CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

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FOREWORD

By Zsofia Olah, Partner, OPL gunnercooke

I am delighted to have co-edited CEE Employment & Labor comparative guide, which looks at labor and employment regulations across CEE jurisdictions.

As with so many other fields of law, the employment and labor law landscape is also regularly changing, which makes it challenging for companies operating at a global or regional level to manage compliance with the applicable rules. Employment and labor law has the potential of having a drastic effect on an organization. Consider the potential consequences on a company's valuation if, for example, a part of its core workforce is found to be misclassified employees or the impact of failed working time scheduling practices. Not to mention the reputational consequences of employment and labor non-compliance. Therefore, management, and especially HR practitioners and in-house lawyers must feed legislative changes and their own legal knowledge into HR strategy and operations.

This guide sets out a summary of those employment and labor rules that international companies and organizations are most often faced with, with the aim of roughing out the main similarities and differences. Understanding the main differences between certain employment and labor law questions in these jurisdictions may help to ask the right questions and apply the appropriate processes in adverse situations that may arise.

The Editors:

- Radu Cotarcea
radu.cotarcea@ceelm.com
- Radu Neag
radu.neag@ceelm.com

Letters to the Editors:

If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at: press@ceelm.com

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GUIDE CO-EDITORS

OPLgunnercooke

KALO ASSOCIATES

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

ALBANIA

Olsi Coku
Special Counsel
o.coku@kalo-attorneys.com
+355 4 2233 532

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1. Hiring

1.1. Contracting

Albanian data privacy legislation provides that the employer must obtain explicit, informed, written, and freely given consent from the employee to carry out background checks. This entails that the employer must inform the employee of the scope and purpose for which the personal data is requested, who will process the personal data, whether providing the requested personal information is mandatory or optional and in case providing that information is mandatory, the employer must inform the data subject on the consequences of the refusal to provide such information. It may be questionable if the consent of an employee is considered as 'freely given' when refusal to provide consent may result in termination of their employment or in them not being hired.

Regarding medical checks, pursuant to the *Council of Ministers' Decision No. 639*, dated September 7, 2016, "*On the determination of rules, procedures and types of medical examination tests that shall be performed according to the occupation of the employee, as well as way of functioning of occupational medical service*," as amended, medical checks before hiring an employee are mandatory. Employers must hire employees based on a medical check which consists of a medical report issued by the family doctor, and is delivered by the employee at the moment of the beginning of work. Under Article 8 of the same decision, Employees are required to have a medical check-up at the beginning of their employment relationship but in any case, not later than the first trimester of their employment.

Generally speaking, the establishment of a legal entity (i.e., limited liability, joint stock, branch) is required to hire employees located in Albania if the work performed by such employees will be in Albania. Apart from the general obligation to comply with the Albanian Labor Code and other related laws and bylaws in effect when hiring and during the employment relationship in Albania, employment of foreign employees is allowed as long as these employees obtain the respective work and residence permit or exemptions thereof.

Employment contracts in Albania are divided into two main categories: **(1)** individual contracts and **(2)** collective contracts.

Collective contracts are entered into by one or more employer(s) and employee unions. Individual employment contracts can be classified as:

a) *Part-time Employment Contracts*, when the employee agrees to work hourly, half-workday, and for fewer hours per day than full-time employees. Part-time employees have the same rights as other employees.

b) *Work-from-home Employment Contracts*, when the employee works from home or other remote places as agreed with the employer according to the terms and conditions of the contract.

c) *Teleworking Employment Contracts* provide that the employee works from home or other places specified as specified in the employment agreement, using specific technology during the working time according to the terms and conditions of the agreement.

d) *Indefinite-Term Contracts*, where there is no set timeframe for the termination of the employment contract. This type of contract is terminated only after observing strict criteria and procedures.

e) *Fixed-Term Employment Contracts* are contracts entered into for a fixed period that should be specified in the employment contract. The contract will terminate at the expiration date set out therein. If a yearly fixed-term contract is extended for more than three consecutive times then the last contract shall be considered an indefinite-term contract.

f) Commercial agent agreements;

g) Agreements for acquiring a specific profession (concluded between the teaching master and the person who is studying to acquire a specific profession);

h) Voluntary work (only with respect to non-for-profit activities);

i) Internship agreements for students;

j) Temporary employment through temporary employment agencies.

Pursuant to Article 21 of the *Albanian Labor Code*, an employment contract must contain at least the following:

a) identity of the parties;

b) place of work;

c) general job description;

d) date of starting work;

e) term of the contract, when it is a fixed-term contract;

f) term of paid leave;

g) notice term to terminate the contract;

h) the elements related to the salary and the date of its payment;

i) normal weekly working hours;

i) references in the collective contract in power;

k) probation period;

l) types and procedures of disciplinary measures, if there are no collective contracts.

The *Albanian Labor Code* requires that the employment contract has a written form. Furthermore, any change made to the contract, especially to its mandatory and essential elements, must be done through the written consent of the employee.

Regardless of the type of written forms, the same will be considered valid only if they bear the signatures of the employer and the employee. In the event that the employment contract is agreed upon orally, the employer must produce a written employment contract following the verbal agreement, bearing the signature of the employer and that of the employee and containing the mandatory legal elements provided for in the *Labor Code*.

The *Albanian Labor Code* does not explicitly provide that the employment contract or other employment documents must be in Albanian. However, as a matter of customary practice, any employment document is entered into in the language of the employee, or in a language that is understood by the employee.

Under *Albanian Labor Code*, the first three months of employment are considered a probation period and it cannot be longer than three months. However, the probation period can be reduced or removed by written agreement between the employer and the employee. During the probation period, each party (the employee or the employer) may decide to terminate the contract upon a five days' notice term and they are not obliged to share the reasons for such termination with the other party.

There is no proper definition of an executive employee in the *Albanian Labor Code* but it can be presumed that administrators (managing directors) of commercial companies can be considered executive employees. It is not mandatory for a company to sign a service contract or employment contract with the managing director. However, the latter is deemed an employee of the company for social and health security contribution purposes. An administrator is always subject to removal by resolution of the shareholders' but the administrator will be in any case subject to any entitlements arising from their relationship with the company based on an employment contract or a different type of contract.

Managing directors may be employed, or in the event that they are (a) physical person(s) registered for commercial purposes they may enter into a service agreement. However, in the event that the managing director is a registered person for commercial purposes, the applicable tax regime shall be different and fall outside the scope of the *Labor Code*. In all other cases, the compensation of the managing director shall be considered as a salary,

In large companies with a complicated structure of the organization or in companies governed by specific laws such as banks, there can be certain positions covered by directors that can also fall within the executive concept but even the employment relationship of such directors is regulated by the *Albanian Labor Code*. The only difference can be that for certain issues such as compensations and removal consent or approval of shareholders or a public regulatory authority is also required.

1.2. Employees versus independent contractors

The main differentiating factor is the form of contracting. Independent contractors are engaged through service agreements which are frequently used in practice in Albania. However, this type of agreement can only be entered into with individual entrepreneurs also known as the physical person(s) registered for commercial purposes with the commercial register and the tax authorities. The service agreement is a sui generis agreement, and such an agreement is regulated by the *Albanian Civil Code* and not by the *Labor Code*.

The main risk of companies when miscategorizing someone as an independent contractor instead of an employee is related to the facing potential penalties from the Labor Inspectorate or the Tax Authorities which can classify such miscategorizing as an attempt to evade employment relations obligations (i.e., payment of social and health insurance and the applicable personal income tax).

1.3. Foreign employees

As a general rule, the work permit is granted for the duration of the contract/assignment letter but not longer than 12 months. Work permits can be renewed by filing the application for renewal at least eight weeks prior to the expiration of the permit. However, foreign nationals from the EEA, the US, Kosovo, Bosnia Hercegovina, Montenegro, North Macedonia, and Serbia, may obtain a Certificate of Exemption from the obligation to obtain a Work Permit, which is valid for an indefinite period.

A short-term stay may not exceed a period of 90 days for 180 days, based on the issued visa or visa-free entry, unless otherwise foreseen in the applicable law or agreements recognized by the Republic of Albania. Temporary stay and permanent stay may be granted only through the equipment of the foreigner with the residence permit.

The Residence Permits may be issued for a period of three months, six months, one year (renewable), or two years (renewable). Foreign nationals who are citizens of the EEA, the US, Kosovo, Montenegro, Bosnia Hercegovina, North Macedonia, or Serbia, may obtain the first Residence Permit valid for five years in accordance with their employment contract.

After five years of residing in Albania through a temporary Residence Permit, employees may apply to obtain a permanent Residence Permit.

1.4. Home office

Work-from-home and telework are recognized by Albanian legislation as employment arrangements. Home office work is regulated in detail through the *Council of Ministers' Decision No. 255*, dated March 25, 1996, while on telework the *Albanian Labor Code* has introduced only some basic rules and obligations such as the obligations to ensure equal treatment, to provide, install and maintain the working equipment, to avoid isolation of employees by enabling them to meet up with each other during working hours, etc.

The home office concept in the Albanian legislation includes the agreement between employer and employee to establish as a workplace their home or any other place they both agree upon. Furthermore, the legislation limits the object of "home office" to work performed at home that is of artisanal or industrial nature, as well as handmade services or services provided with the help of equipment.

Remote working, or the "telework contract" as described in the *Albanian Labor Code*, provides that the employee carries out their job at home, or in any other place as agreed with the employer, using information technology within the working time, as specified by the employee, according to the terms agreed between them in the employment contract.

Thus, both "work from home" and "telework" may be provided, based on a mutual agreement, either in the initial employment contract concluded between the employer and the employee or in a subsequent amendment during the course of the employment relationship.

The working conditions for employees that perform remote work cannot be less favorable, compared to other employees who perform the same work or work comparable to it. The same health and safety rules apply for home office and teleworking, as for other employees. The Employer must ensure that the workplace of the remote employee meets the minimum occupational health and safety requirements. Minimum safety and health requirements related to the physical aspects of the workplace, such as whether the building structure is solid, fire evacuation procedures, temperature, and ventilation, may not apply in the case of remote working, so the employer may not be responsible for these matters in the place where the employee performs the remote work.

However, an employer must take measures to prevent and avoid risks, informing and training employees about the rules to be followed during remote work, emphasizing, in particular, the obligation of employees to comply with these rules. The *Council of Ministers' Decision No. 255/1996* also provides regulations regarding allowances, including supplementary expenses of employees including those for the workplace, which they would not have to pay if they would not work from home. Other types of allowances can be regulated through collective contracts, but are not provided explicitly in the Albanian legislation.

2. Contract Modification

Court practice does recognize employment contract modifications to be valid if made through email correspondence, however, the latter must be notarized before being presented to the court. This is nevertheless subject to a case-by-case assessment, meaning that not every judge will recognize email correspondence as consent by an employee to any modification of the employment contract. Implicit acceptance by conduct of employment modifications cannot be recognized as valid, considering that under *Albanian Labor Law* any modification to the employment contract must be done in writing and with the consent of both parties.

The *Albanian Labor Law* explicitly provides that all changes to the employment contract must be done with the consent of the employee and this must be given in writing.

If a minor task is envisaged in the employment contract, then it will require a contract modification. Otherwise, a simple informatory correspondence with the employee will suffice.

There is no restriction regarding the modification of employer policies/internal regulations insofar as they do not affect the employment contracts of the employees. However, any modification or change must be discussed with the employees and made available to them beforehand.

3. Termination

3.1. Termination types

Normal Termination

Following the Albanian court practice and current laws, an indefinite-term employment contract is considered duly terminated when the employer decides to do so and the notice term and statutory termination procedure are duly observed.

Labor Code provides that an indefinite-term employment contract can be terminated at any time for one of the following causes which are recognized as valid grounds:

- the performance/ability of the employee;
- the behavior of the employee;
- the operational needs of the employer.

