LEGAL ALERT – AMENDMENTS TO THE BULGARIAN EMPLOYMENT LAW

There are substantial amendments to the Bulgarian employment law and particularly to the Labour Code ("**LC**")[1] effective from 17th July 2015[2].

Some stylistic amendments modernizing the legislation are also introduced. In view of these novelties in the legal framework, this alert aims at presenting highlights on the most important employment law changes.

This alert does not discuss exhaustively all current legislative changes such as the new seasonal one-day employment contract which applies to registered farmers only.

I. LEAVES

Substantial part of the newly introduced employment law provisions concerns reduction of the formalities related to the use of paid leaves. In practice, the abolished rules rather caused difficulties than helping the involved parties to exercise their rights in the best manner.

Further, more favourable provisions for mothers of four and more children and employees using sabbatical leave are introduced.

1. Without Schedules for Annual Paid Leave

Employers are not obliged to prepare and approve schedules for the use of annual paid leave by their employees. As a result the due annual leave will be used only upon request of the employee and written approval by the employer.

2. Unilateral Decision for Use of Annual Paid Leave by the Employer

The law provides one new ground to employers to unilaterally induce employees to use their annual paid leave.

Employers may now require unilaterally use of annual paid leave, if the following two prerequisites are met cumulatively:

(a) the employer invited in writing the employee to use his/her annual paid leave for the respective year; and

(b) despite the invitation the employee has not requested this use.

3. Postponement of the Annual Paid Leave Use

The general rule requiring the annual paid leave to be used within the year for which it is due remains into force. Only as an exception the use might be postponed for the following year. The new rules with this regard are:

(a) upon request of the employee the parties may agree on postponement without need to prove an exceptional need of this. The employer on the other hand still may unilaterally to postpone the use of part of the annual paid leave due to business reasons;

(b) unless the postponement is due to the use of other available leave, any postponement must be done for not more than the half of the due annual paid leave[3];

(c) the postponed use is to be exercised within the first six months of the

[1] Published in State Gazette (SG) No. 26 /1986.
[2] SG No. 54/2015, effective as of 17.07.2015.
3 The previous provisions allowed not more than 10-day postponement.

following year. If such use is not approved by the employer, the employee is entitled to plan unilaterally the period for use of the postponed leave only by informing the employer 14 days in advance.

4. The Additional One-Year Maternity Paid Leave is Now Due for Each Child

Mothers are entitled to additional paid maternity leave until the child reaches 2 years of age, regardless of the number of their children.

Prior to these amendments, for the care of a fourth, fifth and following number of child this type of leave was not paid.

5. The Non-Paid Sabbatical Leave is Now Recognized as Part of the Employment Length of Service

Generally, only 30 days non-paid leave per year are recognized as part of the employment length of service relevant for pension entitlement.

The legislator stimulates the employee's personal and professional development and introduces a new exception to the above rule by recognizing any non-paid sabbatical leave as part of the employment length of service.

II. WORKING TIME

1. Prolongation of Working Time Due to Business Reasons – Without Notification to the Authorities

By the discussed amendments, the law does not require the employers to notify the Labour Inspectorate for exceptional prolongation of the working time due to business reasons under Art. 136a of the Labour Code.

Thus, the only procedure required in this case remains the procedure for consultations with the trade unions and the employees' representatives.

2. Free Distribution of the Working Hours by the Employees Having Flexible Working Time

Generally, in case the parties agree on flexible working time, the employee is obliged to be at the working premises only within a specific period of time during the working day as agreed between the parties (e.g. from 10-14:00 h).

The new provisions of the Labour Code further elaborate the above rule and stipulate that the employee is entitled to decide by him/herself whether and how to work off the remaining part of his/her working time outside the mandatory required time in the working premises. The employee may work off this remaining part of the working time by allocating it within one or more days of the respective working week.

The purpose is to enable the employees to be more flexible and find better balance between their family and working duties.

The way of reporting of the actual time spent on work in this case is to be stipulated by the employer in the internal labour rules.

3. Minors from 16 to 18 years of age may work until 22:00 h

The law now increases the period within the day when minors from 16 to 18 years of age are allowed to work. As per this change, the night labour is forbidden for minors as follows:

(a) For minors from 16-18 years: from 22:00 h to 06:00 h.

(b) For minors below 16 years: from 20:00 h to 06:00 h.

III. TERMINATION OF EMPLOYMENT CONTRACTS

The last changes of the law also introduce two major amendments as regards the termination of employment contracts, namely:

1. Employers and Employees May Again Unilaterally Terminate Contracts Due to Acquired Right of Pension

This ground for termination of employment relation was abolished in 2012 due to the State's lack of enough funds for pensions. However, this decision was not corresponding to the business needs and to the maximum age of employment applicable for some governmental officers.

Due to the above, now employers are entitled again to unilaterally terminate a contract with an employee who achieved right to pension for age and length of service by prior notice.

On the other hand, employees having right to pension for age and length of service are now entitled to terminate their contracts unilaterally without prior notice.

2. Authorized Persons Imposing Disciplinary Sanctions

Generally, disciplinary sanctions, including disciplinary dismissal, are imposed by the employer or a person explicitly authorized by it.

By the recent changes, the law now requires employers to authorize only persons at managerial positions to impose disciplinary sanctions.

IV. PAPERWORK COMPLIANCE

1. New Formal Obligation for Keeping Employment Records

The specific obligation of the employer to keep an employment record for each employee is also a newly introduced novelty. This is actually already done in practice by most of the employers. The new provision aims to establish an express legal obligation for that.

The new regulations does not expressly specify a term for keeping these employment records. In any case, the requirement for keeping payroll records for 50 years still applies.

2. Micro and Small Undertakings with Less Obligations

A significant part of the amendments aims to reduce the administrative burden on the parties involved in the employment process. They are prompted by the practice showing unnecessary administrative difficulties for employers.

For the first time the new regulations establish different obligations for the employers taking into account the size of their business. For this purpose the Labour Code uses the terms "micro and small undertakings" as defined in the Small and Medium-sized Undertakings Act, namely: enterprises having:

(a) less than 10 (micro) or 50 (small) number employees; and

(b) less than BGN 3,900,000 (micro) or BGN 19,500,000 (small) turnover for the last year or value of assets.

General Comments

As per the new provision regarding micro and small undertakings, the following rules do not apply:

(a) the statutory procedures for introduction of temporary prolongation or reduction of the working time due to business needs[4];

(b) the obligation of the employer to adopt internal labour rules.

Our Recommendation

Despite the formal relief of the obligation to issue Internal Labour Rules, we would not advise you to take "advantage" of this. The internal rules are of great importance and advantage for each employer. This is the only way for an employer to *(i)* establish specific rules for its own working process; *(ii)* require employees to obey them; and *(iii)* impose sanctions for non-compliance, including disciplinary dismissals.

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[4] It is to be noted that there is an inconsistency between the purpose of this amendment as stated in the motives attached to the bill and the proposed and further adopted wording of the new provision §2a. This gives grounds for different interpretations of the new rule, namely: it is not clear whether such employers are entitled not to comply with the statutory procedures for consultations with the employee's representatives under this item (a) (as it is stated in the motives) or are actually not entitled at all to introduce these two types of exceptional working time due to business needs.