

Social ruling clarifies the nature of the labour relationship

As from end 2002 tax payers and candidate-investors can apply for a ruling in order to know how tax legislation will be applied to their projects. Who would like to obtain certainty on the nature of a labour relationship or especially on the chosen capacity - independent or employee - can as from now apply for a social ruling. The Administrative Committee for the regulation of the labour relationship is after five years finally composed.

False independence

The nature of a professional relationship between two parties has important consequences. The labour legislation arranges for individual (salary, trial period, dismissal, ..) and collective (workers council, ..) labour relationships between employers and employees and the labour regulations (labour hours, legal holidays, ..). These rules do not apply to independent employees. Such independent employee should pay social security contributions himself and has less social protection (no unemployment payments, lower pension) and should arrange himself in cover for these risks.

False independents are people having the capacity of an independent, but are actually performing a professional activity under the authority of an employer. This is social fraud. The Labour Relationships Law of 27 December 2006 will tackle the phenomenon of false independence. The basic principle of the law is that parties freely determine the nature of their labour relationship to the extent that this is not in breach with public order or morality. On the basis of four criteria the labour relationship will be determined: the intention of the parties, the freedom to organize the labour time, the freedom to organize the work itself and the possibility to perform hierarchic control. These general criteria are completed with specific criteria for a certain sector or for one or more professions.

The Administrative Committee for the regulation of the labour relationship

The Labour Relationships Law has also established a Committee for the regulation of the labour relationship, consisting of a normative and an administrative division. The normative division should complement the general criteria with sector specific criteria. Due to simplification reasons, this division is in the meanwhile abolished. Since 1 January 2013 the Committee for the regulation of the labour relationship only has an administrative division and is known as 'The Administrative Committee for the regulation of the labour relationship'.

This committee is established within the Federal Social Security Office and consists out of multiple chambers. The Administrative Committee will treat individual files and give social rulings on the correct qualification of a labour relationship if interpretation difference may occur. The members of this Committee are recently appointed (Royal Decree 11 February 2013, Belgian Official Gazette 21 February 2013).

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Social ruling

The Administrative Committee can take two decisions: confirm the chosen form of collaboration or re-qualify. Consequently there will be a hierarchic relationship and therefore a labour relationship employer-employee, or an independent relationship between a client and an entrepreneur. The Committee cannot take any decision in case the social inspection services in the meantime have started an investigation on the capacity, when the case is pending before court or when the court has already taken a decision in the case.

The advices are binding for the RSZ (Federal Social Security Office), RSVZ (Federal Institution for the social insurances for independents) and the social insurance funds. They are valid for three years. During this period the employer should in principle not fear any re-qualification. Unless the social ruling is based on false or incomplete statements of the employer, because in that case the ruling has no value.

Filing an application

When you have a question on an **existing labour relationship**, all parties (employer - employee or client - entrepreneur) should apply for a social ruling together. This can be done until 31 December 2013. After this date you still have 1 year to apply for a ruling for existing labour relationships, provided that specific criteria have been published for a specific sector. Do you have a question concerning a **new labour relationship** as independent or employee, than every party (employer - employee or client - entrepreneur) can apply for a ruling until 1 year after the start of the chosen qualification.

The apply is made directly with the registrar's office of the Administrative Committee for the regulation of the labour relationship by filing a petition on the spot or by sending a registered letter. Independents can also file the application with their social insurance fund. The sessions of the Administrative Committee are not public. Within three months after the application the Committee takes a decision. Appeal against the decision of the Committee is possible with the labour tribunal. To file for appeal, you have one month after the decision of the Committee.

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