

RENEWAL OF THE CBA FOR EXECUTIVES OF INDUSTRIAL COMPANIES: WHAT ARE THE CHANGES?

On 30 July 2019, Confindustria and Federmanager signed the renewal of the national Collective Bargaining Agreement ("CBA") for executives of companies producing goods and services. The agreement, which will expire on 31 December 2023 and came into effect on 1 January 2019 except for specific effective dates referenced in the individual articles, lays down the new guaranteed minimum aggregate remuneration to be used as a parameter in 2020, 2022 and 2023. As regards the variable remuneration, the agreement introduces a further MBO model under which 50% of the incentive is paid on the basis of the annual results whilst the remaining 50% is paid upon the attainment of the results in the medium to long term. Further changes relate, amongst other things, to payment for untaken holidays, job retention after illness, maternity and paternity protection, equal opportunity, transfer of the executive and the increase to the supplementary indemnity for unfair dismissal for executives whose period of service does not exceed two years.

GUARANTEED MINIMUM AGGREGATE REMUNERATION

The guaranteed minimum annual remuneration ("GMAR") to be taken as a reference parameter for the calculation of the minimum annual level of retribution of the executive has been increased. In particular, from 2020 onwards, the GMAR to be used as a criterion is Euro 69,000 gross. This amount is raised further to Euro 72,000 gross with effect from 2022 and Euro 75,000 gross starting from 2023.

Given that executives in service on 1 January 2015 have a right to an MGAR which rises with the length of service any more favourable terms and conditions set out in the CBA of 30 December 2014 will continue to apply to such executives.

Key issues

- Increase to the GMAR
- New MBO Model
- Termination of employment
- Payment for untaken holidays
- Illness protected period
- Maternity and paternity protection
- Transfer of the executive
- Insurance covering death and permanent invalidity
- Supplementary pension

C L I F F O R D

C H A N C E

MANAGEMENT BY OBJECTIVE ("MBO")

In order to favour the use of remuneration models consistent with the role of executive the agreement has added a fourth MBO which may be implemented by companies that do not have incentive schemes.

The model divides the incentive into two parts:

- The first part of MBO is assessed on an annual basis ("short term" incentive system) and seeks to evaluate the results obtained in that reference period;
- The second part of MBO is assessed on a medium/long term basis, e.g. a three year period (so-called Long Term Incentive) and entails differentiated percentages of accrual in the deferment period. This component is set aside every year and is paid at the end of the period if the executive is still in service and has not resigned.

From an operational point of view 50% of the MBO will be paid upon attainment of the annual result whilst the remainder will be paid on a deferred basis, being contingent upon attainment of the medium/long term objectives.

Companies may in any case continue to set up company level incentive schemes.

TERMINATION OF EMPLOYMENT: SUPPLEMENTARY INDEMNITY AND OLD AGE PENSION

The supplementary indemnity due in case of unfair dismissal of executives who have worked for the company for less than two years has been raised from two to four month's payment.

Considering that the CBA renewed on 30 July 2019 took effect on 1 January 2019 and that no provision has been made for any specific effective date for this increase in the supplementary indemnity the question arises as to applicability after dismissals already effected in the initial months of 2019, especially where the executives in question have not yet filed with the Court their petitions.

The supplementary indemnity does not apply to executives meeting the legal requirements for entitlement to old age pension (removing the previous reference to 67 years of age).

PAYMENT FOR UNTAKEN HOLIDAYS

Subject to the principle that annual remunerated holidays for the period of at least four weeks laid down by the law cannot be waived, holidays exceeding four weeks are subject to the following terms and conditions:

- By way of exception, where the executive decides not to take the additional period, in whole or in part, within the 24 months following the year of accrual, the period of holidays can no longer be requested, provided that there has been an express invitation by the employer to take the period of holidays and information has been provided relating to the fact that if not taken the period of holidays cannot be replaced by the indemnity for untaken holidays;
- Should the employer not provide the information the indemnity for untaken holidays will be paid within the first month subsequent to expiry of the twenty four month period following the year of accrual.

Different agreements between the employer and the executive will remain unaffected.

The introduction of this procedure seems aimed at preventing ambiguity which until now had produced substantial litigation at the end of the employment relationship. Indeed, it was only on this occasion that the question was raised of whether the failure to take the holidays could be ascribed to a decision by an executive vested with power to determine when to take his/her holidays.

ILLNESS: RETENTION OF THE POSITION

The new article 11 of the CBA provides that the so-called illness protected period of executives also covers absences that in total occurred within the three year prior to every new case of illness.

The amendment also appears aimed at resolving litigation on this matter and follows those courts' decisions that recognised the lawfulness of termination on the ground of exceeding the so-called illness protected period calculated by way of summation.

MATERNITY AND PATERNITY SAFEGUARDS

The renewal introduces a new art. 11-bis which states that:

- As regards maternity and paternity leave the employer is required to advance the payment due from the social security agency and supplement it so as to pay the entire remuneration to the executive;
- As regards parental leave, rest days and sick child leave the employer is required to advance the payment due from the social security agency.

EQUAL OPPORTUNITY

The collection of best practices implemented by companies relating to the management of equal opportunity and, in particular, equal pay between male and female executives is assigned to the observatory established at the "4.MANAGER" association which will take specific initiatives aimed at disseminating a culture of equality between the sexes in the field of management.

TRANSFER OF THE EXECUTIVE

A change has been made to art. 14 paragraph 8 of the CBA relating to the limits upon transfer of the executive. In particular, unless the parties agree otherwise, the workplace of an executive who is more than 55 years of age cannot be transferred. As regards executives whose children are minors, their workplace cannot be transferred if they are more than 50 years of age.

INSURANCE COVER: DEATH AND PERMANENT INVALIDITY

With effect from 1 January 2020, insurance cover for death or permanent invalidity that reduces by more than 2/3 the executive's ability to work for reasons other than an accident or a work related illness is increased from

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Euro 150,000 to Euro 200,000 for an executive without a spouse or dependent children and from Euro 220,000 to Euro 300,000 for an executive with a spouse and/or dependent children.

SUPPLEMENTARY PENSION

With effect from 1 January 2020, the contribution to the PREVINDAI supplementary pension fund will be at least 4% for the portion to be borne by the employer as well as the portion to be borne by the executive, with a calculation cap amounting to Euro 180,000.

Within the limit of 8% the company can agree on more favourable terms and conditions for the executive and assume a portion of the contribution due from the executive for up to a maximum limit of 3%. Accordingly, a minimum contribution amounting to 1% of the remuneration would still be borne by the executive.

Starting from 1 January 2022, the annual contribution to be borne by the company cannot be lower than Euro 4,800 regardless of the executive's length of service.

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