ELA GLOBAL EMPLOYER HANDBOOK – BULGARIAN CHAPTER

I. Hiring

A. At-Will v. Just Cause

The Bulgarian labour law (***BLL***) establishes the just-cause employment law system. Thus, the Bulgarian employer may unilaterally terminate the relationship with the employee only under a specific cause for termination. The causes for termination are exclusively listed in the Bulgarian Labour Code (***LC***).

Further, the BLL requires specific termination procedure to be followed for each separate cause of termination. These procedures involve number of documents, required actions (e.g. serving notice for termination; obtaining explanations for established violation from the employee, etc.) and observance of statutory terms. Generally, their purpose is to protect the rights of the employees at the maximum extend.

On the contrary, the employee is entitled to his/her constitutional right of free labour and may terminate unilaterally the employment relation without following a specific cause.

1. Common Law Claims

There are no laws or statutes pertaining to common law claims with respect to at-will v. just cause hiring in Bulgaria.

2. Statutory Claims

The dismissed employees in Bulgaria are entitled to claim unlawful termination, reinstatement at work and/or compensation for being unemployed for up to six months, as well as correction of the ground for dismissal stated in the employee's labour book. The court proceedings for the employees' claims are free of state fee charge and the court system is overprotective for the employees. Due to this, the most safety option for the employer is to reach mutual consent for termination with the employee.

Further, some categories employees in Bulgaria are protected by statute in case of dismissal due to some of the statutory causes for termination available for the employers.

The following categories of employees are subject to special dismissal protection (Art. 333 of the LC):

- mothers of children under the age of three years;
- employees enjoying vocational rehabilitation (reassignment to more appropriate job) due to medical reasons;
- employees who suffer from certain diseases listed in a special Ordinance;
- employees who have commenced use of approved leave (regardless of its type);
- representatives of the employees for the period of their nomination;
- employees who during their period of employment are members of:
    - special negotiation bodies;
    - European works councils;
    - representative bodies with a European commercial or co-operative company;
- employees' representatives on health and safety matters;
- employees who are members of a trade union leadership.

For termination of an employee falling into the categories above, the employer must follow certain formal procedural requirements for dismissal (e.g. obtaining a prior approval from the respective competent state authority).

The above protection applies for the following causes for termination:

- staff reduction based on changes in the employment grid;
- partial closure of the employer's enterprise (e.g. a department);
- decrease in the volume of work;
- employee's lack of qualities to effectively perform the work;
- changes in the job position's requirements (provided the employee does not meet the new requirements);
- disciplinary dismissal.

B. Discrimination

The Bulgarian Protection from Discrimination Act (***PDA***) prohibits all forms of discrimination (direct and indirect discrimination) in any field of social relations including in employment relations. It regulates prevention of discrimination and prescribes administrative fines and sanctions in case of violation of the statutory provisions. Further, civil claims for compensations for violations can be awarded by the civil court.

In particular, the PDA forbids the employers to discriminate job applicants and employees on the basis of the statutory listed characteristics, such as: gender, race, nationality, ethnicity, citizenship, origin, religion or belief, political affiliation, education, personal or social status, disability, age, sexual orientation, marital status, property status, any other grounds established by law or an international treaty to which Bulgaria is a party, etc. The employer should also prevent any type of discrimination treatment at the working place demonstrated by any of its employees towards others.

Discriminated employees are entitled to complain before the Bulgarian Commission for Protection from Discrimination no later than three years after occurrence of the discrimination treatment. Further, the employee may commence court proceedings before the competent district civil court against the employer for discriminatory treatment at the working place and compensation claim. This right of claim is lapsed by a statutory limitation period of five years as from the occurrence of the discrimination treatment.

The employee may claim before the court:

- establishment of the fact of the violation (discrimination treatment);
- issuance of an order addressed to the employer binding the latter to: *(i)* discontinue the violation and restore the situation to what it was before the violation; *(ii)* ensure non-discriminating environment; and *(iii)* refrain from committing such violation;
- compensation for suffered damages.

The right to bring a civil claim before the court is also granted to trade unions and non-governmental organisations, which can sue the employer on behalf of the employee and in certain circumstances on their own behalf.

C. Employment Applications

The BLL does not stipulate specific requirements for employment applications. In practice, the employer requires specific documents and information to be provided by the job applicants. In this case, the employer should observe the mandatory rules for personal data protection and the non-discrimination requirements.

In practice, the standard documents required from the job applicants are CV, motivation letter and copies of diplomas and/or other documents certifying acquired qualification. Usually, the Bulgarian employers do not provide employment applications samples for job applicants.

D. Use of Employment Contracts

For the establishment of a valid employment relation in Bulgaria, the BLL requires the parties to enter into a written employment contract. The employer must notify the National Revenue Agency of the execution of the contract within three days. Employment can lawfully commence after the notification is carried out and a copy of it is delivered to the employee.

A Bulgarian employment contract can be drafted in any language, as long as it contains the mandatory required contents and it is evident that both parties understand the used language. However, any Bulgarian competent controlling authorities may request Bulgarian translation (if relevant). In the event of a dispute, the court also requires the party referring to the contract first to make and present a Bulgarian translation of it.

The LC lists the mandatory required content of the employment contract. At a minimum, an employment contract must content provisions for:

- the parties;
- the job position and job description in question (the name of the job position should comply with the National Classification of the Professions and Positions);
- date of execution of the contract and expected date for commencement of the work.

If the employment contract does not contain any of the other substantial provisions required by law (such as notice period for termination; term of the employment; due annual paid leave, etc.), the minimum statutory rules provided by the LC apply directly. Thus, if no agreement for the term of the notice period is explicitly agreed in the contract, the general 30-day term apply to a contract with indefinite term.

The law further requires number of documents to be prepared by the employer, attached to the contract and delivered to the employee prior to commencement of the work performance (e.g. job description, internal rules, notification submitted with the National Revenue Agency (ref. Section VII A below), etc.).