Immediate termination for (good) cause

To terminate the contract with immediate effect (i.e., without observing the notice term and the statutory termination procedure) a (good) cause should exist. *Labor Code* considers "(good) causes":

- All serious circumstances under which the employer cannot continue the employment relations;
- A serious breach of contractual obligations by the employee;
- A minor, but repeated breach of contractual obligations by the employee, ignoring written warnings of the employer.

Termination by the employer of fixed-term employment contracts

A fixed-term employment contract can be terminated by the employer in one of the following manners.

Expiry of the term.

As a rule, fixed-term employment contracts expire at the end of the term, so termination notice is not required. However, it is advisable that the employer notifies the employees in writing their decision that the contract will not be renewed; otherwise, if after the expiry of the fixed term the contract continues, it will be considered as tacitly renewed (please refer to Section 1.1. on tacit renewal of fixed-term employment contracts) and all legal effects it will produce in the future will be those of an indefinite-term employment contract.

Immediate termination for (good) cause. Fixed-term employment contracts may also be terminated prior to the expiry of the term, in the form of immediate termination. This type of termination is the same as the termination of indefinite-term employment contracts.

Early termination. This type of termination is similar to the normal termination of indefinite-term employment contracts which means that the statutory termination procedure, termination notice, and grounds for termination must be duly observed by the employer.

According to Article 143 of the *Labor Code*, there is a schedule of notice terms ranging to:

a) two weeks for employees who have been working for the employer for up to six months,

b) one month for employees that have been working for the employer for more than six months up to two years,

c) two months for employees who have been working for the employer for two to five years, and

d) three months for employees who have been working for the employer for more than five years. Such notice terms cannot be reduced by virtue of a written agreement.

The procedure for termination of employees by the employer includes: a written invitation for a meeting sent to the employee at least 72 hours in advance. In this meeting, the parties may discuss the reasons for the intended termination and acknowledge objections of the employee, if any.

Following this meeting, the termination notification (if the employer still wants to terminate the contract) is delivered to the employee in a written form no sooner than 48 hours, after the meeting.

Financial compensations are as follows:

a) Salary for the notice term;

b) Seniority bonus for those employees that have worked for more than three years with the employer (half monthly salary for each year of work);

c) a 13th salary if it has been paid for the last three years;

d) compensation for the days of annual leaves not yet enjoyed by the employee

e) Any other payment in compliance with the employment agreement or service rules.

In addition to the above financial compensation when the termination of an employment contract by the employer prior to its expiry date, is deemed to be without reasonable cause or without respecting the notice term and procedure, the employer may be liable to compensate the employee with up to 12 months' salary; the specific obligations of the employer will be decided upon by the courts.

Mutual termination procedures must be done through a written agreement between both parties. These settlement agreements usually offer severance payment on top of the statutory compensations in exchange for the employee waiving their rights to any claim at court. There is no statutory procedure, however, it is suggested that the employers follow the same procedure for termination as described above and during the meeting, parties can produce a written agreement.

In addition to the provision which provides that during the employment period, the employees are not permitted to work for third parties, if such other employment would harm the employer or create competition for the employer, there are provisions to prevent the employee from working for a competitor after the termination of the employment agreement. According to the *Labor Code* non-competition clauses taking effect after termination can be enforced subject to the following conditions:

a) they are provided in writing at the beginning of the employment relationship;

b) the employee is privy to professional secrets in respect of the employer's business or activity during the course of

employment; and

c) the abuse of such privilege shall cause significant damage to the employer.

The non-compete period shall be no longer than one year after the date of termination. Parties are free to determine and set out agreed non-competition clauses in the employment agreement, but such non-competition clauses shall only be enforceable once the aforementioned criteria are met, and in the event that the conditions of prohibition are clearly defined such as conditions related to place, time and type of activity. An agreement on non-competition after termination is subject to remuneration for the employee, wherein such remuneration is equivalent to the amount of 75 % of the salary they would have received if they were still working with the employer. The prohibition for competition will not apply if the employer terminates the employment agreement without reasonable cause or if the employee terminates the employment agreement for a reasonable cause related to the employer.

3.2. Collective dismissal

Collective dismissal is defined under the *Labor Code* as the intended dismissal by the employer for reasons unrelated to the employee (e.g., need for restructuring) of one or more employees within a period of 90 days. The threshold of the number of employees to be dismissed during that 90-day period in order for it to be considered as collective dismissal should be at least 10 for enterprises employing up to 100 employees; 15 for enterprises employing between 100 and 200 employees; 20 for enterprises employing more than 200 employees.

Article 148 of the *Labor Code* defines specific procedures which need to be followed when an employer plans to execute collective dismissals. The employer shall inform in writing the employees' trade union which is recognized as the representative of the employees. In the absence of a trade union, the employees shall themselves be informed by way of a notice visibly placed in the workplace. The notice shall contain:

a) the reason(s) for dismissal;

b) the number of employees to be dismissed;

c) the number of employees employed; and

d) the period of time during which it is planned to execute the dismissals.

One copy of this notice must also be submitted to the Ministry responsible for Labor and Social Affairs.

In order to attempt to reach an agreement, the employer shall then undertake the consultation procedure with the employees' trade union within 20 days of the date on which the notice was displayed. In the absence of a trade union, all interested employees are entitled to participate in the consultations. If the parties fail to reach an agreement, the Ministry responsible for Labor and Social Affairs shall assist them in reaching an agreement within 20 days of the date on which the employer informed the Ministry in writing, with the aim of completing the consultation procedure. After the termination of the 20-day deadline, the employer can then inform the employees of their dismissal and begin the termination of employment contracts by providing the following notice periods:

a) for up to one year of employment: one month;

b) for two-five years of employment: two months; and

c) for more than five years of employment: three months.

Non-compliance with this procedure shall result in the employee's receiving compensation of up to six months' salary in addition to the salary payable for the notice period or to additional compensation awarded due to non-compliance with the provision of the specified notice periods.

There is no established court practice in Albania with respect to collective dismissal and court scrutiny and the ruling is subject to a case-by-case assessment.

3.3. Unlawful termination

The termination of an employment contract by the employer prior to its expiry date, without reasonable cause, can result in the employer being liable to compensate the employee with up to 12 months' salary; the specific obligations of the employer will be decided upon by the courts.

According to the *Labor Code* termination of the employment contract by an employer is considered to be without cause (Article 146 of the *Labor Code*) when it is:

a) based on the fact that the employee had genuine complaints arising from the employment contract;

b) based on the fact that the employee had satisfied a legal obligation (e.g., giving evidence in court);

c) based only on the employee's characteristics (such as race, color, sex, age, civil status, family obligations, pregnancy, religious or political beliefs, nationality, and social status);

d) based on the fact that the employee is required to exercise constitutional rights; and

e) based on the fact that the employee participates in lawful Labor organizations and their activities.

If an employee is dismissed without any reasonable cause, they have the right to bring a claim against the employer to court within 180 days, beginning from the day on which the notice of termination expires. In the event that an employer is found to have had an unjustifiable motive discovered after the expiration of this deadline, the employee has the right to start legal actions within 30 days, beginning from the day on which

the particular unreasonable cause was discovered.

Calculation of damages is done based on the salary at the end of the employment. If the salary has changed throughout the years, it is then calculated based on the average salary and indexed. The *Labor Code* does not make any distinction between the type of compensation provided to the employees. Therefore, all compensation available to them is that mentioned above.

Damages granted by the court are exempted from taxes, whilst those agreed by the parties out of court are subject to a normal personal income tax rate of 15%.

Based on Article 146/3 of the Labor Code, when an employee of the public administration is unlawfully dismissed, the employers may be ordered by a final and binding decision of the court to reinstate the dismissed employee to its positions. the employee

The employer shall observe the non-discrimination obligation, the right of the employees to be organized in unions, the protection of the employees that denounce corruption, minimum age of employees, health and safety at work, protection of pregnant women, minimal salary, overtime limits, etc. These categories of employees cannot be terminated due to the fact that they are a part of said categories. For instance, pregnant women and people on sick or other paid leave cannot be subject to termination.

The *Labor Code* also provides protection for the striking employees during the strike period, inclusive of the prohibition of the employer dismissing or replacing the participants in the strike with new employees.

According to Article 147 of the *Labor Code*, the employer cannot terminate the employment contract in the event that, according to the legislation in force, the employee is completing his military service, receiving benefits payment(s) (from the employer or Social Insurance Institute) related to a temporary inability to work for a period no longer than one year, or in the event that the employee is on leave if such leave is granted by the employer.

The *Labor Code* sets out that employment contracts may be terminated following minor, but repeated breaches of contractual obligations by the employee, ignoring written warnings of the employer. However, the definition and classification of such breaches are done in the employment contract or the internal policies of the employer.

4. Wage And Hour

4.1. Wage

There is a minim wage that is revised by the government from time to time. To date, the minimum wage is ALL 34,000 (approximately EUR 300). Social, health, and tax contributions should be calculated using the reference salary as defined by the *Council of Ministers' Decision No. 285*, dated May 4, 2007, "*On defining the referred monthly wage, for purposes of calculating the social and health security contributions, and tax on personal incomes, according to the nomenclature of economic activity, regarding the employees of private and public sector, that perform unqualified and qualified work, and also regarding their executive and technical – economical staff.*"

The *Labor Code* allows the parties to determine the currency in which the salary will be paid.

Overtime and extra working hours are regulated by the *Labor Code* (Article 91), which provides that the employer shall compensate the employee for any overtime with 25% of normal payment if time-off in lieu is not given; or, if agreed, to compensate with time-off in lieu plus 25% of the hours of the normal working day, unless otherwise provided for in the collective contract. Extra work performed at weekends or on public holidays will give rise to higher extra payments of 50% of the normal payment unless otherwise defined by the collective contract.

The *Labor Code* also regulates night work, defined as work carried out between 10 p.m. and 6 a.m., and which is only permitted in the case of adults over the age of 18 years of age. The duration of night work and of the work carried out one day before or after must be no longer than eight hours without interruption; it must also be preceded or followed by an immediate break of one day. Working during the evening entitles the employee to an extra payment, so for every hour worked between 7 p.m. and 10 p.m. the employee shall receive a payment that is not lower than 20% of normal pay; whereas work during the hours of 10 p.m. and 6 a.m. entitles the employee to extra payment of no less than 50% of normal salary.

4.2. Working time

Working hours are regulated by the *Labor Code* and by *Law No. 9634*, dated October 30, 2006, "*On Labor Inspection State Labor Inspectorate*". According to Article 83 of the *Labor Code*, reasonable working hours shall not exceed 40 hours per week, and such weekly working hours must be set out either in a collective agreement or in individual employment contracts. The normal daily working hours are eight hours. The standard working days are Monday to Friday. For public administration, the standard working hours are 8 a.m. to 4.30 p.m. from Monday to Thursday and 8 a.m. to 2 p.m. on Friday. In the private

sector, the standard working hours differ from one company to another.

In case the employee works more than six hours per day without interruption, they are entitled to an unpaid break of at least 20 minutes, to be granted after three hours, but not later than six hours of continuous work. An additional break of 20 minutes should be granted to the employee working continuously for nine hours per day. For pregnant employees, a break of at least 30 minutes should be granted every three hours.

The maximum yearly overtime in Albania is 200 working hours

Apart from the wage calculation principles explained in the replies to the above questions, there are no defined rules for working time banking in Albania

Annual vacations are governed by the *Albanian Labor Code*. The *Labor Code* provides for minimum paid annual leave of no less than four calendar weeks in one year (pro-rata for those who have worked less than one year). For the purpose of calculating annual leave, sick leave shall be considered working time. The period during which an employee can take annual leave shall be determined by the employer taking into consideration the employee's preferences. The employee is obliged to give the employer at least 30 days' prior notice of the dates for their annual leave. Moreover, in cases where the employee receives a salary that includes a contribution in kind (e.g., accommodation, food, and travel expenses), a bonus equal to the contribution in kind, e.g., travel expenses for homeward travel, is awarded. A decision of the Council of Ministers sets out the method of calculation for such additional contributions.

