

# More flexibility for employers in Belgium in 2018:

## Profit Bonus and E-Commerce

Jan Hofkens, Lydian, Belgium



A new bill, the so-called Programme Act of 25 December 2017, introduces as from 1 January 2018 a series a new legislative initiatives in Belgium which offer more flexibility for employers.

### 1. Tax friendly profit sharing for employees

One of the most important measures is the possibility for employers to grant a tax friendly profit bonus to their employees.

As from 1 January 2018 (for financial years ending 30 September 2017 or later) companies can choose to grant a part of their profits to the employees. Such grant is tax friendly, as highly reduces rates apply. Two kinds of bonuses can be granted:

1. A fixed profit bonus, which gives each employee an identical amount of profit sharing; or
2. A flexible profit bonus, of which the amount can vary depending on objective criteria

The chart below summarizes the most important conditions and requirements:

	Fixed profit bonus	Flexible profit bonus
What?	An identical amount/percentage of remuneration to all employees.	An amount that depends on an allocation key based on objective criteria (seniority, level function, remuneration level and/or education/training level of the employees concerned).
Procedure?	<ul style="list-style-type: none"><li>• Decision of the General Meeting (GM) by simple majority vote and mandatory statements in the minutes of the GM</li><li>• Informing the employees on the decision to grant the profit bonus and its terms and conditions</li><li>• No intervention by trade unions</li></ul>	<ul style="list-style-type: none"><li>• Decision of the General Meeting (GM)</li><li>• (If trade union delegation) specific CBA or (in case of no union delegation) choice between specific collective labor agreement or acceptance of standard form</li></ul>

The total amount of the profit bonus may **not exceed 30% of the total gross wage bill**. Note that the profit bonus cannot be used to replace or convert remuneration or other benefits.

The **(para)fiscal treatment** of the profit bonus becomes more attractive: no employer's contributions for social security are due (saving of +/- 30 % for employers). On the other hand, the profit bonus is a non-deductible expense in corporate income tax. For the employee, the profit bonus is taxed at a low flat rate of 7 %, and a contribution for social security of 13,07 % is due.

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LYDIAN



### 2. Flexible night and Sunday work for e-commerce business

In Belgium, night work (i.e. work performed between 20:00 pm and 06:00 am) and Sunday work is in principle prohibited. Exceptions apply however for some sectors of industry, such as transport and logistics. However, often strict procedures involving trade union consultation need to be followed, and no general exception allowing night and Sunday work existed for the broad e-commerce industry including ancillary services such as retail, call centers, shops, repair etc. This created an important competitive disadvantage with our neighboring countries, where more flexibility was allowed for this booming industry.

The new bill makes it now easier to implement working time schedules with night or Sunday work for the broad e-commerce sector in Belgium:

- **Night work** becomes possible for e-commerce activities, regardless of the industry sector to which the company belongs. A collective labor agreement (CLA) will be required, but the signature of one trade union will do (instead of the agreement from all represented trade unions as required before). For 2018-2019, it will even be possible to introduce night work by simply changing the company's work rules (thus even without CLA).
- **Sunday work** is only allowed in Belgium in exceptional situations under strict procedures requiring trade union involvement. The new bill now introduces a general exception for the broad e-commerce business, allowing employers in this industry to make their employees work on Sunday. The working time schedules need to be implemented through a change of the company's work rules. This is, however, a temporary exception until end 2019. Employers who want to maintain the working-time arrangement with Sunday working as from 1 January 2020 will have to sign a CLA.

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