The BLL provides for a number of forms of employment contracts. Regardless of the form, the above mandatory provisions apply. Some additional terms and conditions might be stipulated by the parties depending on the specific type of employment contract (e.g. for home-based work, telework, temporary agency work, training during work, internship, etc.).

Employment contracts may be concluded for an indefinite term (general rule), for a fixed term (e.g. of up to three years or for one day). Fixed-term contracts in Bulgaria are an exception and the parties may enter into such contracts only for a specific cause (e.g. seasonal work, replacement of absent employee, etc.). One-day contracts may be concluded for up to ninety days in a calendar year and for strictly limited activities (processing of plantations and harvesting certain agricultures' crops).

The BLL also regulates the option of entering into collective bargaining agreements (***CBA***). The CBAs might be concluded between employers and employees on different levels (within the employer's enterprise, industry level, etc.).

The CBAs elaborate on the statutory minimum terms of the employment relations and the employees' social protection.

The CBAs may not stipulate terms and conditions of employment less favorable for the employees than the mandatory legal requirements.

E. Advertising/Recruitment

The BLL does not provide for special rules regarding the advertising and recruitment. The Bulgarian employer may seek potential employees by itself or assign a recruitment agency for this purpose. Both employers and the recruitment agencies are publishing job offers and advertisements in the media and internet or approach potential candidates directly.

The use of Linkedin and posting employers' video advertisements are also quite popular ways for headhunting.

When advertising or recruiting personnel, the employers should ensure that they comply with the mandatory personal data protection and anti-discrimination laws described herein. The employers should ask/obtain only the personal data needed for the exact purpose of its processing, namely: entering into employment contract. For example, the Bulgarian Personal Data Protection Commission finds it unjustified and unlawful if an employer requires a copy of the job applicant's ID card as far as only part of the information on it is needed for the establishment of an employment relation.

For foreign investors starting their business in Bulgaria and having no knowledge of the specifics of the Bulgarian employment market, it is advisable to assign the recruitment process to a qualified agency.

F. Employment References/Background Investigations

Background checks in Bulgaria are conducted by requiring the potential employee to produce and provide the employer with a number of documents prior to the execution of the employment contract. These documents are two main types:

- **Legally required documents**

The BLL provides for a list of legally required background documents. Some of them apply to all employees and some depend on the type of the assigned work. Generally, the required documents include:

  - medical certificate evidencing the applicant's current health status (ability to work);
  - document evidencing a specific professional qualification or capacity;
  - personal ID card which should be returned immediately after collecting the needed limited data.

For some specific jobs a clear criminal record certificate is also required.

- **Documents required by the employer**

The employer may require some additional documents but only if these documents are related to the job performance (e.g. a requirement to provide clear criminal record certificate for the role of an administrative assistant will not be justifiable).

The employer must comply with all personal data protection and anti-discrimination requirements when obtaining personal information of the new employees. For example, an employer will violate the PDA and can be subject to sanctions, if it requests information concerning the employee's racial or ethnic origin, political, religious or philosophical convictions, sex life, etc.

II. Compensation

A. Minimum Wage

The Bulgarian government regulates the minimum wage for the country on annual basis. The minimum monthly wage for 2018 is BGN 510 and the minimum hourly rate is BGN 3.07 (approximately USD 304 per month and USD 1.8 per hour as per the currency exchange rate as at the date of this chapter). The minimum wage level applies to everyone, irrespective of their age, industry and experience.

It is to be noted that the law stipulates minimum social security thresholds differentiated with respect to the specific occupation. Thus, an employee might agree on the minimum wage as remuneration payable

by the employer but his social security contributions will be paid on base of the applicable minimum social security threshold, if it is higher than the agreed remuneration.

B. Minimum Age

Generally, the minimum required age for entering into employment is 16 years of age. The LC introduces some exceptions of this rule for certain occupations such as:

- **15 years old individuals –** they may perform certain types of light and not hazardous or dangerous work as determined case by case;

The BLL explicitly lists and defines the harmful and dangerous types of work and forbids them for individuals between 15 and 16 years of age.

- employees between 13 and 15 years of age – only apprentice positions at circuses;
- no age restriction – only for occasional art activities (cinematography, theatre, concerts, etc.).

In any case, if an employer hires employees under the age of 18 years, it should comply with number of mandatory required procedures and prohibitions, for example such related to execution of employment contract, work performance (e.g. working time) and dismissal of such employees. These procedures, for example, involve obtaining number of documents such as permits and medical certificates from the competent authorities.

C. Wage Payments

Gross wage

The gross employment remuneration in Bulgaria consists of:

- basic wage;
- additional remunerations due by law;
- additional payments as agreed in the individual employment contract and/or a CBA.

The parties should explicitly stipulate the gross amount of the due basic wage in the individual employment contract.

Additional remunerations due by law

The employer is obliged to adopt and deliver to its employees internal salary regulations by means of which to regulate all specifics related to the wage payments, such as way and terms of wage payments, eligibility to additional payments such as bonuses, etc.

The BLL stipulates mandatory due additional employment remunerations. Some of them depend on the specifics of the respective employment (such as additional BGN 15 per month for employee having PHD degree related to the current occupation).

The general additional remuneration mandatory due to all employees is the one for length of service and professional experience. It is due for each year relevant experience on the same or similar position where the employer recognizes the previous experience for the purposes of this remuneration. This amounts to minimum 0.6% of the employee's basic gross monthly remuneration for each year of length of service and professional experience (higher amount might be stipulated in CBA or the individual employment contract).

Bonuses and other benefits

The employer's internal salary regulations usually stipulate how bonuses and other monetary benefits are calculated and awarded. This regulation is mandatory for payments made on a regular basis.