Under the provisions of the *Labor Code* "*Annual leave must be given during the working year or within the first three months of the consecutive year, but in no case may it be less than one calendar week without interruptions. The right to annual leave which has accrued but has not been (awarded) taken within three years of the date when this right might be enjoyed, is subject to statute of limitations*".

Further to the above-stated provisions, such rights of the employee must be exhausted no later than the month of March in the subsequent year. Thus, the employer should designate and award to the employee the right to take his annual leave within the month of March in the subsequent year. The last paragraph acknowledges the right of the employee to be awarded/to take the annual leave even after the month of March in the subsequent year. This paragraph is designated to protect the interests of those employees who, for any reason (their own or that of their employer), are unable to take the annual vacations. Nevertheless, in practice, this last paragraph has not been applicable as most employees choose to exhaust their annual vacations within the respective year. Furthermore, in practice, if the employees have not taken the annual leave by the month of March in the subsequent year, they receive compensation equal to the salary for the vacations which have not been taken.

According to Article 130 of the *Labor Code*, the employee provides evidence of his disability to work by a medical report duly issued by a doctor. Furthermore, at the request of the employer, the employee is obliged to undergo an examination by another doctor assigned by the employer; this doctor will declare only the disability of the employee to work while maintaining medical confidence. In the event of illness, the employer pays the employee 80% salary for a period of 14 days, a period which is not covered by Social Insurance. *Law No. 7703*, dated May 11, 1993, "*On Social Insurance in the Republic of Albania*", as amended, defines that after 14 days the employee shall benefit from the social insurance scheme.

The unpaid leave is not regulated within Albanian legislation and there are no conditions or procedures to benefit from it. However, in practice, unpaid leave, its duration, etc., can be arranged by mutual consent between the employee and the employer. It is at the discretion of the employer to accept or refuse the request for unpaid leave.

5. Collective Labor Law

5.1. Trade unions

In Albania, all citizens have the right to join Labor organizations for the protection of their employment interests and social security and all employees have the right to form trade unions and employers have the right to form their own organizations (Article 176 of the *Labor Code*). A trade union must have a minimum of 20 people and is formed as an organization/body with legal status through registration as such with the Court of Tirana. Employee trade unions are organized on a national level (according to the respective industry sector) and also on a company level.

Furthermore, the employees have the right to strike, which is provided for by the *Constitution of the Republic of Albania* and by the *Labor Code*. Participation in any strike is voluntary and no one shall be forced to participate in a strike against his will. Any action that includes threats or any kind of discrimination against workers due to their participation or non-participation in a strike is prohibited. While a strike is taking place, the parties shall make efforts, through negotiations, to reach a common understanding and sign the relevant agreement confirming the outcome of the negotiations. A strike shall be deemed lawful if it fulfills conditions defined in the *Labor Code*. The right to strike cannot be exercised in services of vital importance, where the interruption of work endangers the life, personal safety or the health of a part of or all of the people. Such vital services include water supply, electricity supply, fire

protection, air traffic control, necessary medical and hospital services, and prison services. A strike shall cease when the parties reach an agreement or the trade union decides to end it.

The Trade Union organization freely organizes the administration and activity; it freely drafts its program. Discrimination against the Trade Union representatives is prohibited.

The termination by the employer of the contract of employment of representatives of the organization of the employees without the consent of this organization shall be invalid. The representatives of the trade union organization may not grant their consent for the termination of the contract, as long as the termination of the contract violates the principles of equal treatment or upon seriously aggrieving or making impossible the normal functioning of the trade union. The request of the employer on granting the consent of the trade union organization shall be responded to within 8 days by the respective body of the organization. The employer may terminate the Labor contract as long as the trade union organization grants its consent or where the court determines the withholding of this consent ungrounded. Where the employer does not observe the procedure provided for in this paragraph, the termination of the Labor contract shall be invalid.

The change of the conditions of the contract of employment of the representatives of the organization of employees may be made only with the consent of the employee and of this organization. The employer may not change the workplace of the representatives of the organization of employees, even if this change is provided for by the contract of employment, without the consent of the employee and of this organization, except for the cases where the change is absolutely indispensable for the economic activity of the enterprise.

If the representatives of the organization of employees, acting at a national scale, during their mandate work and get paid by these organizations, their contracts of employment with the employer shall be suspended. At the end of the mandate, suspension ceases to exist and the contract of employment shall re-enter into force. From this moment on, the parties shall enjoy all the rights and obligations, which stem from the contract of employment.

The employer must create all the necessary conditions and facilities for the elected representatives of the organizations of employees to normally exercise their functions, which are defined in the collective contract of employment. To this effect, the employer must:

a) allow them to enter into working premises;

b) allow the distribution of notices, brochures, publications, and other documents, which belong to the organization of employees;

c) give them the required time to participate in the activities of these organizations inside and outside the country;

d) allow them to enter into working premises and create facilities for them to collect the membership fees of the organization, as well as to organize meetings and appointments.

The trade union rights being benefited based on more than two consecutive collective contracts can not be contested by the employer.

The representatives of the trade union enjoy the protection provided for in this article even subsequent to the end of the mandate, for a period not less than one year.

Each legally founded trade union may submit a collective bargaining request to its employer or employer organization, in order to commence negotiations in relation to a collective Labor contract at either enterprise, group of enterprises, or sector level.

5.2. Works councils

The *Labor Code* does not provide regulations for the establishment of work councils. *Law No. 9901*, dated April 14, 2008, "*On Entrepreneurs and Commercial Companies*", as amended, provides that the council of employees may appoint representatives to the board of a joint-stock company if agreed with the management of the company. No other provisions deal with such issues.

The establishment of a safety council and relevant criteria are provided under *Law No. 10237*, dated February 18, 2010, "*On Security and Health at Work*". This type of council represents the employees solely in relation to health and security issues at the workplace.

6. Transfer Of Undertakings

This issue is regulated by Article 138 of the *Labor Code* which is in compliance with *Council Directive 77/187/EEC "The Acquired Rights Directive"* and is applicable only in the event of the transfer of an enterprise, business, or part of a business to another employer as a result of a legal transfer or merger.

In the event of transferring an undertaking or part of it, all rights and obligations arising from a contract of employment valid until the moment of transfer will pass on to the person subject to the transfer of these rights. Any employee refusing to change employer in this event remains bound by the employment contract until the expiration of the termination notice. According to Article 138(2) of the *Labor Code*, the previous employer remains jointly responsible with the new employer for obligations derived from the employment contract until the expiration of the notice period for termina-

tion or until such date specified in the contract. Article 139 of the *Labor Code* provides for an information and consultation procedure in the event of a transfer of enterprise. The transferor and transferee are obliged to inform the trade union of its role as the employees' representative or, in its absence, the employees, and further explain the reason for the transfer, its legal, economic, and social effects on the employees, and the measures to be undertaken in respect thereof. Moreover, they are obliged to engage in consultations regarding the necessary measures to be taken at least 30 days prior to the completion of the transfer.

The transfer of an undertaking in itself does not generally amount to a valid reason or grounds for the termination of employees' contracts. Exceptions to this rule are when the dismissals are due to economic, technical, or organizational reasons that impose changes to the employment structure. In such cases, the termination procedure as defined in the *Labor Code* is required to be followed. In the event that an employer terminates the contract without following the abovementioned procedures of information and consultation, the employee is entitled to compensation equal to six months' salary in addition to the salary they would have received during the prior notice period.

The employee can object to the transfer and, in this case, their employment contract can be terminated following the normal rules of termination and the benefits therein.

7. Labor Investigation

Labor inspectors impose fines/sanctions based on *Law No. 9634*, dated October 30, 2006, "*On Labor Inspection*" (amended), and *Law No. 10433*, dated June 16, 2011, "*On Inspection in the Republic of Albania*".

In practice, fines should be determined by inspectors in proportion to the violations. Elements that are taken into account by inspectors in imposing fines are a) repetition or non-repetition; b) duration of the violation; c) the extent of the damage and its consequences; d) the number of employees affected by the violation.

The *Labor Code* states that the labor inspector imposes a fine from 10 times to 50 times the minimum salary, according to the principle of proportionality, in accordance with the law on inspection. Although there is no specific blacklist of the most significant breaches, the most important ones can be deduced from the amount of penalty imposed on a specific breach. For instance, the highly punishable breaches are the ones related to **(i)** the employee's personal protection, harassment, and discrimination as per stipulation of applicable law on protection against discrimination, and misuse and disclosure of personal data, **(ii)** non-observance of applicable health and safety rules at work, **(iii)** lack of signed employment contract with the employee; and **(iv)** use of personal belongings of the employee.

Olsi Coku
Special Counsel
o.coku@kalo-attorneys.com
+355 4 2233 532

KALO ASSOCIATES

schönherr
ATTORNEYS AT LAW

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

BULGARIA

Tereza Shishkova
Attorney at law
te.shishkova@schoenherr.eu
+359 2 933 10 80

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1. Hiring

1.1. Contracting

In Bulgaria, there are no legal provisions or guidelines regarding the background check of job candidates. However, the relevant *GDPR* rules must be considered when implementing such a check. Personal data or medical history cannot be collected without the employee's consent.

Ordinance No. 4 dated May 11, 1993, provides the necessary documents for the conclusion of an employment contract, where apart from the obligatory documents (ID document and a permit by the Labor Inspectorate, if the person is under 18 years of age), other types of documents must be provided only if there is a specific legal requirement or if they are relevant to the employee's specific work or position. A medical examination document must be provided at the initial start of employment and in the case of interruption in the employment activity for more than three months. A certificate of conviction must be provided only when the criminal record must be certified based on the provisions of a legal act (e.g., when the employee's activities would involve accountability for assets). Documents evidencing acquired education, specialization, qualification, capacity, scientific title or degree, as well as professional experience in the field, must be provided where such are required for the respective work or position by law or the employer's internal requirements.

There are no specific restrictions on foreign entities hiring employees in Bulgaria and a local legal entity does not need to be established. The only requirement is to obtain a tax identification number from the National Revenue Agency in order to pay social security and health insurance premiums and the personal income tax of the hired employee.

A typical employment contract is an employment contract for an indefinite term. The most common fixed-term contracts are the following types: **(i)** for a definite period, which may not be longer than three years unless otherwise provided by law; **(ii)** for the execution of casual, seasonal, or short-term work and activities, as well as with newly hired employees in enterprises that have been declared bankrupt or put into liquidation; **(iii)** for a period of not less than one year, for work and activities that are not of a casual, seasonal or short-term nature, as an exception, consisting of specific economic, technological, financial, market, and other objective reasons justifying the fixed term (such an employment contract may also be concluded for a shorter period upon request in writing by the worker or employee); **(iv)** upon completion of specific work; and **(v)** to temporarily replace an employee who is absent from work.

Apart from the differentiation of the employment contracts based on their term, there are other types of employment contracts, depending on the specifics of the case.

An employment contract for additional work can be concluded with **(i)** the same employer for the performance of work beyond the scope of the employee's employment duties, outside their fixed working time, as well as with **(ii)** another employer, for work outside the working time fixed under the principal employment contract, unless the latter contains a prohibition for the purpose of protecting trade secrets and/or preventing conflicts of interest.

A separate type of employment contract is one for work on particular days of the month.

When the relations between the parties include the necessity to train the employee, they can conclude an on-the-job training employment contract, through which the employer trains the employee in the process of working in a specific occupation or field. If the employee is under 29 years of age and is a high school or university graduate with no work or professional experience in their attained profession or field, an internship employment contract can be concluded with them for a term between six and 12 months.

Various types of employment contracts may be differentiated based on whether they provide for a probation period or not.

Other atypical employment contracts exist depending on the economic sector, e.g., with groups of persons (in the construction business), for one day (in seasonal farm work), etc.

An employment contract must contain the following mandatory elements: **(i)** the place of work; **(ii)** the position title (in accordance with the *National Classification of Professions and Positions*, endorsed by the Minister of Labor and Social Policy) and the nature of work; **(iii)** the date of its conclusion and the starting date of its performance; **(iv)** the term of the employment contract; **(v)** the amount of the basic and extended paid annual leave and of additional paid annual leaves; **(vi)** equal termination notice period for both parties; **(vii)** the basic and supplementary remunerations of a permanent nature, as well as the frequency of their payment; **(viii)** the duration of the working day or week.

