

EMPLOYERS AND HR MANAGERS, WHAT TO EXPECT IN 2022?

Employers and HR managers will face many employment law challenges in 2022. While the COVID-19 pandemic will continue to impact employment relationships and to require adaptations and re-adaptations for employers and employees, other non-COVID related reforms may require particular attention.

WHAT HAS CHANGED / WILL CHANGE IN 2022?

Mandatory "3G CovidCheck" in the workplace

As from 15 January 2022, employers will have the statutory obligation to verify that employees accessing the workplace hold one of the following valid certificates (the "Certificates"):

- certificate of COVID-19 vaccination
- certificate of COVID-19 recovery
- certificate of negative COVID-19 test (PCR or rapid antigenic test but no self-diagnostic test) or
- certificate of contraindication to COVID-19 vaccination with a negative test certificate (PCR, rapid antigenic or self-test to be performed on site).

This requirement is commonly referred to as the "3G CovidCheck" regime (for *Geheelt, Geimpft, Getest*, respectively meaning in Luxemburgish recovered, vaccinated and tested).

The employer will also have the obligation to verify the identity of the Certificates' holders with a valid ID document.

In this context, and to facilitate the Certificates and ID verifications, the employer will be allowed to keep a list of vaccinated or recovered employees

Key issues

- The "3G CovidCheck" regime will be mandatory in the workplace as from 15 January 2022.
- The number of working days performed by French and Belgian residents in their country of residence without impacting the taxation of their remuneration is/will be risen to 34.
- An increase of the salary indexation is expected (but not yet confirmed) in the second semester of 2022.
- The bills on the right to disconnect, protection against moral harassment and protection of whistle-blowers may become laws in the course of 2022.
- Depending on the evolution of the COVID-19 pandemic, the CSSF Circular on telework may enter into force.

(under certain conditions to comply with the personal data protection rules in force).

Any individual who is not an employee (i.e., clients, suppliers, service providers, etc.), may also be required (if the employer decides so) to present a Certificate to access all or part of the company's premises.

Specific rules apply in case an employee refuses to present a Certificate, notably with regard to discipline. In any event, such a refusal will not constitute, in itself, a valid reason for dismissal.

Until 15 January 2022, the employer may already (but is not obliged) implement the 3G CovidCheck regime in all or part of the company (formalities must be complied with).

Finally, the following current specific restrictions continue to apply:

- restrictions to the access to the company restaurants: mandatory 2G/2G+ CovidCheck regime limiting the access to holders of certificates of COVID-19 full vaccination (three shots), of recovery or of contraindication to vaccination with a negative test. Individuals having received two shots of COVID-19 vaccination are required to present, in addition to their vaccination certificate, a negative test result (however, a bill of law has been tabled by the government on 5 January 2022 removing such obligation to present a negative test result, if the validity of the vaccination certificate does not exceed 180 days);
- restrictions to gatherings (including professional meetings): obligation to comply with health protection measures and/or to implement the 2G or 2G+ CovidCheck regime, depending on the number of attendees.

All the measures indicated above are currently in force until 28 February 2022.

Increase of the teleworking tax thresholds for French and Belgian residents

The threshold of days French and Belgian residents employed in Luxembourg may perform in their country of residence, without their remuneration becoming taxable in such country, is increased to 34 days (instead of 29 days for France and 24 days for Belgium).

This increase is effective as from 1 January 2022 for Belgian residents. The exact effective date for French residents is not known yet and should be announced later in the year.

However, working days performed by French, Belgium (and German) residents in their country of residence due to the COVID-19 pandemic are currently not considered to determine the country of taxation of their remuneration, in accordance with tax agreements concluded between Luxembourg and its border countries (this derogation currently applies until 31 March 2022 with a tacit extension until 30 June 2022 for France and Belgium). Agreements were also entered into between those countries to temporarily derogate to the rules normally determining the applicable social security legislation.

WHAT MAY CHANGE IN 2022?

Possible increase of the salary indexation

According to the STATEC (the national institute of statistic and economic), it is currently expected (but not confirmed yet) that a new compulsory salary indexation may become due during the second semester of 2022.

This would lead to an automatic and mandatory rise of all salaries by 2.5%.

Bills which may be passed into law

- **Right to disconnect:** the bill of law 7890 amending the Labour Code to introduce the right to disconnect¹ has been tabled in 2021.

According to this bill, a regime ensuring the respect of the right to disconnect outside working hours for employees using digital tools for professional purposes will need to be defined at company or sector level. This regime, to be adapted to the company or sector, will need to cover, where appropriate, the practical arrangements and technical measures for disconnecting from digital tools, awareness-raising and training measures and compensation arrangements in the event of exceptional derogations from the right to disconnect.

- **Moral harassment:** the bill of law 7864 introducing in the Labour Code a protection against moral harassment at work² has also been tabled in 2021.

This bill, which provisions do not significantly differ from the rules currently applied regarding moral harassment³, provides for a statutory regime against moral harassment, implying notably:

- the obligation for the employer to determine (after information and consultation of the staff delegation or of the employees) measures adapted to the company to protect employees against moral harassment
 - the obligation for the employer, in case an employee is victim of moral harassment, to proceed to an internal assessment and investigation, and to stop the harassment
 - the possibility for the employee or the staff delegation to report to the Labour Inspectorate (which may order the employer to take measures to stop the harassment and impose administrative fines)
- **Whistleblowing:** the government announced at the end of 2021 having tabled a bill of law transposing the EU Directive 2019/1937 of 23 October 2019 on the protection of persons who report breaches of European Union law (Whistleblowers).

¹ Available at: <https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7890>

² Available at: <https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7864>

³ Deriving from case law, the statutory obligation of health and safety at work of employers and employees, the principle of contractual good faith, some collective bargaining agreements, the Convention of 25 June 2009 on harassment and violence at work, and the statutory provisions on discriminatory harassment and obsessional harassment.

This bill, which exact content is not known yet, will certainly be part of 2022 major employment law topics.

Entry into force of the CSSF Circular on telework?

On 9 April 2021, the Luxembourg supervisory authority of the financial sector, the CSSF, issued its Circular 21/769 regarding "Governance and security requirements for Supervised Entities to perform tasks or activities through Telework"⁴.

The entry into force of this circular, which provides for specific rules to be implemented in case of telework in supervised entities, was scheduled for 30 September 2021. It has however been suspended due to the lasting COVID-19 pandemic and will remain suspended until general working conditions will not be "normal" (i.e., until the end of this pandemic, provided that no other exceptional circumstances affect the working conditions).

⁴ Available at: <https://www.cssf.lu/fr/Document/circulaire-cssf-21-769/>

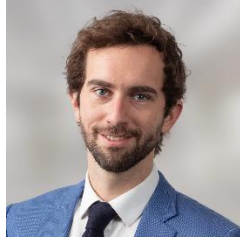


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