No formal requirements apply to the discretionary payment of bonuses and other benefits although there is a general ban on discrimination (refer to Section I B).

In all cases, bonus and benefits policies should be notified to employees in advance to avoid possible labour law and/or discrimination disputes.

Fringe benefits are widely used and are an important part of the employment choice in Bulgaria. The most common fringe benefits are additional private medical insurances, food vouchers and sports cards.

Terms of payment

The wages in Bulgaria are payable on a monthly basis within the month following the month for which the wage is due. The terms of payment depend on what the parties agreed in the individual employment contract, the CBA, and/or the rules of the employer's internal salary regulations. Advance payments are allowed, if agreed/regulated in advance.

The law guarantees payment of at least 60% of the wage per month, but not less than the minimum wage for the country. For any delayed payments the employer owes statutory interest for each day delay. The statutory interest rate currently amounts to the base interest rate determined by the Bulgarian National Bank applicable as of 1st of January, respectively 1st of July of the current year plus 10 points for the period of the delay.

D. Child Labor

Please refer to Section II B above.

E. Overtime Pay

Generally, the BLL forbids the overtime work. As an exception, the LC allows overtime work to be performed only if it is extremely needed for the process of work.

The employers should comply with number of statutory requirements and procedures (e.g. cause for overtime work, time limitations, reporting to the Labour Inspectorate, etc.) in order to introduce and assign lawfully overtime work.

As compensation for the overtime work the employer should pay increased remuneration in the minimum amount of:

- 50% increase for overtime work during working days;
- 75% increase for overtime work during non-working days;
- 100% increase for overtime work during official holidays;
- 50% increase for overtime work in case of cumulatively calculation of the working time.

Along with the increased remuneration, the LC provides other protections for the employees who have no weekly break at all due to overtime (e.g. additional 24-hour break).

A CBA might provide for higher compensation or other requirements towards the employers assigning overtime work.

F. Workday/Workweek/Work hours

Working time

The standard working time under the BLL is eight hours per day over a 40-hour (five-day) week.

Alternatively, the employers may introduce:

- **extended working time**

The extension for employees working on standard working time is up to 48 hours per week but not exceeding 60 working days annually, 20 of which should not be consecutive. The extension is introduced by a written order of the employer.

- **mandatory required reduced working time**

The reduction is to six or seven hours per day and is mandatory required for minors or employees working under specific conditions and unavoidable life or health risks. The Council of Ministers determines specific job positions to which a reduced working time is mandatory required;

- **open-ended working time**

By means of this, the employer may unilaterally require some of its employees to stay at work after the end of the working day (for up to totally 12 hours per day) for completion of the work, if and when it is needed

The law stipulates prohibition of open-ended working time introduction for some categories of employees such as these with reduced working time.

- **shift work** - the allowed types of shifts are:
    - Mixed shift: including both daytime and night time work.
    - Night shift: including four or more hours of night time work.
    - Day shift: including less than four hours of night time work.

The maximum duration of a shift cannot be:

- more than 12 hours, in a 56-hour working week;
- for employees with reduced working time - not more than one hour over their reduced working time.

Two uninterrupted working shifts are prohibited.

- **overtime work**, if extremely needed;
- **part-time work –** the working time covers a fraction of the legally defined standard working time.

There is no general requirement for minimum duration of the working day – it depends on the agreement between the parties. For the purposes of length of service recognition, the part-time employee should work at least four hours per day. The employer may unilaterally reduce the working day but only following the mandatory required procedure and under any of the exhaustively listed grounds for this. It may reduce the working day unilaterally for not more than the half of the working time of the respective employee and for a period not longer than three months per calendar year;

- **working time with variable limits**

The employee is obliged to be at the employer's premises only for a specific period of time during the working day (for example, from 9am until 1pm) after which time the employee himself decides whether and how to work off the remaining part of his/her working time. The employee may allocate this remaining part of the working time within one or more days of the respective working week.

The standard working time of employees below 18 years of age in any case should not exceed 35 hours per week.

Breaks

Employees are generally entitled to:

- **lunch break** – not less than 30 minutes per day and not included in the working time;
- **daily break** – not less than 12 hours between two consecutive working days;
- **week break** – at least 48 hours (two consecutive days one of which generally should be Sunday), or at least 36 hours in the case of cumulatively calculation of the working time or 24 hours in case of shift work together with cumulatively calculation (summed calculation) of the working time;

- **physiological breaks** included in the working time – upon measurement of the working conditions and following the health and safety working requirements, the employer is obliged to ensure such breaks with duration depending on the specifics of the work (e.g. 10 minutes break per hour for work on a computer).

Specific breaks and working time duration are mandatory determined for some employees working under specific and harmful working conditions.

III. Time Off/Leaves of Absence

A. Paid Vacation

The BLL requires employees' allowance of at least 20 working days paid leave per year. For some categories employees an increased annual paid leave is due (e.g. 5 days more for employees with open-ended working time or employees working under harmful working conditions).

In order to use this allowance, the employees should have at least eight months length of service (irrespective where it is acquired).

The employee should use his annual paid leave (at once or in parts) within the relevant calendar year.

If annual paid leave remains unused, two-year statutory limitation for the right of its use applies. The law allows monetary compensation of unused annual paid leave only in case of termination of the employment relationship.

B. Paid Sick Leave

The Bulgarian employees are mandatory insured for temporary work inability. Thus, if such inability occurs due to sickness, occupational disease or accident, the employees are entitled to paid leave for their health recovery.

Eligibility

In order to receive compensation (indemnification) payment during the sick leave the employees should have been insured for temporary work inability for a period not less than six months. This rule does not apply for employees:

- under the age of 18;
- whose work inability is a result of an occupational disease or accident.

Compensations

The employees are entitled to the following compensations in case of paid sick leave:

- for the first three working days of absence - 70% of their average daily gross wage due and payable by the employer;
- for the remaining prescribed period for recovery:
    - 80% of an employee's average daily gross wage for inability due to sickness;
    - 90% of an employee's average daily gross wage in the case of an occupational disease or accident.