Apart from the basic particulars of the parties (names, personal identification number, or business number), it is explicitly provided that a permanent address/headquarters and management address must be provided, personal identification number(s) of the employer's representative(s), if the latter is a legal entity, as well as the type and degree of educational attainment of the employee if related to the work they perform.

Bulgarian legislation explicitly provides that the employment contract must be in written form and, therefore, all actions in relation to the conclusion, amendment, or termination of the

employment contract must be in written form as well. The same applies to all actions having an impact on the employment relationship, despite not being explicitly agreed upon in the employment contract, e.g., orders by the employer, requests by the employee, etc. The written form is necessary to evidence the diligent implementation of the employer's obligations in case of inspection by the authorities or in case of an employment dispute with the employee. However, the day-to-day assignments of the employee within the scope of their job description do not have to be in written form.

Pursuant to the *Ordinance on the type and the requirements for the creation and filing of electronic documents in the employment file of workers and employees*, the employer and the employee may agree in the employment contract (or separately) that statements concerning facts and circumstances related to the employment relationship will be in electronic form.

The employer must use an information system for the creation and filing of such electronic statements that meet the legal requirements and through which date, time, and entry numbers are automatically certified.

Electronic statements must be handed over through an electronic registered mail service.

The documents must always be signed by the employer with a qualified electronic signature. The employee must sign the documents with an electronic signature, as determined by the legal provisions and agreed with the employer, i.e., with a simple electronic signature, advanced electronic signature, or qualified electronic signature. If the employee uses a qualified electronic signature, the employer must ensure a mechanism for signing on behalf of the employee for their own account.

The employer must not refuse to receive hard copy documents from the employee in any case, despite the implementation of the electronic documents system.

There is no explicit requirement for employment contracts and documents to also exist in the Bulgarian language. Nevertheless, in the case of inspection by the public authorities, all documents must be presented in Bulgarian. Moreover, since employees must be informed of all relevant facts regarding the employment relationship, in the event of a disciplinary procedure, court dispute, or the like, it may be argued that the employee does not understand the relevant documents if they are only in a foreign language.

Where the work requires the employee's ability to perform it to be tested, their final appointment may be preceded by a contract providing for a probation period. Such a contract may also be concluded where the employee wishes to verify whether the work is suitable for them. The employment contract must specify the party to whose benefit the probation period is agreed. Otherwise, the probation period will be presumed to be agreed to the benefit of both parties.

During the probation period, the parties will have all rights and duties as under a final employment contract.

The provided probation period will be up to six months, and when the work is for a fixed term shorter than one year, the probation period will be up to one month. The probation period will not include the time during which the employee has been on statutory leave or has not performed the work for which the contract has been concluded for other valid reasons.

An employment contract for a probation period may be concluded with one and the same employee for one and the same type of work at one and the same enterprise only once.

Until the expiry of the probation period, the party to whose benefit it has been agreed may terminate the contract without notice. The employment contract will be presumed finally concluded if it is not terminated prior to the expiry of the probation period.

Bulgarian legislation does not strictly differentiate between an executive and an ordinary employee, apart from the fact that the executive employee is explicitly assigned by the employer to manage the employment process in the enterprise or part of it. Whether an employee is an executive does not depend on their position, but rather on the explicit authorization by the employer to manage the employment process. Depending on the granted powers, the executive employee may be entitled to impose disciplinary penalties, including disciplinary dismissal. The executive employee may be subject to a personal penalty imposed by the Labor Inspectorate, separate from the penalty of the employer if they contributed with their actions or inactions to the violation of the employment legislation.

1.2. Employees Versus Independent Contractors

The main difference between employees and independent contractors is the nature of the relationship with the employer or the assignor, respectively.

The subject of the contractor agreement is the provision of a *result*, whereas the employment contract is focused on the provision of the workforce and the working process itself. The other main differences are that the employment contract provides for a set working time and annual leave, and can be terminated based on specific grounds, all of which are not applicable to the contractor agreement. The contractor is not subordinated to the disciplinary authority of the employer.

If the provisions of the contractor agreement indicate that the actual relationship between the parties is an employment one

(e.g., the subject suggests the provision of workforce instead of a service or a product, a set working time is defined, etc.), the Labor Inspectorate can declare the agreement to be an employment contract.

The reverse situation – categorizing someone as a contractor instead of as an employee, in case of a concluded employment contract, may be applicable if the employment contract is in conflict with the law or with a collective bargaining agreement, or circumvents them, and thus is void. The employment contract will be declared void by the court. Nullity will not be declared in case the defect of the employment contract lapses or is remedied. Where an employment contract is declared void and the employee has acted in good faith upon conclusion of the said contract, the relations between the parties to the contract up to the time it was declared null will be regulated in the same manner as a valid employment contract. If the employee was not acting in good faith, the relations should be regulated by the civil legislation applicable to contractual relations. That would mean that some rights specific to the employment relationship will not apply, e.g., the relevant period would not be regarded as employment service, but only as pensionable service.

1.3. Foreign Employees

During their residence in Bulgaria, EEA nationals and their family members have all rights and obligations according to the Bulgarian legislation and the international agreements to which Bulgaria is a party, except those for which Bulgarian citizenship is required (e.g., to vote, to run for elected office, etc.). EEA nationals can be employed without any restrictions provided they obtain a long-term residence permit. There are no other formalities, such as work permits. The procedure for obtaining a long-term residence permit is simple and fast, as the EEA national must only provide evidence of the grounds for their stay in the country.

Non-EEA nationals can be employed in the country only if they have a residence and work permit. The general rule is that non-EEA nationals can be granted access to the labor market when applying for positions for which no Bulgarian nationality is required when the following prerequisites are met: **(i)** the total number of non-EEA nationals with long-term residence permits having worked for a local employer in the preceding 12 months does not exceed 20% of the average size of the workforce hired on an employment contract during that time, or 35% in the case of small or medium-sized businesses; **(ii)** the existing conditions of work and compensation are not less favorable than those for Bulgarian nationals for the respective category of labor; **(iii)** the third-country national possesses the specialized knowledge, skills, and professional experience necessary for the relevant position.

There are different types of residence and work permits. The basic type is the Single Residence and Work Permit. It is granted by the Ministry of the Interior subject to a prior written endorsement by the Executive Director of the Employment Agency. All prerequisites listed above must be met, where the employer must substantiate their decision to employ a non-EEA national instead of a Bulgarian citizen or an EEA national and must provide evidence that they could not find an eligible employee on the local labor market.

The second type of residence and work permit is the EU Blue Card, which can be granted to highly qualified non-EEA nationals.

The employee should have the skills required for the job: a degree in higher education evidenced by a diploma, certificate, or other document issued by a competent authority following a course of study with a duration of no less than three years provided by an educational institution recognized as a school of higher learning by the relevant country. The gross compensation indicated in the employment contract of the employee should be at least 1.5 times higher than the average wage in Bulgaria according to the official data available for the past 12 months preceding the signing of the employment contract. The term of the employment contract must not be less than 12 months.

The requirement to observe the ratio between non-EEA nationals and Bulgarian citizens and EEA nationals (20:80 or 35:65 respectively) employed by the employer does not apply when applying for an EU Blue Card. The employer must substantiate their decision to employ a non-EEA national instead of a Bulgarian citizen or an EEA national, but there is no requirement to provide evidence that they could not find an eligible employee on the local labor market.

Apart from the two main types of residence and work permits indicated above, there are several other types, determined by the specific situation.

The first specific situation is an intra-corporate transfer. An intra-corporate transfer is a temporary relocation, for work or training, of a non-EEA national from an enterprise having its seat and registered address outside the territory of Bulgaria to an affiliate of that enterprise or to an enterprise controlled by the same group of enterprises, having its seat and registered address within the territory of Bulgaria.

The relocated employee can apply for an intra-corporate transfer permit solely for an enterprise within the receiving group of enterprises and solely in the positions of manager, specialist, or intern, provided that they have been employed by the foreign enterprise for at least 12 months as a manager or specialist, or six months as an intern. The requirement to

observe the ratio between non-EEA employees and the rest of the staff does not apply. The employer must substantiate the grounds for the transfer.

Furthermore, seasonal workers can apply for a continuous residence permit, the term of which cannot be less than 90 days and more than nine months within each 12-month period. The permit may be extended once within a period of nine months if the employment contract with the same employer is extended or if the employer is changed. Seasonal work for up to 90 days without interruption within each 12-month period is subject to registration with the Employment Agency based upon a declaration submitted by the employer.

The Minister of Labor and Social Policy approves a List of Economic Sectors, which includes activities whose performance depends on the change of seasons.

Employees posted to Bulgaria by their foreign employer can work in the country if they have a work permit and a separate residence permit. If the posting is for up to three months out of every 12-month period, the employee may perform certain duties without a work permit, based on a one-time registration with the Employment Agency.

1.4. Home Office

An employment contract may provide that work obligations related to the manufacture of products and/or provision of services may be performed at the employee's home or at other premises of their choice outside the employer's workplace, using their own and/or the employer's equipment, materials, and other tools. Along with other terms, the employment contract will regulate the workplace location, the procedure of work assignment and reporting, the manner of materials supply and delivery of ready products, as well as the running costs of the workplace and the payment thereof.

Employees working from home will be free to choose the start and end time and the distribution of their working hours, subject to the observance of statutory working time rules. They will be free to choose the periods of rest within a working day, between working days, and within a week. For both circumstances, the employee must inform the employer within seven days of the conclusion of the employment contract.

There is no possibility to establish open-ended working hours or overtime terms and conditions for employees working from home.

Apart from working from home, Bulgarian legislation allows for the possibility of remote work, where the basic difference is that the work is outsourced from the employer's premises and may be performed from a place other than the employee's home through the use of information technology.

Each party can propose to the other to switch from working at the employer's premises to working remotely. The procedure for assigning and reporting remote work, as well as the content, volume, results, and other characteristics of the work important in accounting for the work done, must be agreed upon in the employment contract. An employee working remotely must designate a specific area in their home or in other premises chosen by them outside the employer's premises to serve as a workplace. Issues related to the operational, technical, and other equipment at the workplace, and the obligations and costs pertaining to its maintenance must be agreed upon in the employment contract.

The employer must provide the following at its own expense: **(i)** the equipment needed to perform the remote work, as well as the supplies needed for its operation; **(ii)** the software needed; **(iii)** preventive maintenance and technical support; **(iv)** devices intended for communication with the employee working remotely, including internet connectivity; **(v)** data protection; **(vi)** information on and requirements for operating the equipment and keeping it in good repair, and the legal requirements and rules, including those of the enterprise in the field of data protection for data to be used in the course of the remote work; **(vii)** a surveillance system, where it is necessary to install one at the workplace and the employee's written consent thereto has been obtained; in such cases, their right to personal space should be respected; **(viii)** other technical or documentary means in accordance with the individual employment contract and/or the collective bargaining agreement. It may be agreed that the employee will use their own equipment.

Employees working remotely will enjoy the same rights related to occupational health and safety as those employees working at the employer's premises. The employer will be responsible for ensuring safe and healthy conditions at the workplaces of employees working remotely, and must inform them of the occupational health and safety requirements in accordance with the legal regulations and the employer's applicable internal rules. The application and observance of the requirements and standards on occupational health and safety will be subject to inspection, including through visits to the employee's workplace.

The working time of an employee working remotely will be established in the employment contract, where the employee will organize their own working time in such a way as to be available and to work at the time when the employer and its business partners communicate with each other. The workload and performance standards for an employee working remotely will be the same as those for employees working at the employer's premises. The actual time worked will be recorded on a monthly basis in a standard-form document endorsed by the

employer. Employees working remotely will be responsible for the authenticity of the data.

