

## **Amendments to the Labor Code**

Law no. 136/2015 "On some additions to the Law no. 7961 dated 12.07.1995 "On Labor Code of the Republic of Albania", as amended

The Newsletter provides for a brief summary of the amending law as follows:

### **Novelties**

#### **1. Temporary employment Agency**

The Amending Law introduces the Temporary employment agency in line with the provisions of the EU Directive 2008/104/EC on temporary Agency work.

The Agency has the role of the employer hiring an employee, for a temporary period of up to two years, who works for the account of a hosting enterprise/company for the whole employment term and under the same job position.

The Law regulates the relationship between the employee and the Agency, the relationship between the Agency and the hosting enterprise, and the joint obligations and rights of the Agency and of the hosting enterprise against the employee.

It is not clear by the newly introduced provisions if this Agency has the traits of a recruitment agency but it might not meet all the requirements of a recruitment Agency since it is not required to recruit the employee itself (the hosting company might recruit it directly, the Agency only employs him/her for the account and on behalf of the hosting company), and since the law considers as invalid any Agreement entered into between the Agency and the hosting enterprise which provides for the obligation of the employee to pay an employment fee to the Agency.

The primary law does not provide for any special registration or licensing of the temporary employment agency, however it is not excluded that a subsequent secondary law issued for the implementation of the law, might provide for that and for the unclarity as per the above paragraph.

The aforementioned agreement is considered invalid also in the event of prohibiting the hiring of the employee at the hosting enterprise after termination of the employment contract entered into between the employee and the Agency.

#### **2. Telecommuting**

The Amending Law introduces telecommuting as a new form of employment, based on which the employee works from an arranged place of work for the employer through telecommuting.

#### **3. Parental leave**

The employer, who has more than one consecutive work near the same employer, has the right to obtain an unpaid leave for a period of not less than four months, until the child reaches the age of six. The right to require the parental leave is individual for each parent and is not transferable, with the exception of the case of death of one parent. The leave might be broken down during the period of benefit, but not less than one week per year.

#### **4. Principles applied**

The Amending Law introduces the following principles and protection rights:

- The principle of non discrimination (equal treatment) of the employees (the legal means to claim the breach of such principle is also provided)
- The principle of mutual trust in the employment relationship in fulfilling mutual rights and obligations,
- Protection of personality
- Protection of personal data related to the collection and elaboration of sensitive data as per the provisions of the law on the protection of personal data,
- Equality in remuneration for equal working conditions,

#### **Temporary employment of foreign citizens**

The Amending Law regulates the temporary employment of the foreign citizens who are transferred in Albania under (i) a secondment contract from a mother company for its branch, or (ii) under a contract with a foreign company who has an arrangement with a local company for the transfer of the employee, or (iii) under an employment contract with a recruitment agency or temporary employment agency for the transfer to the local hosting company. A temporary employment is considered the term of one calendar year starting from the day when the foreign citizen has been transferred to work for the first time in Albania.

According to the reciprocity principal on foreign citizens the law of the country of residence may be applied if it is more advantageous than the domestic law.

#### **International transfer of an employee**

In the event of a local employee going to work abroad for more than one month, the employer who assigns the employee to work abroad must obtain the consent of the employee and provide the later with a document stating besides the working conditions: (i) the term of employment, (ii) currency of the salary (iii) compensations in kind (if applicable), (iv) conditions that regulate the repatriation of the employee (if applicable).

#### **The form of the employment contract**

The employment contract must be concluded and amended only in written form. The contract should be stipulated as of the day the parties agree on the terms and conditions of their collaboration; however the contract may be executed, if justifiable, within a period of 7 days from the hiring. Therefore, as it is not allowed to have a period during which the contract may be entered into in verbal form, the probationary period is included in the written provisions of the contract. Lack of compliance to enter into a written contract is subject to penalty imposed on the employer.

### **The annual leave**

The annual leave is not less than four calendar weeks and does not include the days of official holidays, which in case occur during the annual holidays, the later are postponed accordingly. The employee cannot give up his entitlement to have paid annual leaves under certain legally acknowledged agreements of submitting some rights by free will from part of an employee based on the individual or collective job contracts. Moreover, the annual leave cannot be substituted by monetary compensation, unless the employment is terminated and the employee must obtain the compensation corresponding to the untaken leave.

### **Other leaves**

In case of marriage of the employee or in case of death of his cohabitants/spouses, his direct ancestors or predecessors; the employee is entitled to a 5 days paid leave.

In case of a heavy decease of the members of the family, cohabitants, his direct ancestors or predecessors, certified by a medical report, the employee is entitled to a maximum of 30 days unpaid leave.

In case of child birth the spouse/cohabitant is entitled to a 3 days of paid leave.

The Amending Law introduces the concept of the cohabitant besides that of a spouse.

### **Protection for pregnant women**

The work for pregnant women is prohibited 35 days before and 63 days after child birth. In case the pregnant woman decides to start work after the period of 63 days after child birth, until the child reaches the age of one, she may chose between the two options: (i) a paid leave of two hours during the normal work duration or (ii) reduced work duration with two hours, for the same salary as she had worked full time.

### **Work during weekends/official holidays and overtime**

Work performed during the weekend will be compensated with an additional salary of at least 25% of the normal salary or with paid time – off equal to the time of the performed work plus an additional time – off at least at 25% of the duration of the performed work.

The work performed during the official holidays when they fall on a work day, will be compensated with an additional salary of at least 25% of the normal salary and with a paid time-off equal to the duration of the work performed during the official holiday.