This second part of the compensation is due and payable by the state (the National Social Security Institute) and is capped at the maximum social security base of BGN 2,600 from 1 January 2018 (approximately USD 1,456 as of the date of this chapter).

C. Paid Time Off

The LC lists 14 public holidays, for example 1 January and 1 May. In addition the Council of Ministers may determine other days as non-working days on a one-off basis. The remuneration for work performed during public holidays amounts to not less than the double amount of the remuneration that would be ordinarily paid.

The public holidays are not included in the annual paid leave of the employees.

Other provisions with regard to paid time off can be defined by the employer's internal employment regulations and CBAs.

Employers often request their employees to use paid time off during their notice period. For this purpose the parties may agree to use part of the remaining annual paid leave or the employer to grand additional paid time off. However, such time off might be granted only if the employee agrees. Generally, the employees might either continue work during the notice period and then cash out the accrued annual paid leave or request non-observance of the notice period against compensation (notice period non-observance might be requested by each party regardless of the fact who served the notice; the due compensation for non-observance amounts to the remuneration due for the non-observed period).

D. Family and Other Medical Leaves

If an employee has a disabled or sick family member, he is entitled to sick leave as if it was his own disability or illness (ref. Section III B above).

Careers are entitled to indemnity payments from the National Social Security Institute for a limited period (between maximum ten and 60 days per year, depending on the age of the sick family member or until end of the hospitalization / lifting of the quarantine).

The Bulgarian employees are entitled to exhaustively listed paid leaves. In addition to the leave for sick family member and the parental leaves (ref. Section III F below) the employee may take a number of days (1-2) for some special occasions, such as blood donation, marriage and death in the family. Should an employee need a longer leave or a leave due to other personal reasons non-listed in the BLL, he only may ask the employer unpaid leave granting or an exceptional use of the annual paid leave.

E. Disability Leaves

As per the BLL "disability" refers to temporary or permanent incapacity for work. The competent medical authorities establish the percentage of the work disability and prescribe the needed time off (leave). Based on such prescription the employees may take paid sick leave as described above. Further, the authorities may prescribe vocational rehabilitation of the employee (change of the job position to another one, more suitable to the health condition of the employee).

The maximum allowed paid sick leave on an uninterrupted basis is 18 months (this applies where the employee has a serious sickness). Apart from this, if the employee has permanently reduced ability to work of 50% or more, he is entitled to an increased annual paid leave of not less than 26 days.

Longer paid leaves may be established in these cases by a CBA.

F. Pregnancy Leave/Paternal Leave

Pregnant employees in Bulgaria are entitled to paid maternity leave of 410 calendar days for each delivered child. 45 calendar days must be taken before delivery.

Employees using maternity leave receive indemnity payments from the National Social Security Fund, if they have acquired 12-month working experience recognized for social security purposes. Maternity leave indemnity payments amount to 90% of the employee's average wage on which social security contributions have been calculated and paid for the period of 24 months preceding the maternity leave (where the minimum and maximum social security thresholds apply). The minimum amount of the payment is the minimum daily wage for Bulgaria (ref. Section II A). The father is also entitled to paid leave

of 15 calendar days after the birth of a child, if he has acquired 12 months' working experience. The paid leave is indemnified by the National Social Security Institute in an amount determined in the same manner as the maternity leave indemnification.

Once the child has reached six months the father may use the remaining maternity leave upon the consent of the mother. In this case, the father is entitled to the same benefits as the mother, if she had used her maternity leave.

In relation to full adoption, there are amendments in the Bulgarian legislation in force as from July 1, 2018 providing that the adoptive mother of a child of up to 5 years of age is entitled to a maternity leave for a period of 365 days as from the day the child was handed over for adoption but no later than reaching the age of five years by the child.

The indemnity payment for the period of use of the maternity leave above is in the amount of 90% of the average daily gross salary or average daily insurable income of the adoptive employee on which basis insurance contributions have been paid or are payable for the period of 24 calendar months preceding the month of use of the leave (where the minimum and maximum social security thresholds apply).

The amendments also provide for the right to additional parental leave for raising a child of up to 2 years of age equal to the right of the birth mothers. The adoptive employee is entitled to this leave, if, after the expiry of the 365-day leave, the child is less than 2 years of age. For this additional leave, the amount of the compensation is determined by the Social Security Budget Act for the respective year. For 2018, the amount of compensation for this type of leave is BGN 380.

Adoptive fathers are entitled to the same leave as natural fathers once the child has reached six months of age, though this must be taken no later than the child's fifth birthday.

A foster parent (that is, an individual caring for a child without adoption, under the terms of the Child Protection Act) is entitled to parental leave until the child reaches two years of age.

After the expiry of maternity leave, an employee that is a mother, father, adoptive mother or adoptive father is entitled to paid parental leave until the child reaches the age of two, regardless of the number of the children.

During parental leave use, the employee receives indemnity payments from the National Social Security Institute. The amount is determined annually by the Social Security Budget Act. Currently it is stipulated in the amount of BGN 380.

The mother or father of either of the parents can use the parental leave instead of the mother with the mother's consent.

Upon expiry of the above paid leaves, each parent (adoptive parents inclusive) is entitled to an unpaid six-month leave until the child reaches eight years of age. Above his own six months each parent may use five of the allowed six months' unpaid leave of the other parent with the latter's explicit consent. A single non-married parent is entitled to a 12-month non-paid leave, where the other parent has passed away or has been deprived of his parental rights. The unpaid leave might be taken at one time or in different periods.

The working mothers of child up to 8 months of age are entitled to paid leave of one or two hours once or twice per day for feeding the child. The allowed leave depends on the working time of the mother.