Subject to the current legislation and as agreed between the parties, employees working remotely will determine their own rest periods within their working time.

Issues related to salary, additional remuneration, and social benefits from the enterprise are regulated in the same way as for employees working on-site. The same applies to labor and trade union rights and access to training and career development opportunities.

The employer must provide opportunities for preventing the isolation of workers and employees working remotely from the rest of the workers and employees working at the employer's premises by **(i)** creating conditions for periodic work or social meetings at the employer's premises/offices, **(ii)** creating a corporate virtual space – a chat room, forum, or other kinds of media, through which employees working at the employer's premises and those working remotely can freely communicate, if possible, **(iii)** access to corporate and professional information of the enterprise related to performing the remote work, **(iv)** participation of the workers and employees working remotely in the organizational and social life of the trade union of which they are members.

Employees working remotely will be entitled to appropriate training in conformity with the technical equipment provided to them and with the characteristics of this form of work organization.

No allowances are provided either for work from home or for remote work.

2. Contract Modification

According to Article 119 of the *Labor Code*, an employment relationship may be modified by written consent of the parties. The provision is not subject to broader interpretations and the modifications must not be made through e-mail or implicit acceptance by conduct.

Under Article 118 of the *Labor Code*, neither the employer nor the employee may unilaterally modify the content of the employment relationship, except in the cases and according to the procedure established by law. The employer may unilaterally increase the employee's remuneration. The transfer of an employee to another workplace (e.g., office) within the same enterprise, without changing the specified place of work (e.g., Sofia), the position, and the amount of the basic wage of the worker or employee, will not be treated as a modification of the employment relationship.

According to Article 120 of the *Labor Code*, where production so requires, as well as in the case of a work stoppage, the employer may order the employee, without their consent, to temporarily perform other work in the same or in another enterprise, but in the same location or locality, for up to 45 calendar days within one calendar year, and in the case of a work stoppage, for the duration of the stoppage. The change will be done in accordance with the qualifications and the health condition of the worker or employee. The employer may assign the worker or employee work of a different nature, even though it does not correspond to their qualifications, where this is necessary due to compelling reasons.

In relation to the COVID-19 situation, there are specific provisions applicable when a state of emergency or a pandemic has been declared, namely: **(i)** the employer may assign work from home or remote work without the employee's consent – in such a case, only the place of work will be changed, without modifying the rest of the conditions under the employment contract; **(ii)** the employer may issue an order discontinuing the work of the enterprise, of part of the enterprise or of individual employees for the entire period or for part of it until the state of emergency is lifted.

The employee's tasks are described in the job description, which is an inseparable part of the employment contract. The day-to-day tasks may differ if they fall within the description of the employee's position and the nature of the work. If the changes are outside the scope of the employee's responsibilities pursuant to the employment contract and job description, the absence of written modification would be a problem in the event of an employment dispute concerning the said tasks, as it cannot be evidenced that they were assigned to the employee. In such a situation, the dismissal of the employee due to non-performance of these tasks would be considered unlawful.

The employer is obliged to ensure that all employees are familiar with the modifications of the employer's policies and internal regulations, this being evidenced in written form and certified by the employee's signature.

In some cases, when the modifications concern the activities, economic situation, and work organization in the enterprise, the employer may adopt the modifications after holding advance consultations with the worker and employee representatives.

Trade unions are entitled to participate in the preparation of all internal policies and regulations and will be duly invited by the employer to do so. The same applies to amendments to the enterprise's internal acts.

3. Termination

3.1. Termination types

An employment contract may be terminated only on the grounds explicitly provided in the *Labor Code*.

Until the expiry of the probation period, the party in whose favor the probation period is agreed can terminate the employment contract without prior notice. The other party can terminate the contract upon observing the prior notice period agreed therein.

After the expiry of the probation period, the employment contract can be terminated on the grounds listed below.

The employment contract will be terminated without notice being due by either party on the following general grounds: **(i)** by mutual consent of the parties expressed in writing, where there are two possibilities – by initiative of either party, with or without compensation, and by initiative of the employer against compensation of four gross monthly salaries; **(ii)** when the dismissal of the employee is found to be unlawful or the employee is reinstated in their former job by the court and fails to appear within two weeks; **(iii)** upon the expiry of the agreed term; **(iv)** upon completion of the assigned work; **(v)** due to the return of the employee being replaced; **(vi)** when the position is designated for a pregnant employee or an employee with special health requirements and there is a candidate who is entitled to occupy it; **(vii)** with the start of work of the employee who has been elected or who has won a competitive selection procedure; **(viii)** in case the inability of the employee to perform the assigned work due to sickness led to permanently decreased working capacity, or due to health concerns based on a statement of the labor-expert medical committee; **(ix)** upon the death of the person with whom the employee has concluded the employment contract with regard to his personality; **(x)** upon the death of the employee; **(xi)** due to position being designated for a public servant; **(xii)** in case of a fixed-term agreement for the term of the long-term service under the *Diplomatic Service Act*.

The employee can terminate the employment contract by giving prior written notice to the employer. The notice period starts to run from the day following the day of receipt of the notice. The notice period is 30 days unless agreed otherwise in the employment contract, but not more than three months in the case of an employment contract for an unlimited term. In the case of a fixed-term employment contract, the notice period is three months, but not more than the remaining term of the contract.

The employee can terminate the employment contract in writing without prior notice when **(i)** the employee is unable to perform the assigned work because of illness and the employer fails to provide them with other suitable work in accordance with the prescription of the health authorities, **(ii)** the employer delays the payment of salary or compensation under the *Labor Code* or related to social security, **(iii)** the employer changes the place or the nature of the work or the agreed remuneration, except where it is entitled to make such changes, and when it fails to fulfil other obligations agreed in the employment contract or in a collective bargaining agreement or established by a normative act, **(iv)** as a result of a change of the employer, the work conditions with the new employer significantly deteriorate, **(v)** the employee moves to a paid elective position or starts scientific work based on a selection procedure, **(vi)** the employee continues their education or starts a PhD in a regular form, **(vii)** the employee works under a fixed-term employment contract for a defined term or to replace an absent employee and moves to another job for an indefinite term, **(viii)** the employee works under an employment contract with a temporary staffing agency and enters into an employment contract with another employer that is not a temporary staffing agency, **(ix)** the employee has been reinstated due to their dismissal being declared unlawful to take their previous job, **(x)** the employee starts work at a state authority, **(xi)** the employer ceases its activity, **(xii)** the employer has granted the employee unpaid leave without their consent, or **(xiii)** the employee has acquired the right to retire.

The employer can terminate the employment contract with prior notice on the following grounds: **(i)** if the company closes down; **(ii)** if part of the company is closed down or in case of staff reduction; **(iii)** in case of a decrease in work volume; **(iv)** in case of a stoppage of the work for more than 15 working days; **(v)** in case the employee lacks the qualities to perform the work effectively; **(vi)** when the employee does not have the necessary education or professional qualification for the performed work; **(vii)** in case the employee refuses to follow the company or its department when it moves to another city or location; **(viii)** when the position of the employee has to be released to reinstate an unlawfully dismissed employee; **(ix)** if the right to retirement is acquired; **(x)** when the employee is granted a decreased pension due to early retirement; **(xi)** when the employment relationship has started after the employee has acquired and exercised their right to retirement; **(xii)** when the employment relationship has started after the employee has been granted a decreased pension; **(xiii)** in case of a change in the requirements for the position if the employee does not meet them; **(xiv)** in case of the objective impossibility to perform the employment contract; **(xv)** for management – management employees may be released from work with prior notice also due to the conclusion of a management agreement in the company. Termination can take place within nine months of the start of the management agreement.

The employer can terminate the employment contract without prior notice on the following grounds: **(i)** when the employ-

ee is detained for the execution of a sentence; **(ii)** when the employee is prohibited by a sentence or administrative procedure from exercising their profession or occupying their position; **(iii)** when the employee's science degree has been revoked if the employment contract was entered into by virtue of such a degree; **(iv)** when the employee refuses to take the recommended appropriate position in case of special medical requirement; **(v)** when the employee is disciplinarily dismissed; **(vi)** when a conflict of interests under the *Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act* has been established with an effective legal act; **(vii)** when the employee does not pass the vetting process required under the *Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act* established with an effective legal act.

Some of the termination grounds may require additional actions to be undertaken by the employer in advance (e.g., conducting selection procedures, and obtaining permission from a labor or health authority).

The consequences of the termination of the employment contract are determined by the reasons for termination and the specific legal ground.

The party entitled to terminate the employment relationship with notice may terminate the relationship even before the expiry of the notice period, in which case that party will owe the other party compensation amounting to the employee's gross remuneration for the unobserved notice period.

The party who has been given notice of termination may terminate the employment relationship even before the expiry of the notice period, in which case that party will owe the other party compensation amounting to the employee's gross remuneration for the unobserved notice period.

Upon termination of the employment relationship by an employee without notice in the cases of a delayed payment of salary or compensation, change of the place or the nature of the work or the agreed remuneration or deterioration of the work conditions (in case of a change of the employer), the employer will owe the employee compensation amounting to the gross remuneration for the notice period in case of an employment relationship of indefinite duration, and amounting to the actual detriment in case of a fixed-term employment relationship.

Upon dismissal for breach of discipline, the employee will owe the employer compensation amounting to the employee's gross remuneration for the notice period in case of an employment relationship of indefinite duration and amounting to the actual detriment in case of a fixed-term employment relationship. The same applies in case the employee is dismissed due to conviction for a criminal offense, which also constitutes a breach of labor duties.

The actual detriment will be calculated on the basis of the gross remuneration of the employee for the period during which the employee was unemployed, or the employer has been left without an employee for the same work, but not more than the remainder of the term of the employment relationship.

Upon dismissal due to closure of the enterprise or of a part thereof, staff cuts, reduction in the volume of work, stoppage of work for more than 15 working days, refusal of the employee to follow the enterprise or a division thereof in which the employee works when the enterprise or division relocates to another populated area or locale, or where the position occupied by the employee must be vacated to reinstate a wrongfully dismissed employee who previously occupied the same position, the employee will be entitled to compensation from the employer. The compensation will amount to the employee's gross remuneration for the period of unemployment but not more than one month. Compensation for a longer period may be provided for by an act of the Council of Ministers, by a collective bargaining agreement, or by the employment contract. If the employee begins work for which they are paid a lower remuneration during the said period, the employee will be entitled to the difference for the said period.

Upon termination of the employment relationship due to illness, the employee will be entitled to compensation from the employer amounting to the employee's gross remuneration for a period of two months, provided that the employee has worked for the employer for at least five years and has not received compensation on the same grounds during the last five years of employment service.

Upon termination of the employment relationship, after the employee has acquired entitlement to a contributory service and retirement-age pension, irrespective of the grounds for termination, the employee will be entitled to compensation from the employer amounting to the employee's gross remuneration for a period of two months, and where the employee has worked with the same employer or in the same group of undertakings for 10 years during the past 20 years, the compensation will amount to the employee's gross remuneration for a period of six months. Such compensation will be payable on a single occasion only.

Upon termination of the employment relationship, the employee will be entitled to cash compensation for any unused paid annual leave for the current calendar year in proportion to the time recognized as employment service and for any unused leave deferred, the right to which has not lapsed by prescription

Unemployed persons whose employment relationships have been terminated on their own initiative or with their consent, or due to their culpable behavior, will receive the minimum amount of the cash unemployment benefit (which currently is BGN 18) for a period of four months, which is the shortest term provided in the legislation.

The *Labor Code* provides two possibilities to terminate the employment relationship. The first one is the provision of Article 325 (1) (1) of the *Labor Code*, pursuant to which either the employer or the employee can make an offer to the other party for termination of the employment contract by mutual consent. The party who has been approached with the offer must respond within seven days after receipt of the offer. If they do not, it will be assumed that the offer was rejected. In this case, the mandatory elements are the offer and the written acceptance of its terms. In practice, the parties sign an agreement for termination of the employment contract by mutual consent on the basis of Article 325 (1) (1) of the *Labor Code* instead of (or together with) the employee's written consent to the offer.