The time – off is taken one week before or after the work performed as above.

In case the official holiday falls on the weekend, then the time –off due to the official holiday is postponed in the subsequent working day.

The maximum weekly working hours including overtime will be 48 hours from 50 hours as per the old law. The employer has the right to require the performance of overtime work by taking into consideration the personal and family conditions of the employee and for not more than a maximum of 200 hours per year.

Pregnant women are forbidden to take overtime work until the child reaches the age of one.

### **Abrogated articles**

Article 13, Article 22.3, Article 49, Article 50

### **Additional medical examinations for dangerous works**

The additional medical examinations which up to date were optional in case of works dangerous for the life and health of the employees, based on the Amending Law are obligatory to be performed at the expenses of the employer periodically and also as per the advice of the doctor of the enterprise, before and after hiring the employees.

### **Additional documentation required by the labor inspectorate**

The Amending Law requires that the employer is obliged to make available to the labor inspector upon request besides other documents, a document on the evaluation of risk for each job position accompanied by relevant precautionary measures.

### **Work load**

If the employee works more than 6 hours per day without interruption, a minimum of 20 minutes unpaid break should be provided and in case the employee works 9 consecutive hours per day, an additional unpaid break of 20 minutes should apply. Such provisions should be included in the individual or collective work contract.

### **Night work**

It is considered night as night work, the work carried out at least for 3 normal daily working hours, performed during the night, as it is provided by the individual or collective job contract.

### **Termination of the individual job contract from the employee in case of enterprise transfer**

In case the individual contract is terminated by the employee due to the essential unfavorable changes in his working conditions caused by the transfer of the enterprise, such termination is considered as unjustified termination of the contract from the employer. The employee notifies the employer in writing within 30 days from the date of the enterprise transfer, stating also the reasons for the termination.

### **Terms of employment agreement**

The Amending Law reiterates the principle that an employment contract should be indefinite unless it is justified by the objective reasons related to the temporary nature of the duty for which the employee is hired.

According to the consequences of termination of both types of contracts, the best choice also for the employer would be an indefinite term contract.

### **Information and consultation**

The employee has the right to require information and consultation through the employee's representative, from his employer, with regard to the future activities of the company, its financial situation and his personal employment relationships with the employer; at least once per year.

The employer may refuse to give any requested information if it is considered confidential or to participate in any consultation if the nature of the matters to be discussed may seriously damage the company's activity.

### **Amendments for the individual contract of an indefinite duration**

Upon end of the trial period, for contract termination purposes, the parties should notify each other upfront two weeks/one month/two months/three months when the work relationship has lasted six months/up to two years/from two to five years/more than five years respectively

The reasons for termination should be disclosed to the employee and should relate only to employee's skills, behavior or operational requirements of the company. .

During the notification period for contract termination form part of the employer, it is foreseen that the employee is entitled of at least 20 hours paid leave per week to seek a new job.

### **Unreasonable causes for contract termination**

Are considered as additional unreasonable causes for contract termination from the employer, the following causes:

- The breach of forbidden discrimination as per the provisions of Labor Code and of the specific law on the protection from discrimination.
- The termination of the contract is made contrary to the provisions of article 144.3 to the extent of the reasons for termination disclosed by the employer to the employee.

### **The immediate termination of the job contract for reasonable causes – opinion**

The Amending Law abrogates point 4 of article 144 of the old law, hence the procedure of notification for the termination of the indefinite or definite period individual job contract, is not applied in case of immediate termination of the contract for reasonable causes. However, article 154.3, according to which the employer is obliged to pay a compensation damage of two salaries in case of immediate termination of contract, for non - complying with the period of notification provided by article 144.5, is still in force.

As per our opinion also article 154.3 which makes reference to article 144.5 should be abrogated.

### **Amendments for the contract of definite term**

In case of termination of an individual job contract of a definite term, before the end of that term, the procedure of notification provided by article 144 is applied, as in the case of the termination of the contract of an indefinite term.

### **Immediate termination of a contract without reasonable causes**

In the event of immediate termination of the job contract for unjustifiable reasons from the employer, the court might rule by evaluating all the given circumstances, for a compensation equal up to one year salary, which will be added to the salary that the employee should have taken during the notification period. In case of the civil servants, when a final court decision is issued for return to his working position, the employer is obliged to implement such decision.

### **The termination of the contract by the employer for abandonment or non-show**

If the job contract is terminated by the employer in case he is able to prove that the employee has not shown in his working place or abandons it for unreasonable causes and has not notified in written form the employer within 7 days; this is considered as termination of contract for unreasonable causes from part of the employee. The employee should compensate the employer with up to one week salary and for the additional damage caused (if applicable).

### **Method of salary payment**

The monthly salary is paid only through the banking system and in Albanian currency unless otherwise provided by the agreement between the parties.

The employer should make available to the employee, by verifiable means and periodically, evidence containing all elements of the salary, as per the legislation in force.

The payment in kind given to the employee for accommodation and food (if applicable) cannot exceed 20% of the monthly salary.

### **Other amendments**

Other amendments consist of provisions regulating shift work, work at home, other cases of contract termination, creation of regional three parties' council, unions, collective agreements, etc.

### **Entry into force**

The Law is published in the Official Gazette no. 220 dated 22 December 2015 and enters into force 6 months after its publication.

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IF you wish to know more on the issues highlighted in this newsletter, you may approach us at:

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