An employee who used maternity or parental leave (regardless of its type, unpaid leave inclusive) is entitled to propose the employer temporary change of the working time or other working conditions (e.g. to request telework) needed for the proper adaptation and transition to standard workload. The employer is obliged to consider such proposal if it is possible in view of the workload at the enterprise.

G. Workers' Compensation

Except for the compensations (indemnifications) paid to the employees during the leaves discussed above, the Bulgarian LC defines number of compensations due by the employer when it fails to fulfill any of its mandatory obligations. The scope of the monetary liability of the employer depends on the type of the failed obligation and most of them originate from the general prohibition for unilateral change of the employment relation by the employer.

The employer might be held responsible for:

- death or harm to the health of the employee as a result of occupational accidents and diseases

In this case the employer owes compensation irrespective of its fault. The reason is the statutory presumption that the employer failed to fulfill its obligations to ensure a healthy working environment. The due amount is reduced by the amount received by the employee from the social security compensation and insurance policies. It can also be decreased when the employee contributed to the causing of his own damages.

- any violation of the employee's labour rights

The compensation in this case depends on damages occurred for the employee, such as:

  - unlawful non-admission to work;
  - unlawful suspension from work;
  - failure to issue or delayed issuance of employment documents needed by the employee;
  - entry of false information in the above documents;
  - unlawful detention of the worker's labour book after termination of the employment relationship, etc.

IV. Termination Issues

A. Wrongful Termination Claims

If an employer initiates termination of an employment contract, there must be strong and indisputable documentary evidence to support the termination on one of the causes listed in the LC (please see Section I A above).

Generally, the employment termination process is initiated by a formal written notice to the employee (except for disciplinary dismissals and some objective causes not requiring notice delivery such as employee's decease). The notice period is 30 days, unless otherwise agreed between the parties. The notice period might not be longer than three months.

Following the procedure applicable to the chosen cause for termination, the employer should also consider whether the employee in question enjoys a special protection against dismissal (ref. Section I A2 above).

On expiry of the notice period or occurrence of the specific cause for termination, the employer documents the termination by a formal act, namely: order for termination.

If the procedural requirements for termination of the contract on the chosen cause are not met, the employee may claim unlawful dismissal before the court (ref. Section I A2 above).

In addition, if the employee notified the Labour Inspectorate of the unlawful dismissal, the Labour Inspectorate can impose monetary sanctions on the employer.

B. Retaliation Claims

There are no laws or statutes pertaining to retaliation claims or whistleblowing in Bulgaria. The closest to the matter is the regulation of discrimination issues (please see Section I B above).

C. Discrimination Claims

Anti-discrimination legislation applies to employment in general and its provisions make no difference between discrimination claims when hiring or terminating the employment. For the relevant discrimination criteria and proceedings, please refer to Section I B above.

D. Severance Pay

The LC provides for statutory compensations due by the employer upon termination of employment contract. They vary in accordance with:

- the termination cause (e.g. for some objective causes such as staff reduction one wage compensation is due for being unemployed);
- observance or non-observance of due notice period;
- the duration of the employment (applicable if the employee reached retirement entitlement).

Statutory compensations generally vary from one to six months' gross wage.

The severance pay always includes compensation for due (unused) annual paid leave.

E. Harassment

As mentioned above, the Bulgarian PDA does not allow direct or indirect discrimination or advantages for reasons not related to the professional qualities of the employee.

As per the PDA harassment is any behavior based on discrimination and manifested physically, verbally or otherwise, aiming at or resulting in:

- harm to the individual's dignity;
- a hostile, insulting or threatening environment.

Harassment on the grounds of any of the discrimination types (ref. Section I B above), including sexual harassment, may result in disciplinary action by an employer that can ultimately lead to dismissal. An employer who has received a complaint by an employee for harassment at the workplace must immediately undertake measures to:

- perform an investigation;
- stop the harassment;
- impose disciplinary measures on the harassing party (if the investigations prove the harassment).

The procedures in relation to complaint and civil action are the same as in relation to discrimination (ref. Section I B above).

V. Layoffs/Work Force Reductions/Redundancies

Redundancy/layoff is defined as a decrease or future elimination by the employer of separate units of the approved total number of employees where the respective labour function is effectively removed.

The employer can carry out redundancies in cases of:

- closure of the enterprise or a part of it;
- staff reduction;
- reduction of the volume of work;
- suspension of the employer's business activity for more than 15 working days.

A. Advance Notice

The process is strictly regulated. Further, in case of collective redundancies (mass layoffs) it involves consultations with the employees' representatives. The consultation must take place at least 45 days

before the effective date of the redundancies. Its purpose is to agree on the performance of the envisaged redundancies or reduce the number of the affected employees.

When the redundancies are not collective, the employer is free to choose which employees to make redundant or which positions to close down. It is possible to dismiss employees whose positions are not made redundant in order to retain employees with better qualifications or work performance.

The employer is obliged to follow a statutory selection procedure, if the redundancy affects identical or similar job positions.

The notice periods that have to be observed are the same as those for regular termination. They depend on the particular employment relation.

Additional rules for notification and/or consultations may apply if a CBA applies to the affected employees.

B. Severance Pay

In case of redundancies the employer owes the same severance pay as in case of termination due to any other causes (ref. Section IV D above).

It is to be noted that in particularly all cases of redundancy requires payment of compensation for being unemployed for one month. A longer period for this compensation might be provided by an act of the Council of Ministers, by a CBA or in the individual employment contract. If during that period the employee starts a new job with a lower remuneration, he is entitled to the difference between the two amounts for the indicated period.

C. Benefits

The Bulgarian employers are not required to provide benefits to employees who are laid off, unless otherwise agreed in a CBA/individual contract. This does not refer to the severance pay, described in the preceding item B above.

