014.

Discussion on termination clauses

Following the Unified Employment Status Act, the effect that should be given to termination clauses concluded with higher-earning white-collar employees, which were in force on 31 December 2013, was unclear.

It appears from the preparatory works on the Unified Employment Status Act that it was the legislature's intention to leave valid termination clauses with higher-earning white-collar employees intact. However, the Act's text itself does not reflect this vision and imposes a fixed notice period of 1 month per commenced year of service for higher-earning white-collar employees, without any reference to *contractual* rules.

For lower-earning white-collar employees, the Act's text leaves room for contractual deviations. The question was whether this could constitute unequal treatment between higher-earning and lower-earning white-collar employees.

Constitutional Court brings clarification

The Constitutional Court's response to this question is positive. The Court decided that the Unified Employment Status Act goes against the principle of equal treatment, as far as it does not allow the application of valid termination clauses entered into before 31 December 2013 when calculating the first part of the notice period for higher-earning white-collar employees.

Pending any action by the legislature, it is up to the referring court to end this unequal treatment by applying the validly concluded termination clauses of higher-earning white-collar employees in the first step of the calculation of the notice period.

The Constitutional Court did not express any standpoint on the validity of termination clauses concluded *as of* 1 January 2014.

Stijn Demeestere, Advocaat-vennoot/Avocat associé, Tel: + 32 2 800 71 42, Email: sdemeestere@laga.be

Julien Hick, Avocaat-vennoot/Avocat associé, Tel: + 32 2 800 70 66, Email: juhick@laga.be

Heleen Franco, Avocaat/Avocat, Tel: + 32 2 800 71 58, Email: hfranco@laga.be

Laga
Gateway building
Luchthaven Brussel Nationaal 1J
1930 Zaventem
Belgium

A top legal practice in Belgium, Laga is a full service business law firm, highly recommended by the most authoritative legal guides. Laga comprises approximately 140 qualified lawyers, based in Brussels (Zaventem and Woluwé), Antwerp, Ghent and Kortrijk. Laga offers expert advice in the fields of banking & finance, commercial, corporate/M&A, employment, IT/IP, public/administrative, insolvency and reorganisations, real estate, tax law, tax and legal services for high-net-worth families and individuals (Greenille by Laga), and litigation. Where appropriate to ensure a seamless and comprehensive high-quality service, Laga lawyers work closely with financial, assurance and advisory, tax and consulting specialists, and with select EU and US law firms.

Laga provides thorough and practical solutions tailored to the needs of clients ranging from multinational companies, national large and medium-sized enterprises, financial institutions, and private clients to government bodies.

More information: www.laga.be