Another possibility for termination of the employment contract by mutual consent is provided in Article 331 of the *Labor Code*, under which the employer may offer the employee termination of the employment contract in consideration of compensation. Again, the employee must confirm the acceptance of the offer in writing within seven days, otherwise, the offer will be presumed rejected. In practice, the parties sign an explicit agreement for termination of the employment contract by mutual consent based on Article 331 of the *Labor Code*, instead of (or together with) the employee's written consent to the offer.

The minimum amount of the compensation is statutorily determined at quadruple the gross monthly remuneration as last received by the employee. The compensation will be paid to the employee within one month after the date of termination of the employment contract, otherwise, the grounds for termination of the said contract are presumed lapsed. This means that the mandatory elements of the termination under Article 331 of the Labor Code are the offer, the acceptance of the offer and/or the mutual agreement, and the payment of the compensation within the provided term and in the provided minimum amount or the higher amount agreed between the parties.

Based on Article 111 of the *Labor Code*, the employee may conclude an additional employment contract with other employers for work outside their fixed working time under their principal employment contract, unless a prohibition is provided for in the latter, for the purpose of protecting trade secrets and/or preventing conflicts of interest.

The court practice is that employers are not entitled to restrict the employee's activity after the termination of the employment relationship, irrespective of whether consideration has been paid or would be paid, as such restrictions infringe the right to work and the right to free business activity under the *Bulgarian Constitution*. Such a restriction can be provided in the employment contract or in a separate agreement, but if the employee breaches it, the employer does not have the tools to stop the breach or to collect the penalty, as in a potential lawsuit the provision would be declared null and void.

3.2. Collective Dismissal

The criteria for defining dismissals as collective is their number compared to the number of people employed during the month preceding the termination of the employment contracts, at the initiative of the employer, namely: **(i)** at least 10 over a period of 30 days in enterprises employing more than 20 and less than 100 employees during the month preceding the collective dismissals; **(ii)** at least 10% of the number of the employees in enterprises employing at least 100 but less than 300 employees during the month preceding the collective dismissals over a period of 30 days.

If the employer has dismissed five workers or employees over a one-month period and decides to terminate the employment contracts of other people in the following month, the employer must check whether the collective dismissals criteria are met and then follow the relevant statutory procedures.

When calculating the total number of the employees affected by the collective dismissals, it must not include those employees whose contracts are going to be terminated for reasons other than the decision of the employer or for reasons related to the individual person concerned, e.g., termination by mutual consent (with or without compensation), unilateral termination within the probation period agreed to the employer's benefit, disciplinary dismissals, etc.

Where the employer is contemplating collective dismissals, it must provide written information to the representatives of the workers and employees and to the trade union representatives.

The information provided by the employer must specify **(i)** the reasons for the projected dismissals, **(ii)** the number of employees that will be dismissed and the main economic activities, groups of professions, or occupations to which they are referred, **(iii)** the number of employees employed in the basic economic activities, groups of professions, and positions in the enterprise, **(iv)** the specific indicators for applying the selection criteria to the people to be dismissed, **(v)** the period over which the projected dismissals are to be effectuated, and **(vi)** the dismissal compensations due.

The information on the period over which the projected dismissals are to be effectuated includes the time when the

dismissal process will start and when it will end, whether the dismissals will be effectuated simultaneously or in stages, or how many and at what intervals, when the notices of dismissal will be served, whether the period after serving them will be considered a working period or whether compensation for non-observed notice period will be paid, etc. The specific legal grounds for termination of the employment contracts must be indicated as well.

The reason for this obligation is to ensure that the employee representatives and trade union representatives will be aware of the main issues of the collective dismissals and the underlying situation in the enterprise and to provide an opportunity for them to take part in the following consultation procedure.

Within three working days, the employer will send a copy of the information to the relevant subdivision of the Employment Agency (Labor Office Directorate).

After the obligation to provide the information is fulfilled, the employer may begin consultations with the employee representatives and the trade union representatives. The consultations should start not later than 45 days prior to the date on which the dismissals are to be effectuated. These consultations are essentially discussions or negotiations intended for the parties to reach an agreement to avoid or reduce the collective dismissals and to mitigate their effects (e.g., a reduction of the number of employees affected by the dismissals, increased dismissal payments, organization of training and retraining courses, etc.). The employer's obligation to conduct consultations is deemed to be fulfilled even when the participants in these consultations fail to reach an agreement.

The dismissals will be effectuated not earlier than 30 days after the notification of the Labor Office Directorate and not earlier than 45 days after the start of the consultations, i.e., a period of 45 days after the opening of the dismissal process has to elapse for the purpose of observing both statutory time limits. In the event of breaches, the employer would pay a monetary penalty or a fine and the relevant executive employees would be punished with a fine.

The failure to carry out the notification and consultation procedure does not constitute grounds to revoke the dismissal as unlawful in a potential court case, i.e., the only legal effect is the administrative liability of the employer and the imposition of a monetary penalty. The amount of the monetary penalty for the company is between BGN 1,500 and BGN 5,000 and the amount of the fine for the responsible executive employee is between BGN 250 and BGN 1,000, both applicable for each separate breach.

Parallel to the procedure outlined above, the employer has to meet the requirements laid down in the *Employment Promotion Act* by sending a written notification to the relevant subdivision of the Employment Agency on the projected collective dismissals, no later than 30 days prior to the date on which they are to be effectuated. The content of the notification is almost identical to that indicated above (required under the *Labor Code*), with the addition that the notification should include information on the outcome of the preliminary consultations held with the employee representatives and trade union representatives. The employer will send the latter a copy of the notification within three working days.

After the notification is received, a team will be set up with a representative of the employer, employee representatives, trade union representatives, a representative of the Employment Agency, and a representative of the municipal administration to draft the relevant measures to provide employment to the employees concerned. For failing to follow this procedure, the employer would be punished with a monetary penalty of BGN 200 for each dismissed employee.

3.3. Unlawful Termination

The employee will be entitled to contest the legality of the dismissal before the employer or before the court and to claim **(i)** the dismissal to be pronounced unlawful and be revoked, **(ii)** reinstatement to their previous job, and **(iii)** compensation for the period of unemployment due to the dismissal.

Upon an unlawful dismissal, the employee will be entitled to compensation from the employer amounting to the employee's gross remuneration for the period of unemployment caused by the dismissal, but for not more than six months, unless a higher amount is determined in the employment contract or the collective bargaining agreement. If the employee has worked in a lower-paid job during this period, the employee will be entitled to the difference between the two remunerations.

Where the unlawfully dismissed employee is reinstated to work and after reporting to the enterprise is not admitted to performing the said work, the employer and the culpable executive employee will be jointly liable to the employee for payment of an amount equal to the employee's gross remuneration from the day of reporting to the day of actual admission to work.

The gross remuneration as a basis for calculation of the compensation for unlawful dismissal will be the gross remuneration received by the employee for the month preceding the month in which the grounds for the relevant compensation occurred or the last monthly gross remuneration received by the employee.

Pursuant to the *Ordinance on the structure and organization of the salary*, the gross remuneration consists of the base salary, additional remunerations determined by the relevant legislation

(such as the additional remuneration for employment service and professional experience), and other remunerations determined in the employment contract. The type of additional remunerations that will be included in the gross remuneration when determining the amount of the compensation for unlawful dismissal will be determined case-by-case, as the principle is that only additional remunerations with a permanent nature will be considered in the calculation. If the employee receives a bonus that does not depend on their *ad hoc* performance, it will be included in the calculation of the gross remuneration. Whether an additional remuneration has a permanent nature will be determined not only based on the provisions of the employment contract and the employer's internal acts but also based on the actual practice of the parties, i.e., if the employer pays the employee a certain amount of money on top of the base salary each month, this will be regarded as an additional remuneration with a permanent nature and will be included in the calculation, even if it is not agreed in the employment contract.

According to Article 24 (1) of the *Personal Income Tax Act*, the taxable income accruing from employment relationships will comprise the remuneration and all other payments in cash and/or in-kind from an employer or for the account of an employer, except for explicitly listed incomes. The compensation for unlawful dismissal is not listed and, therefore, it is taxable income, where the tax rate is 10%.

An employee is entitled to contest the legality of dismissal before the employer or before the court and to seek that it be pronounced unlawful and revoked. The employer, acting on its own initiative, may revoke the dismissal order before the employee brings legal action before the court.

Article 333 of the *Labor Code* provides protection to certain categories of employees in the case of termination of the employment contract by the initiative of the employer on some of the legal grounds for unilateral termination.

The protection can be determined as absolute or relative, based on whether there are possibilities for it to be overcome or not.

The categories of employees entitled to relative prior protection are (i) a female employee who is the mother of an infant up to three years of age, **(ii)** an employee re-assigned to a suitable job/position on account of a disability, **(iii)** an employee suffering from a medical condition as defined by an ordinance of the Minister of Health, namely: ischemic heart disease, active tuberculosis, any oncological disease, any occupational disease, any mental disorder, and diabetes, **(iv)** an employee on a statutory leave of absence (which includes any type of leave, including sick leave), **(v)** an employee who is an elected representative of the workforce, for the duration of their term in such capacity, **(vi)** an employee who is a representative of the workforce on matters of occupational health and safety, elected by the general workers' meeting or the assembly of workers' representatives, for the duration of their term in such capacity, **(vii)** an employee who is a member of a special negotiating body, a European Works Council or a representative body in a European commercial or cooperative entity, for the duration of their term in such capacity, **(viii)** an employee who is a member of the trade union leadership body of the enterprise, or an elected territorial, sectoral or national trade union leadership body, for the duration of their term in such capacity and up to six months following their stepping down from said leadership position.

The grounds for unilateral termination of an employment relationship by the employer to which prior protection under Article 333 of the *Labor Code* applies are as follows: **(i)** partial closure of the enterprise or staff cuts; **(ii)** a decrease in work volume; **(iii)** the employee lacks the qualities necessary to properly do their job; **(iv)** changes in job requirements that the employee is unable to meet; and **(v)** disciplinary dismissal of the employee.

With respect to the categories of employees listed above, protection against unilateral termination by the employer amounts to the requirement for the employer to seek and obtain prior authorization from the Labor Inspectorate for each individual case.

In cases of a proposed termination of the employment contract of an employee who has been reassigned to a job/position on account of a disability or who suffers from any of the medical conditions listed above, in addition to prior authorization from the Labor Inspectorate, the employer must also seek an opinion from the Territorial Expert Medical Commission.

The legality of the dismissal of an employee who is a member of a trade union leadership body is contingent upon the employer obtaining the prior consent of a union body identified by a decision of the central leadership of the respective trade union.

In cases of concluded collective bargaining agreements, it may provide that the dismissal of employees in the enterprise (falling in the above categories or not) on the grounds of staff cuts or a decrease in work volume must be preceded by the prior consent of the relevant trade union body in the enterprise.

A pregnant female worker or employee and a female worker or employee in an advanced stage of in vitro treatment may be dismissed only on the following grounds: **(i)** closure of the enterprise; **(ii)** in case the employee declines to follow the enterprise or the division thereof where she currently works if it is being relocated to another populated area or locale; **(iii)**

where the job or position held by the employee must be vacated to reinstate an unlawfully dismissed employee who held the job or position prior to the appointment of the employee; **(iv)** in case it is objectively impossible for the employment contract to be performed; **(v)** in case the employee is incarcerated for the purposes of serving a court-imposed sentence; **(vi)** disciplinary dismissal.

In the case of disciplinary dismissal, the prior permission of the Labor Inspectorate must be obtained.

An employee on maternity leave may be dismissed only on the grounds of closure of the enterprise.

The dismissal protection applies at the time the dismissal order is served.

Where the dismissal requires the prior consent of the Labor Inspectorate or of a trade union body and such consent has not been requested or has not been granted before the dismissal, the court will revoke the order of dismissal as unlawful on these grounds only, without examining the labor dispute on the merits.