D. Use of Separation Agreements

In Bulgaria the institute of the separation agreement is not legally defined. There are two similar causes for termination of the employment:

- **mutual consent for termination without compensation**

In this case the LC requires the parties to deliver each other a formal written proposal and acceptance for termination. The acceptance should be delivered within 7 days as of receipt of the proposal. As a result, the employer issues termination order. The requirement for proposal and acceptance exchange is met also in case the parties make them in the form of a separation agreement.

- **mutual consent for termination against compensation**

In this case, along with the formal proposal and acceptance (or separation agreement incorporating them), the LC requires minimum of four wages severance payment. A higher compensation might be agreed between the parties in the separation agreement. It is presumed that termination due to this cause is initiated by the employer.

In both alternatives for mutual consent termination compensation for unused annual paid leave is due.

The BLL does not regulate explicitly the lawful behavior of the parties after the employment termination (such as confidentiality obligations). In view of this, it is highly recommendable the parties to sign at least non-disclosure agreement.

VI. Unfair Competition/Covenants Not to Compete

A. Trade Secrets

The BLL does not regulate explicitly the non-disclosure obligations of the employees after employment termination nor defines what confidentiality information means. In view of this, it is advisable the employer to define in advance the scope of the required confidentiality (in the employment contracts, its internal rules or other formal internal acts).

Disclosure of confidential information during the employment is a legally established violation of the employee's obligations and represents a cause for imposition of disciplinary sanctions, including dismissal. In order the employee to be deemed in fault, he/she must be informed in advance what type of information is considered confidential.

The law, on the other hand, does not provide for special rules regarding disclosure of confidentiality information after termination of the employment. In view of this, it is advisable the employers to formalize this issue with their employees by including a non-disclosure clause in the employment contracts reviving their termination (or execute separate confidentiality agreements) and stipulate penalty for noncompliance.

B. Covenants Not to Compete

The BLL does not explicitly regulate the non-compete covenants. However, as per the constant court practice such restrictions after termination of the employment contract are not valid as far as they violate the constitutional freedom of labour of the employees. Thus, even when explicitly agreed in an employment contract, non-compete clauses after termination are generally void in Bulgaria.

A Bulgarian employment contract may contain non-compete covenant valid only during the employment relation (prohibition for entering into second contract with competitor or any other employer).

C. Non-Solicitation of Employees and Customers

Non-solicitation of employees and customers after termination of the employment are not defined in Bulgarian legislation and are considered violation of the freedom of labour and protection of competition guaranteed by the Bulgarian Constitution and other acts. However, this does not refer to the obligation of an employee to protect its former employer's secrets, when such a clause is included in the employment contract. The former employee is also subject to the provisions of the Protection of Competition Act and its rules for fair competition.

VII. Personnel Administration

A. Required Postings

The employer must notify the National Revenue Agency (**NRA**) of the execution of each employment contract within three days of its signing. The employment relation may commence lawfully only after the notification is duly made and a certified copy of it (along with the other legally required documents) is delivered to the employee.

The employer should make such notifications to the National Revenue Agency in case of change of the job position; change of term, changes in the place of work for the business trip assignments and termination of the employment contract. These notifications are to be made within seven days of the change.

Special notification form should be submitted with the NRA in case of transfer of undertaking.

Internally, the employer is obliged to keep and fill in the labour book of the employee. It is to be updated with relevant information in any case of changes of employment as listed in the LC.

B. Required Training

Some professions in Bulgaria are subject to regulation. For their performance the employee needs to receive a respective degree of professional qualification (e.g. a professional high school diploma, a university degree, a legal certificate for competence, etc.).

On the other hand, the employer is obliged to:

- ensure the development of the professional qualification of its employees (if possible);
- ensure that the employees are updated with the work novelties occurred during their absence;
- organize initial and periodic health and safety trainings and instructions for the employees;
- ensure that all employees are instructed and trained on safe working methods before starting work.

The employees, on the other hand, are obliged to develop their professional qualifications by participating in the employer's trainings and initiating such development on their own.

C. Personnel Records

The employer is obliged to keep and prepare number of personnel documents evidencing the length of service, received remunerations, social security status, development of employment, etc. The payroll records should be kept within 50 years (for retirement purposes) and delivered to the National Social Security Institute in case of closure of employer's legal formation (ref. Section VII G below).

Further, the employer should enter relevant records (e.g. on hiring, termination of employment; change of job position, etc.) in the employee's labour book.

The employer should provide the employees with excerpts, conformation letters and any other documents related to the employment upon their request.

When keeping personal records of the employees, the employer in Bulgaria must comply with all anti-discrimination and applicable personal data protection requirements, such as to:

- ensure proper processing and protection of the personal data from unlawful access, distribution, use and destruction;
- provide the employees with all information on the held specific personal data related processes as required under Art. 13 and 14 of GDPR, etc.

As per the applicable EU personal data protection legislation is any information about a person which is sufficient enough to identify this person directly or indirectly.

As regards his/her personal data each employee may exercise any of his/her rights under GDPR (e.g. Sections 2, 3 and 4 of the GDPR).

D. Meal and Rest Periods

According to the LC, the employer must provide employees with time for rest (physiological breaks) and meal during the working day. The duration of the meal break (lunch break) should be not less than 30 minutes (a longer period might be agreed in the employment contract) and is not included in the payable working time. Where the organization of the work process does not allow its interruption, the employer ensures time for meal during the working time.

The employers should also grant the employees physiological (rest) breaks during and included in the working time. The duration and frequency of these breaks are determined by the labour medicine service provider of the employer and depend on the specifics of the assigned work. These breaks aim provision of health and safety working conditions.

After the working day the mandatory required rest breaks are daily and week breaks (ref. Section II E above).

The Council of Ministers may establish a different duration of the working time and rest periods for some occupations with specific nature and/or work organization.

E. Payment Upon Discharge or Resignation

In certain cases, the LC provides for different types of payments upon an employee's dismissal. The amount of such payments is described in Section IV D and Sections V B above.

