



Newsflash

Wage moderation act: what does it mean?

The Law of 27 April 2015 (published and entered into force on 30 April 2015) sets the maximum margin for remuneration cost evolution at 0% for 2015 and at 0.5% for 2016. Furthermore, it establishes that, for 2016, the maximum margin of 0.5% can be increased by 0.3% of the total net remuneration, without increasing the costs to the employer.

Although the percentages for 2015 and 2016 are clear, the practical consequences of this wage moderation are not. What does this mean for a company's remuneration policy?

Purpose: protection of Belgium's competitiveness

The Law of 26 July 1996 introduced the principle of wage moderation with the aim of protecting Belgium's competitiveness. This wage moderation determines the maximum margin for remuneration cost evolution, taking into account the expected cost changes in Germany, France and the Netherlands.

Belgium is indeed a country with an open economy which strongly depends on imports and exports with neighbouring countries. If Belgian remuneration costs increase faster than those of its neighbouring countries, Belgium's competitiveness weakens, creating a negative impact on employment. Therefore, a maximum increase margin is determined every two years, in principle by the social partners, or by the government should an agreement not be reached.

Scope: private sector

The Law of 26 July 1996 applies to the private sector. Compliance with the maximum margin for remuneration cost evolution needs to be respected at company level (by the entire legal entity, not at business unit or any subdivision level).

Description: “nominal increase of the average remuneration costs per employee – expressed in full time equivalents”

In order to determine whether the maximum margin for remuneration cost evolution is respected, it is key to interpret “average remuneration costs per employee” correctly. Step-by-step, it can be analysed as follows:

1. Remuneration

In principle, all salary components count: remuneration in cash (e.g. gross salary, overtime pay, bonuses, variable salary, vacation pay), ‘alternative’ remuneration (e.g. meal vouchers, eco vouchers, gift vouchers), benefits in kind (e.g. mobile phone, company car, hospitalisation insurance).

Some benefits however are excluded, namely profit sharing, one-off innovation premiums, contributions to sectoral social pension schemes, non-recurring result tied bonuses (CBA n° 90) and so on.

2. Remuneration costs

The net profit for the employees is not relevant, but the cost of this remuneration for the employer is. It is however unclear what should be understood by “remuneration costs”, especially for benefits in kind. For example, for a company car or laptop, should depreciation in value be taken into account?

3. Average remuneration costs per FTE

The employer must not comply with the maximum margin on a per individual employee basis. It is the global remuneration cost which is relevant. However, it is not this global remuneration cost which needs to be compared to that from the previous year, but the average remuneration cost per full-time equivalent (“FTE”). The global remuneration cost to the company is thus divided by the number of FTE’s within the company.

A nominal increase in the global remuneration cost (e.g. as a result of hiring new employees) is thus irrelevant. As a result, an individual salary raise is in principle possible, as long as the average remuneration cost increase falls within the allowed margin.

4. Excluded increases

In principle, a nominal increase in the average remuneration cost per FTE exceeding the allowed margin is not permitted. However, some salary increases are not taken into account when determining this nominal increase:

- a. Remuneration cost increases consequent to an increase in the number of FTE’s;
- b. Indexations and grade increases. It should be noted, however, that the Act of 23 April 2015 limits the automatic increase of wages and social security benefits to 2% in case of a rise in consumption prices;
- c. Variable salary increases consequent to improved company results. The employer has no control on variable remuneration fluctuations. The variable remuneration system must, however, have been established before 1 January 2015 and entitlement conditions must remain unchanged;

- d. Overtime pay increases; and
- e. Unilateral increases. Since the Law of 26 July 1996 provides that the margin cannot be exceeded by agreements at an inter-sector, sector, company or individual level, an argument can be made for a possible unilateral increase.

Sanctions

An employer failing to comply with the wage moderation principle can be sanctioned with an administrative fine ranging from EUR 250 to EUR 5,000. However, these sanctions have never been imposed yet. On the other hand, the FPS (Federal Public Service) Employment, Labour and Social Dialogue has already refused to accept sectoral or company CBA's which did not comply with the wage moderation rules.

For the same reason, some courts already nullified some CBA's. Furthermore, the Michel I governmental agreement does state that the government will be more strict regarding wage moderation.

However, even if the government will be more severe, it is undeniable that compliance with wage moderation is currently very difficult to assess. Therefore, severe sanctioning may, in fact, prove impossible because:

- It is unclear how "remuneration costs" should be interpreted;
- Employers cannot verify wage moderation compliance until the end of the year;
- Inspection needs to reconstruct the entire remuneration history determining whether the employer remained within the allowed margin, taking into account the exclusions mentioned above. This is far from being an easy task.
- It is impossible to regularise a violation. It would be difficult to request that employees reimburse received salary, let alone request that tax or social security institutions reimburse paid payroll tax or social security contributions.

At this stage, wage moderation is therefore only theoretically relevant. In practice, consequences are, de facto, rather limited.

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