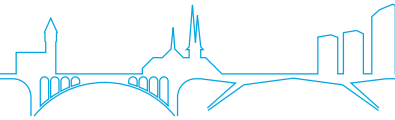




# Professional reclassification

New law applicable as of November 1, 2020



On July 24, 2020, a new law on professional reclassification was promulgated and will be applicable as of November 1, 2020.

The text raises many questions, which have not been answered at the time this article is released, but contacts have already been made with the ADEM Joint Commission to resolve them. Of course, we will keep you informed.



One of the main changes compared to the former law is the abolition of the notion of risk position. Indeed, for any employee, if the competent occupational physician considers that the employee is unfit for the job, he/she will inform the employer and the employee by registered letter, specifying the means of appeal and refer the matter to the Joint Commission.

If the company has more than 25 employees, the referral can take place if there is a certificate of aptitude or if the employee has more than 3 years of seniority; on the other hand if the company employs less than 25 employees in addition to the above conditions, the written agreement of the employee is required and in case of internal reclassification the written agreement of the employer.



Moreover, if the incapacity leads to a reduction in work time, at the first evaluation this reduction cannot exceed 20% as opposed to 50% at present, except in exceptional cases and on the advice of the ADEM occupational physician. On the other hand, during subsequent reassessments, the occupational physician's decisions (such as an increase in working hours) are binding on the employer, who has a period of 12 months to adapt the position.

This new law also introduces a number of obligations for employers, including:

- **The number of reclassified employees:**

Any company with more than 25 employees that does not have a sufficient quota of employees to be reclassified (4% — reclassified employees are assimilated to disabled workers) is obliged to reclassify internally. If a company has several legal entities, the quota of reclassified employees applies in each entity.

- **Income of reclassified employees:**

The employer may not reduce the employee's salary more than the reduction in working time and in fact may not downgrade it. The salary taken into account for the reclassification corresponds to gross remuneration + bonuses + gratuity + current supplement and benefits in kind, excluding overtime and incidental expenses.

Once a year, the ADEM conducts a review of the reclassified employee's contributory earnings if the amount exceeds the former contributory earnings. The compensation allowance will be reduced. If the occupational physician had decided on a reduction in working hours and ADEM finds that overtime was paid, reimbursement will be required.

The compensatory indemnity paid by ADEM remains acquired in the event of a change of company and is adapted to the index.

- **Participation in the loss of yield:**

At the employer's request, the director of ADEM allocates a share of the employee's salary of the worker in internal or external redeployment in case of a loss of performance. This loss of performance is evaluated based on the conclusions resulting from the analysis of the employee's workstation by the ADEM occupational physician and by an examination conducted by an ADEM agent using a standardized and objective tool that compares the employee's profile with the profile required for the position. This participation is proportional to the loss of performance (maximum 75% of the salary paid to the worker) and is subject to re-evaluation.