Further to this, should the employment is terminated on any cause after the employee reached retirement entitlement, the employer is obliged to pay a severance pay in the amount of either two or six-month wages depending on his length of service with the same employer (two wages for work up to ten years with the employer or six wages for work for more than ten years with the same employer). This severance payment is due only once.

In case of employee's resignation only compensation for unused annual paid leave and for unobserved notice period, if any, apply.

F. Giving Employment References

The employees are entitled to request in writing for an objective and fair characteristic of his professional qualities and of the results of his work performance and/or an objective and fair recommendation in order to apply for work with another employer. In this case, the employer must meet the request.

The only exception in which the employer is legally required to give references even without employee's request is in case of internship contract. The internship contract is a fixed-term contract facilitating young people having no experience to acquire practical skills in the profession that they just acquired. The employer is legally bounded to write a recommendation letter after termination of such contract.

G. Recordkeeping

Bulgarian LC provides for a specific obligation of the employer to keep an employment record for each employee. The employment record is created at commencing work under the respective employment contract and contains the documents related to the establishment, existence, amendment and termination of the employment relationship, such as:

- payroll sheets;
- different types of declarations, signed by the employees, when such are necessary for the occupation of a particular job position;
- other documents signed and/or submitted by the parties during the employment;
- orders of the employer for awards, disciplinary sanctions and other circumstances related to the employment;
- employee's requests for the use of all kinds of leaves and sick leave certificates; etc.

Employees are entitled to request and receive certified copies of all documents contained in their employment records.

Employers in Bulgaria must issue or keep available other types of documents for the purpose of control by the relevant authorities:

- register of job-related accidents;
- internal rules of the employer's enterprise;
- documents related to the organization of the working time (orders for overtime work, shift schedules, etc.);
- a book for accounting of the overtime work, etc.

In the event of termination of the activity of the employer when it has no legal successors, the employment and payroll documentation should be delivered to the competent local division of the National Social Security Institute, unless another procedure for their keeping is established by law. This

rule is established for the protection of the social security rights and status of the employees, especially their pension and state compensation entitlement.

VIII. Privacy

A. Drug Testing

There are no specific rules in the BLL regarding the drug testing. The LC establishes general obligation for the employees:

- to appear at work in a condition proper to fulfil their tasks; and
- not to consume alcohol or another intoxicating substances during working time.

In view of this general obligation, each employer is entitled to determine its own internal policy and rules, including drug/substance testing.

It is to be noted that the Bulgarian Constitution prohibits any interference with the personal inviolability, unless it is required by law. Due to this, the explicit consent of the employee for such testing is required. There is no statutory obligation for employees to agree to a drug test.

Appearing at work under the influence of alcohol, narcotics, or other intoxicating substances is considered violation of the work discipline and is ground for disciplinary sanction (incl. dismissal). Depending on the method of testing, the employer may need to involve a person with the appropriate medical education in the testing procedure. In case of refusal of the employee to be tested, the employer is entitled to evidence the state of intoxication by other means, including by use of witnesses. As far as the procedure for imposition of disciplinary sanction is quite complicated and formal, the state of intoxication and the risk of serious consequences from a violation of work safety due to intoxication must be established in a formal procedure. Failure to provide the necessary evidence may invalidate the intended dismissal.

B. Personnel Records and Information

Please refer to Section VII C and G above.

C. Off-Duty Conduct

Employers can take disciplinary action against employees for off-duty conduct only if it has an impact on the employment relationship. For example, if a professional driver loses his/her driving license because of an alcohol abuse, this represents one of the causes for dismissal or imposition of a disciplinary sanction.

Thus, as an exception the employer might take adverse actions against the employee in case the latter violates the employment discipline by an off-duty conduct. For example, an employee taking day-off is smoking in the non-smoking area in the employer's premises, or conducts any improper actions that threaten the health and safety working environment for the other employees in the employer's premises. Another example strongly confirmed in the recent court practice is the case when during the time-off an employee damages the reputation of the employer. The obligation to keep the employer's reputation should be observed at any time even during time-off.

In view of the above, it is to be noted that if the employer wants to take some adverse actions for employee's off-duty conduct, it should carefully assess all circumstances and decide whether the conduct is directly related to the employment.

Bulgarian employers may not discharge or discriminate employees for engaging in lawful conducts on their spare time.

Off-duty political or social activities do not, in general, give cause for any kind of disciplinary action by the employer.

D. Medical Information

According to the applicable legislation the information from medical records is considered protected and sensitive personal data. The law defines the authorities competent to process such information

(specialized health authorities and institutions). The medical information can be entrusted to third parties (including employers) only in case of an exception explicitly listed in the law.

Generally, employers do not require any kind of medical records from their employees, except for medical certificate evidencing the ability of the employee for work upon the establishment of the employment relationship. Such medical record may be requested by the employer also in cases of suspension of the employee`s labour activity for a period exceeding three months.

Further medical data is needed only for some specific occupations, where this is prescribed by law or for employees having specific medical conditions entitling them to special employment protection.

The employer deals with medical information also with regard to its obligation to conduct periodical medical examinations of the employees.

Whatever is the reason for processing medical information, the employer must comply with all personal data protection requirements when obtaining such information and keep it confidential. Usually, the sensitive medical information is collected by a labour medicine service provider (service provider assigned by the employer for compliance with the health and safety requirements) and only statistical general information or warnings are given to the employer.

E. Searches

Generally, the Bulgarian law views searching employee property or even searching the employee personally as grievous encroachment of the employee's right to privacy, unless the search is conducted via publically available resources. Searches are only permissible, if there are reasonable causes to justify them covered by the criminal legislation.

F. Lie Detector Tests

There are no specific provisions in the BLL regarding special employment testing such as lie detector tests, psychological and personality profiling, or other similar screenings. At present, there are no laws regulating the activities of companies providing lie detector services or the obligatory licensing of their activities. Employees who participate in the lie detector tests do so on a voluntary basis.

