

Parental leave guaranteed when unemployed at the time of birth or adoption

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By a judgment of 25 February 2021 (C-129/20), the Court of Justice of the European Union (CJEU) found Luxembourg law to be non-compliant with the EU directive implementing the revised framework agreement on parental leave¹ (the “**Directive**”).

Indeed, according to Luxembourg law², the right to parental leave is subject to the twofold condition that the worker is lawfully employed in a workplace and is affiliated in that regard to the social security scheme (i) at the time of the birth or of the reception of the child to be adopted and (ii) for a continuous period of at least 12 months immediately preceding the start of the parental leave.

In the case debated before the CJEU a dispute had arisen between a Luxembourg civil servant (parent) and the “*Caisse pour l’avenir des enfants*” (Luxembourg Children’s Future Fund) which refused to grant the parental leave on the basis that the first condition was not met, i.e. the parent was not in a paid employment relationship on the date of birth.

The CJEU concluded that a Member States can require that a parent has been uninterruptedly employed during 12 months prior to the start of the parental leave, but cannot request from a parent to be employed on the date the child is born or adopted.

An amendment of Luxembourg law is to be expected to comply with the CJEU ruling.

- 1 Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC
- 2 Article L.234-43 of the Luxembourg Labour Code and Article 29 bis of the Law of 16 April 1979 fixing the general status of Luxembourg civil servants

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The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

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