Only one disciplinary sanction may be imposed for the same breach of discipline.

4. Wage And Hour

4.1. Wage

The minimum wage in Bulgaria is determined annually by the Council of Ministers. Currently, it is BGN 710 per month. The minimum hourly wage is BGN 4.29. Both are expected to increase as of July 1, 2023. The minimum monthly wage and minimum hourly wage are not industry dependent and are the same for all business sectors.

There are no explicit provisions on whether wages must be paid in Bulgarian currency or in another currency. Therefore, it is not forbidden to pay wages in foreign currency. However, the manner in which the currency exchange rate is determined must be indicated in the employment contract, since if it varies, this will cause differences in the amounts received. In addition, the taxes, social security, and health insurance payments deducted from the gross wage must be paid in Bulgarian currency.

There are different types of allowances that must or can be included in the base monthly salary. The *Labor Code* and the *Ordinance on the structure and organization of the salary* determine the additional remunerations which must be paid to the employee if the indicated specific circumstances are present.

The obligatory additional remunerations are as follows: **(i)** for acquired employment service or professional experience; **(ii)** for overtime work; **(iii)** for work at night; **(iv)** for standby time; **(v)** for the academic degrees Doctor and Doctor of Sciences.

The additional remuneration for employment service or professional experience is due regarding the acquired employment service and professional experience within the enterprise, including in different positions, as well as within different enterprises when it concerns the same or similar work or work of the same nature. The minimum amount of the additional remuneration is determined by the Council of Ministers, where currently the amount is 0.6% for every year of acquired employment service and professional experience. Higher amounts may be provided in the employment contract, the collective bargaining agreement, and the internal salary rules.

Overtime work performed will be paid with an increase agreed upon between the employee and the employer but not less than **(i)** 50% for work on working days; **(ii)** 75% for work on weekends; **(iii)** 100% for work on public holidays; **(iv)** 50% for work at working times calculated on a weekly or longer basis. The calculation will be based on the base salary of the employee and additional remunerations with a permanent nature.

For each night hour or part thereof worked between 10:00 p.m. and 6:00 a.m., additional remuneration for night work will be paid to the employee in a minimum amount of 0.15% of the minimum monthly wage, but not less than BGN 1. A higher amount may be provided in the employment contract, the collective bargaining agreement, or the internal salary rules.

The minimum remuneration for standby time is BGN 0.10 per hour and it is due for the time when the employee is outside the enterprise but is on call to the employer if needed. A higher amount may be provided in the employment contract, the collective bargaining agreement, or the internal salary rules.

The remuneration for the academic degrees of Doctor and Doctor of Sciences is due when the respective degree is related to the work performed by the employee. The minimum amount is BGN 15 for Doctor and BGN 50 for a Doctor of Sciences. A higher amount may be provided in the employment contract, the collective bargaining agreement, or the internal salary rules.

Apart from the obligatory additional remunerations, other types of additional remunerations, as well as their amounts and the terms of their payment, may be determined in the collective bargaining agreement, the internal salary rules, and/or the employment contract, including, but not limited to **(i)** performance bonus – yearly, currently, or for other periods, **(ii)** temporary changes in the labor conditions which lead to additional stress and psychological changes as all as changes in other conditions that harm the employee's health, and **(iii)**

participation in the profit.

4.2. Working Time

The normal workweek will consist of five days, with a normal duration of weekly working time of up to 40 hours. The normal duration of the working time during the day will be up to eight hours.

There are no minimum daily working hours. The maximum daily working hours can be 12 hours, in case of open-ended working hours and aggregate calculation of the working time, since the minimum daily break of 12 hours must be observed in any case.

The working time will be allocated in accordance with the internal work rules of the enterprise. The lunch break is not included in the working time and is not paid unless the parties agree on a lunch allowance.

The duration of overtime work performed by one employee within any calendar year may not exceed 150 hours. A longer duration of overtime work may be agreed in the collective bargaining agreement, but may not be longer than 300 hours in one calendar year.

Bulgarian legislation does not contain provisions on time banking.

Each worker or employee will be entitled to paid annual leave. For newly hired employees, the employee may use their paid annual leave after at least four months of employment. The amount of basic paid annual leave must not be less than 20 working days. Certain categories of employees, depending on the special nature of the work, will be entitled to extended paid annual leave. The categories of employees and the applicable minimum amount are determined by the Council of Ministers. Part-time employees have the right to paid annual leave in proportion to the time recognized as employment service.

Employees will be entitled to not less than five working days additional paid annual leave **(i)** for work under specific conditions and life and health hazards that cannot be eliminated, restricted, or reduced regardless of the measures taken, and **(ii)** for work in open-ended working hours.

Longer amounts of basic and additional paid annual leave may be agreed upon in the collective bargaining agreement, as well as between the parties to an employment relationship.

The paid annual leave will be approved by the employer based on a written request by the employee. It can be granted to the employee in whole or in part.

The employer will be entitled to grant the paid annual leave to the employee even without the employee's written request or consent during a work stoppage of more than five working days, where all employees use leave simultaneously, as well as where the employee, following an invitation by the employer, would have failed to request leave by the end of the calendar year for which it is due.

The employee must use their leave by the end of the calendar year for which it is due. The employer is obliged to approve the use of the employee's paid annual leave by the end of the respective calendar year unless the use of the said leave has been deferred in accordance with the procedure described below. In such a case, an opportunity will be ensured for the employee to use not less than one-half of the paid annual leave to which they are entitled in the respective calendar year.

The use of the paid annual leave may be postponed for the following calendar year by **(i)** the employer – for important operational reasons, and **(ii)** the employee – by using an alternative type of leave or upon their request with the employer's consent.

If the leave was postponed or was not used by the end of the calendar year to which it relates, the employer will be obliged to ensure its use in the next calendar year, but not later than six months as of the end of the calendar year for which the leave is due. If the employer would not have authorized the use of the leave in the cases and within the terms specified above, the employee would be entitled to themselves determine the time of its use by notifying the employer thereof in writing at least 14 days in advance.

Where the paid annual leave or part thereof is not used until the expiry of two years after the end of the year for which the said leave is due, regardless of the reasons, the entitlement to use such leave will be extinguished by prescription.

If the paid annual leave would be postponed under the terms and procedure described above, the employee's right to use it will expire upon the expiry of two years as of the end of the year in which the reason not to use it would have ceased to exist.

For the time of paid annual leave, the employer will pay the employee remuneration calculated based on the average daily gross remuneration charged at the same employer for the last calendar month preceding the use of the leave, during which the employee has worked at least ten working days. Where the employee has not worked at least ten working days for the same employer during any month, the remuneration will be determined based on the base salary and additional remunerations of a permanent nature as agreed in the employment contract.

It is prohibited to compensate the paid annual leave in cash, except upon termination of the employment relationship.

Sick leave will be permitted by the competent health authorities.

Persons insured in respect of common diseases will have the right to cash benefits instead of remuneration for the duration of the leave of absence due to temporary incapacity to work, provided they have at least six months of insured length of service, in the course of which they have been insured in respect of such risk.

The employer, in its capacity of insurer, will pay out to the employee, in its capacity of an insured person, for the first three business days of the temporary incapacity to work, 70% of the average daily gross remuneration for the month in which the temporary incapacity to work occurred, but not less than 70% of the average daily remuneration that was agreed upon.

The remaining part of the period of temporary incapacity to work will be covered by state funds. The daily cash benefit for temporary incapacity to work due to a common disease will be calculated at the rate of 80% of the average daily gross remuneration or the average daily contributory income on which social insurance contributions have been remitted or are due, for the period of 18 calendar months preceding the month of occurrence of the disability. The daily cash benefit for temporary disability due to a common disease may not exceed the average daily net remuneration for the period based on which the benefit is calculated.

5. Collective Labor Law

5.1. Trade Unions

Employees are free to associate, without preliminary approval. A trade union in the enterprise can be established by a meeting of its founders (the number of which varies depending on the statute of the respective national trade union and is most commonly three to five people). Minutes of the founding meeting must be drafted and signed, where among other things, the following resolutions must be adopted: **(i)** establishment of the trade union; **(ii)** adoption of its statute; **(iii)** election of management bodies (a president and a secretary); and **(iv)** determination of membership in a national trade union.

The trade union will acquire the status of a legal person upon registration in a register maintained by the relevant District Court having jurisdiction over their registered office. The acquisition of the status of a legal entity is not an obligatory precondition to becoming a trade union. Any division of a duly registered organization must acquire the status of a legal person according to its statute.

To be recognized as a representative at a national level by the Council of Ministers, a trade union must meet the following requirements: **(i)** have at least 50,000 members; **(ii)** have organizations of employees in more than one-fourth of the industries designated by a code up to the second digit in the Classification of Economic Activities endorsed by the National Statistical Institute, with at least 5% of the people engaged in each economic activity being members therein, or at least 50 organizations with at least five members in each economic activity; **(iii)** have local bodies in more than one-fourth of the municipalities in Bulgaria and a national governing body; **(iv)** possess the capacity of a legal person, at least two years prior to the submission of the request for recognition of representativity.

In Bulgaria, there are two trade unions recognized as representatives at a national level: the Confederation of the Independent Trade Unions in Bulgaria (KNSB) and the Confederation of Labor *Podkrepa*.

The bodies of the trade union in the enterprise will be entitled to participate in the drafting of all internal rules and regulations which pertain to industrial relations, and the employer will mandatorily invite them to do so.

The trade unions participate in the negotiations with the employer, group of employers, and their organizations for the conclusion of collective bargaining agreements. The employers are obliged to negotiate with the trade unions on the conclusion of a collective bargaining agreement and to make available to them **(i)** the concluded collective bargaining agreements that bind the parties on the basis of industry, territorial, or organizational affiliation, as well as **(ii)** timely, true, and comprehensible information on their economic and financial status relevant to the conclusion of the collective bargaining agreement.

The trade unions participate in the information and consultations procedure in the enterprise, when such will be conducted, pursuant to the provisions of the *Labor Code*, e.g., regarding working time issues (extension or reduction of the working time, establishment of open-ended working hours), change of the employer due to reorganizations, transfer of the enterprise or part thereof, collective dismissals, etc.

The trade unions and their divisions will be entitled, upon the request of employees, to represent them as authorized representatives before the court. They may not conclude settlements, acknowledge legal actions, waive, withdraw or reduce the demands of the employees, or collect any amounts on behalf of the persons represented unless they have been expressly authorized to do so.

The state bodies, local government bodies local authorities, and employers will create conditions for, and cooperate with, the trade union in the pursuit of their activities. The said bodies and employers will make available to the said organization,

for gratuitous use, movable and immovable property, buildings, premises, and other facilities required for the performance of their functions.

The collective bargaining agreement will regulate issues of industrial and social-security relations of employees not regulated by mandatory provisions of the law. The collective bargaining agreement may not contain provisions that are less favorable to the employees than the provisions of the law or of a collective bargaining agreement that is binding on the employer. The collective bargaining agreement will have an effect with regard to the employees who are members of the trade union which is a party to the agreement. The employees who are not members of a trade union that is a party to a collective bargaining agreement may accede to a collective bargaining agreement concluded by their employer by applications in writing submitted to the employer or to the leadership of the trade union which has concluded the agreement.

Within an enterprise, the collective bargaining agreement will be concluded between the employer and a trade union. A collective bargaining agreement by industry and branch will be concluded between the respective trade union and representative organizations of the employers. Upon mutual request of the parties to the collective bargaining agreement executed on an industry or branch level, the Minister of Labor and Social Policy may extend the application of the agreement or of individual clauses thereof to all enterprises of that industry or branch. The extended collective bargaining agreement or individual clauses thereof will apply to employees working in enterprises covered by the relevant industry or branch.

5.2. Works Councils

There are various types of representatives of workers and employees.

The first type is representatives for participation in the enterprise's management.

The workers and employees will participate, through representatives elected by the General Meeting of workers and employees, in the discussion and addressing of enterprise management issues only in the cases provided for by law.