Any lie detector or similar testing can be conducted only with the written consent of the employee and cannot be used as ground for his dismissal.

G. Fingerprints

Usually fingerprints are used for the purposes of ensuring control mechanisms for compliance with the labor discipline and/or ensuring restricted access and security of the employer`s premises.

Fingerprints are sensitive personal data and the employers should ensure the required lawful processing and protection of these data.

H. Social Security Numbers

Social security information – as with other personal data – is subject to protection. Employers have to comply with the requirements of the relevant acts.

Having his own social security number, the employee may check his social security status. It is advisable to obtain such information on a regular basis as far as all social security instalments are made by the employer (even those due by the employee).

However, the Bulgarian social security number are not used as universal general identification personal number as it is in other states. The use of this number is limited mainly to social security purposes.

I. Surveillance and Monitoring

Companies more often monitor their employees by checking the internet sites they visit, recording their phone conversations, installing security cameras. This might be considered GDPR violation if is not held properly.

In such cases it is important the employers to adopt and deliver to all employees in advance internal policy containing clear instructions on their rights and obligations related to the use of the employer's property. Thus, if the employer plans to monitor the correspondence/phone conversations of its employees, it has to inform them that the use of their office email accounts/office phone for personal purposes is prohibited. Otherwise, there is high risk any monitoring of personal conversations and other personal and non-job related employees' activities to be considered as grievous encroachment on the employees' right of privacy.

Video surveillance (including recording video surveillance) is admissible as long as it does not violate the privacy of employees (such as installing cameras in lavatories), their dignity and the personal data protection requirements.

IX. Employee Injuries/Workers' Compensation

Employee injuries are covered by the statutory employee temporary disability insurance under the Bulgarian Social Security Code. Please refer to Sections III B and E above.

X. Unemployment

Unemployment benefits (state compensation) in Bulgaria can be paid to individuals who are capable to work but have no job. Benefit seekers must register as unemployed at the competent Employment Agency and be available for work. Section III of Chapter IV of the Social Security Code and other provisions therein defines the terms, procedures and amounts of payment of unemployment state compensations.

The former employees are entitled to unemployment state compensations, if they were subject to statutory insurance for unemployment at least twelve months for the last 18-month period. The amount and duration of this payment depend on different criteria such as acquired length of service and grounds for termination of the employment relationship. The maximum duration of the unemployment state compensations payment is twelve months. It applies for employees with acquired length of service exceeding 15 years.

Unemployed persons whose employment relationships are terminated at their request or with their consent or due to their guilty conduct receive the minimum amount of the unemployment benefit for a period of 4 months. Same applies for the former employees who are entitled to unemployment compensation before expiration of three years as from the previous exercised right to unemployment benefit.

Generally, employees receiving other state compensations or pension are not entitled to receive unemployment compensation.

On the other hand, the employers may receive grants and incentives for employing people. The incentives are individualized annually with the National Action Plan for Employment, based on various criteria (for example, the employment of persons below 29 years of age; permanently unemployed people, unemployed people with permanent disabilities, etc.) and represent state subsidies payable by the Employment Agency. Grants generally cover the remuneration and social security instalments due from the employer.

Each year the National Action Plan for Employment determines the funds and their amount under the individual programs and measures to promote employment.

The European Union's (EU) funds also provide various funding opportunities. EU operational programmers offer incentives for employing people in Bulgaria (for example, the Operational Programmed "Human Resources Development" with its "Active" scheme). Most of these aim to encourage employment of inexperienced young employees.

XI. Health & Safety and Unions - Industrial Relations

A. Health and Safety

The Bulgarian Labour Code entrusts employers with responsibility for health and safety conditions of labour. Special rules apply to their health and safety obligations, such as:

- to require mandatory preliminary health checks at the employee's expense before commencement of the employment;
- to adopt and comply with internal health and safety rules consistent with the specifics of the work with the enterprise;
- organizing initial and periodic health and safety trainings and instruction for the employees;
- ensuring that all employees are instructed and trained on safe working methods before starting work;
- free provision of special work clothing, personal protection items, preventive meals and anti-toxins and other measures neutralizing the harmful effects of the work environment;
- to assign the health and safety compliance to specialists – labour medicine service provider.

On the other hand, the employees are obliged to work in compliance with all health and safety rules determined by the employer, use properly the protection facilities, learn safety rules and methods, etc.

In order to ensure the above compliance, the employers must establish joint employer/employees bodies on health and safety matters within their enterprises (namely: working conditions committees or working conditions groups depending on the total number of employees). Their purpose is to ensure and strengthen the social dialogue between the employers and the employees as regards the health and safety working conditions.

B. Unions

The LC protects the constitutional freedom to be, to become or not to be a member of an employers' or employees' association or union.

Employees have the right to organize and participate in trade unions which represent and protect their interests. The employers have the reciprocal rights but with employers' organizations.

Employees who are part of the union's leaderships enjoy a special protection from dismissal (ref. Section I A 2 above). The employer may dismiss such employees unilaterally due to the causes listed in the LC (such as disciplinary dismissal, staff reduction, etc.) only after it receives prior permission of the respective union's competent body.

Separately, the LC requires the employees to establish general meeting of all employees in the employers' enterprises. The general meeting of the employees should also appoint employees' representatives on general matters and representatives on health and safety matters who carry out the communication with the employer on different occasions and represent the employees in information and consultation procedures (e.g. as required in case of transfer of undertaking, adoption of internal rules, etc.).

The trade unions act on behalf of the employees, particularly in collective bargaining and settling disputes with the employer. The employers' organizations, especially the representative ones, also have an important role in the collective bargaining and the tripartite cooperation.

For the collective bargaining agreements, please refer to Section I D above.