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EDITO

Dear readers,

Our March newsletter is devoted to leave on personal grounds and the analysis of a judgment concerning access to social security benefits and the non-granting of compensation for occupational illness.

In our "Belgian Law" section, we will discuss the pre-contractual information obligation of diamond and jewellery dealers.

Remember, this newsletter is also yours and we are open to all suggestions for future issues. Please contact us at this e-mail address: *theofficial@daldewolf.com*

We wish you an excellent reading!

The DALDEWOLF team

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FOCUS

LEAVE ON PERSONAL GROUNDS

An official may exceptionally request to the Appointing Authority (AA) for unpaid leave on personal grounds (Article 40 of the Staff Regulations). The AA has a wide discretion as to the legitimacy of the reasons submitted to it by the official and their compatibility with the interests of the service (Mascetti v Commission, 16/12/1976 C-2-76, ECLI:EU:C:1976:187).

The official must receive prior approval from the AA if he plans to engage in a paid activity while on leave. It should be stressed that the official remains subject to the obligation's incumbent on him (Connolly v Commission, 06/03/2001, C-274-99, ECLI:EU:C:2001:127). For instance, to avoid a conflict of interest, it is prohibited for the official to engage in lobbying or advocacy work for the entire term of leave.

During the leave, the official may be replaced in his/her job. In addition, it should be noted that during the period of leave, the official ceases to participate in step advancement and grade promotion. Finally, the official is no longer covered by the social security system.

Duration of leave on personal ground

The leave can only last for a year, but it can be extended numerous times, each time for a maximum of one year. The leave is granted for a total of 12 years (15 years for those officials who on 31 December 2013 have been on leave on personal grounds for more than ten years over their entire career). If the official needs to extend their leave, they must notify the AA two months before expiry of the initial period.

There are, however, some circumstances in which personal leave may be extended indefinitely as long as the circumstances that led to its approval continue. For instance, when a child is regarded as the official's dependent, when the official's spouse has another place of employment, or in the event of a family member's significant illness or handicap.

Reappointment of the official following leave

The AA is required to reappoint the official in a position that is appropriate for his grade and abilities when the absence expires. According to Bieber v. Parliament (26/05/1998, T-205/96, ECLI:EU:T:1998:110), the Administration's discretionary power only relates to the official's genuine abilities, which must be evaluated in light of the roles he is expected to hold.

The official still has the option to be reinstated for a second opening if they reject the offered position. After consulting with the Joint Committee, the official may have his position terminated in the event of a second rejection.

The administration must take the official's personal interests—especially those of a familial nature—into account in accordance with the principle of solicitude and the proper administration of justice. However, if reinstatement in a particular place of employment is required for significant reasons relating to the interests of the service, the Administration may offer a job in a location other than that chosen by the official. (Ritcher v Commission, 16/12/1997, T-19/97, ECLI:EU:T:1997:197).

The non-integration of an official on the first vacancy corresponding to his capacity constitutes a fault liable to cause him prejudice for which he is entitled to claim compensation (Bieber v Parliament, 26/05/1998, T-205/96, ECLI:EU:T:1998:110).

CASE-LAW

NON-GRANTING OF OCCUPATIONAL DISEASE COMPENSATION AND VIOLATION OF THE RIGHT OF ACCESS TO SOCIAL SECURITY BENEFIT

In a recent judgment of 8 March 2023 (SP v. European Investment Bank, T-65/22), the General Court of the European Union confirms that there is no infringement of the right of access to social security benefits by a European institution if it takes out an insurance contract and provides the insurer with the information necessary to process the file of the official or other servant.

In the present case, the applicant, who was traumatised after witnessing the suicide of a trainee on the premises of the European Investment Bank (EIB), was refused a claim for compensation for an occupational disease, after having applied to the insurance company AXA for recognition of the occupational origin of his disease.

According to the claimant, this refusal violated his right of access to social security benefits, as provided for by European legislation, which implies working conditions that respect his health, safety and dignity (cf. the Charter of Fundamental Rights of the European Union and the European Social Charter). It is on this basis that various actions were brought against the EIB.

According to the General Court, respect for these rights presupposes that the institution has taken out insurance against accidents at work and the consequences that may arise from them. In addition, the institution must provide the insurer and the insured with the information necessary to process the case.

The EIB had made provision for this in its Staff Regulations (cf. Article 33a of the Staff Regulations). It (i) concluded an insurance contract for accident at work cover for its staff (ii) provided each member of staff with a copy of the insurance policy, with acknowledgement of receipt (iii) took all the necessary steps with the insurance company against which staff and officials have direct rights in the event of an accident at work.

As regards the first two conditions, it is clear that the EIB complied with them by concluding an insurance contract with AXA and providing a copy of the insurance policy.

As for the last condition, the judge stated that the EIB transmitted to the insurer, following the submission of the insured's claim for compensation for occupational disease, the information it had at its disposal and which it considered useful for handling the case. In addition, during the administrative procedure of the present case, it specified its role in the processing of the files. Finally, the EIB informed the insured party, who had suspended the processing of the case, that it had to make a decision regarding the insured party.

As a result, the Court affirmed that the EIB had not violated the claimant's right of access to social security benefits. According to the judge, the claimant did not present any evidence that the institution had infringed the health, safety and dignity of the staff members, as well as the effective access to social security benefits.

Moreover, the claims for compensation for occupational illness and for non-pecuniary damage made by the applicant were not granted. According to the court, these claims are closely linked to the application for annulment of the contested decision, which was itself rejected (AI / ECDC, T-79/20). Moreover, the judge recalls the obligation for staff members to initiate, in the first instance, a pre-litigation procedure before the institution concerned.

DAY-TO-DAY IN BELGIUM

THE PRE-CONTRACTUAL INFORMATION OBLIGATION OF DIAMOND AND JEWELLERY DEALERS

The purchase of a diamond, whether or not it is incorporated into a piece of jewellery, is an investment which, from the legislator's point of view, justifies certain precautions being taken with regard to the consumer.

Under the Royal Decree of 26 January 2023, from 1 May 2023, diamond and jewellery dealers will be obliged to inform consumers about the characteristics of the diamond they wish to sell them.

The information that will have to be provided in relation to the good is as follows:

- Whether the good is or contains natural or synthetic diamonds and the number of the latter;
- Whether the diamond(s) have been treated;
- The weight of the diamond(s);
- If applicable, the type of treatment carried out on the diamond(s).

Other information must also be communicated in relation to the seller: the seller's company number, trade name or corporate name, the address of the seller's shop and the identification of the item in order to be able to recognise the item.

This information must be transmitted on paper or, if the consumer agrees, on another durable medium.

Furthermore, this information, like all consumer information, must be legible and unambiguous to the consumer and must not contain any abbreviations.

The pre-contractual information document must be dated and signed by the diamond or jewellery dealer before the contract is concluded.

This pre-contractual information obligation does not apply to distance sales. However, for the latter, the European legislator has provided for similar obligations.

Finally, failure to comply with these rules may result in a fine of up to EUR 10 000 (non-indexed amount) being imposed on sellers.