The workers and employees may elect at a General Meeting their representatives, who will represent their common interests on issues of industrial and social-security relations before the employers or before the State bodies.

The second type is representatives for participation in the information and consultation procedures provided in the *Labor Code*.

In enterprises employing at least 50 workers and employees, including in enterprises providing temporary employment, as well as in organizationally and economically self-contained divisions of enterprises employing at least 20 workers and employees, the General Meeting will elect from among its composition worker and employee representatives for exercising the right to information and consultation. The General Meeting may delegate these functions to representatives designated by the management of the trade union or to the worker and employee representatives for participation in the enterprise management. The number of representatives depends on the average monthly number of workers and employees employed during the previous 12 months.

The election of both types of representatives is within the power of the General Meeting of workers and employees. The employer will not be sanctioned if such representatives have not been elected in the enterprise. On the other hand, the lack of such representatives would hinder the information and consultation procedures, where such are necessary, as they would be carried out with all employees in the enterprise.

A separate type is representatives for occupational safety and health. They participate, together with representatives of the employer, in committees or groups on working conditions. A committee on working conditions is to be set up in bigger enterprises (with more than 50 employees), while a group on working conditions is to be set up in smaller enterprises (with more than five and less than 50 employees).

The worker and employee representatives participate in the same information and consultation procedure in the enterprise as the trade unions, including in case of changes in the activity, economic status, and labor organization. Additionally, they have the right to receive information from the employer, to have access to all workplaces in the enterprise or division, etc.

A collective bargaining agreement or a separate agreement with the employer may provide that the worker and employee representatives, where this is necessary considering their obligations, may enjoy entitlement to reduced working time, additional leave, and other such benefits.

In addition to the above, the worker and employee representatives enjoy protection against dismissal, as noted in Section 3.3.

The worker and employee representatives are obliged to inform the employees of the information received and of the results of the consultations and meetings held, as well as to observe the necessary confidentiality obligations.

The employer will be obliged to cooperate with the worker and employee representatives in the discharge of their functions and to create conditions for the implementation of their activities.

6. Transfer Of Undertakings

The employment relationship with the employee will not be terminated in the event of a change of employer as a result of the reorganization of an enterprise (including mergers, spin-offs, etc.) by the formation of a new enterprise, the transfer of a self-contained part of one enterprise to another, the change of the legal form of the business organization, the change of ownership of the enterprise or of a self-contained part thereof, the cession or transfer of activity from one enterprise to another, including transfer of tangible assets, or the lease or usufructuary lease of the enterprise or of a self-contained part thereof.

The rights and obligations of the transferor/lessor employer arising from the employment relationships existing on the date of the change will be transferred to the new transferee employer.

Before carrying out the change, the transferor employer and the transferee employer will be obliged to inform the trade union's representatives and the worker and employee representatives at the enterprises of **(i)** the projected change and the date the change will be carried out, **(ii)** the reasons for the change, **(iii)** the possible legal, economic, and social implications of the change for the employees, and **(iv)** the measures envisaged in relation to the workers and employees.

The transferor employer is obliged to provide the information within two months before the change is carried out. The transferee employer will be obliged to provide the said information in good time, and in any event within two months before the employees are directly affected by the change as regards their conditions of work and employment.

Where any of the employers envisages measures in relation to the employees of the enterprise, the employer will be obliged to consult the trade union representatives and the worker and employee representatives in good time on such measures and to make efforts to reach an agreement with them.

If there are no trade unions or worker and employee representatives at the enterprise, the employer must provide the information to the relevant employees.

If the employer fails to fulfill these obligations, the trade union representatives and the worker and employee representatives or the workers and employees themselves will have the right to alert the General Labor Inspectorate Executive Agency of a non-observance of labor legislation.

In considering a failure to fulfill the obligation, any defense on the part of the employer on the grounds that another entity has taken the decision regarding the change will not be taken into account.

The obligation of the employer is considered fulfilled even if an agreement with the trade union representatives and the worker and employee representatives has not been reached.

These structures or the employees cannot block the change of the employer if they are not satisfied with the outcome of the negotiation procedure. They are only entitled to terminate their employment contracts, without notice, if the working conditions at the new employer deteriorate substantially after the change.

7. Labor Investigation

There is no blacklist of the most significant employment law violations. There are provisions in various legal acts which regulate the consequences of specific employment law violations, e.g., the *Public Procurement Act* provides that this is a ground for the exclusion of public procurement.

The fines for breaches of the employment legislation differ depending on the nature of the violation and the person who has committed it, i.e., whether an employee, the employer (and whether the employer is a natural person or a legal entity) or an executive employee assigned by the employer to manage the employment process. In addition, the fines differ depending on whether it is the first violation or a repeated violation of the respective obligation. For repeated violations, the fines are higher.

Generally, the smallest fine imposed on an employer is BGN 1,500, the smallest fine for an executive employee is BGN 250 and the smallest fine for an employee is BGN 100.

For any violation that can be eliminated immediately after it has been ascertained and that has not adversely affected any employees (minor violations), the employer will be liable for a fine of BGN 100 or higher, but not exceeding BGN 300, and the culpable executive employee will be liable for a fine of BGN 50 or higher, but not exceeding BGN 100.

The highest single fine imposed on an employer is BGN 20,000, on an executive employee BGN 10,000, and on an employee BGN 500, if the violation is not qualified as a repeated violation. For systematic violations of certain employment obligations, the fine imposed on the employer can reach BGN 30,000 and the fine imposed on an executive employee can reach BGN 20,000.

DTB

Divjak Topić Bahtijarević & Krka

Law Firm

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

CROATIA

Andrej Zmikic
Attorney, Head of Employment
Andrej.Zmikic@dtb.hr
+385 1 5391 608

Andrija Duvnjak
Trainee
Andrija.Duvnjak@dtb.hr
+385 1 5391 632

CEE
Legal Matters

1. Hiring

1.1. Contracting

Hiring

The currently applicable Croatian Labor Act (*Official Gazette, No. 93/2014, 127/2017, 98/2019*, and *151/2022*) does not directly prescribe any particular requirements pertaining to the recruitment of employees, except that the employment relationship may only be established with a person of at least 18 years of age, or a person of 15 years of age or above 15 and under 18 years of age, who is not attending a compulsory primary education and whose employment has been approved by their legal representative/guardian.

However, if the law, special regulation, collective bargaining agreement, or internal employment rulebook (*pravilnik o radu*) of the employer set out special conditions for establishing employment for certain jobs or a work position, the employment agreement for such jobs or a work position can be entered only with a person who meets/fulfills these conditions (e.g., positive medical check, college or a high-school degree, relevant driving license, hygienic minimum approval for employees handling food and beverages, certificate confirming the absence of any criminal record, etc.).

In that sense, as a rule, medical checks are not mandatory before hiring an employee, unless a medical check – initial or periodical – is/are expressly prescribed as a special precondition for establishing employment for certain jobs or a work position by the law, special regulation, collective bargaining agreement or internal employment rulebook (*pravilnik o radu*) of the employer.

Regarding health information, the candidate must notify the employer of any illness or other circumstances which would prevent or substantially interfere with their ability to perform the job duties, or which would endanger the life or health of others during the performance of work.

Moreover, for the purpose of determining the employee's physical capacity to perform certain jobs, the employer may, in the course of employment, require the employee to undergo a medical examination before a competent doctor specializing in occupational medicine.

As for the background checks, the employer can require a criminal record excerpt or information on the prior criminal history of a job candidate, only if expressly authorized to require such information/document from a job candidate for a specific job/work position by the law. Such a document/excerpt is obtained by the candidate before the Croatian Ministry of Interior (MUP) or before the competent Municipal criminal court (depending on the type of excerpt required).

Engagement by a foreign-based employer

From a Croatian employment law perspective, it would be possible to engage the employee by a foreign-based employer (i.e., with no subsidiary of a branch office established in Croatia) by way of entering a direct (cross-border) employment agreement between the Croatia-based employee and a foreign-based employer, as an entity engaging them directly/for whose benefit the employee works, as their employer. From the legal perspective, such an employment agreement shall be valid and shall duly produce mutual rights and obligations between the parties. From the taxation perspective (especially regarding company taxation), a permanent establishment (PE) risk would need to be separately considered and assessed on a case-by-case basis.

According to the *EU Regulation No. 593/2008* on determining the applicable law for agreements (Rome I), in such an employment agreement (having in mind its international elements) the contracting parties shall be eligible to expressly stipulate the applicable law for their employment relationship, and such a disposition/consensual will of the contracting parties shall take precedence over the general rules on the conflict of laws related to employment agreements from the relevant EU regulations and/or local laws. An exemption may exist in cases where mandatory local employment law (i.e., Croatian law) would apply to certain aspects of the employment relationship as more beneficial for the employee, regardless of the law that applies to the employment agreement (e.g., minimum wages, working hours, health & safety standards, public holidays, vacation rights, non-discrimination, gender equality, etc.).

However, irrespective and regardless of the applicable law for the employment relationship stipulated in the employment agreement, in accordance with the EU regulations on coordination of the social security system, especially including *EU Regulation No. 883/2004* on the coordination of social security systems, social security contributions in respect of monthly salary and other employment-related payments received by the employee shall be determined in accordance with the legislation of the EU member state where/from where the employee predominantly performs their work – which would, in this case, be Croatia.

In terms of personal income tax matters, the relevant legal source for determining the rights and obligations of the parties from the personal income tax perspective would be the relevant double taxation treaty entered between Croatia and the relevant foreign country where a foreign employer is based. Under most double taxation treaties, employees who live in one EU member state but work there for a company based in another EU member state, are normally taxed by a personal

income tax only in their country of residence – which would, in this case, again be Croatia.

Before cross-border employing of the Croatia-based employee, a non-resident employer needs to obtain a Croatian personal identification number (*osobni identifikacijski broj* – OIB) before the Croatian Tax Authority, so that the personal income tax and social security contributions (i.e., mandatory pension and health insurance contributions) can be properly paid under this number by the foreign-based employer, to the benefit of the employee. Moreover, a non-resident employer must declare before the Croatian Tax Authority that it has become an employer employing the employee to whom the Croatian law applies in order to record the employer in the register of the personal income taxpayers, and in connection with the obligation to deliver the relevant tax (so-called "JOPPD") forms to the Tax Authority.

A common way to deal with the foregoing situations and challenges in practice would be to engage a Croatian payroll provider to handle the Croatian payroll processes on behalf of a foreign-based employer.

Finally, in order to mitigate possible risks and negative implications, even in this case of a direct employment agreement between a foreign-based employer and the employee, the employee should still obtain an A1 form from the Croatian Pension Insurance Fund (HZMO) (serving as a proof that the employee is covered by the social security in Croatia) and deliver it periodically to a foreign-based employer, as well as to carry it with him/her to a foreign country of the employer and for the entire duration of periodical work/business trips to a foreign country of the employer.

Types of employment agreement

There are two main types of employment agreements, based on the duration of employment: **(i)** employment agreement for an indefinite (open-ended) period of time, and **(ii)** employment agreement for a definite period of time. As a rule, an employment agreement is considered to be entered into for an indefinite period of time, unless the law or the individual employment agreement itself specifies differently. An employment agreement for an indefinite period of time produces rights and obligations for the parties until one of the parties terminates it in accordance with the Labor Act rules, or the agreement terminates in some other way prescribed by the law.

Under the Labor Act, an employment agreement for a definite period of time is permitted only in exceptional circumstances, where the end of employment is determined in advance by an objective reason supporting the need for a temporary performance of work by the employee.

Such an objective reason must be expressly contained in every written employment agreement for a definite period of time (i.e., both in the first/original employment agreement for a definite period of time, as well as in every consecutive employment agreement for a definite period of time entered with the same employee) and such a reason can be, e.g., the performance of work which duration is limited by a specific date or by the occurrence of a specific event, or a replacement of a temporarily absent employee.

The maximum duration of every definite term employment agreement cannot exceed a period of three years.

Moreover, the duration of consecutive definite term employment agreements entered with the same employee cannot exceed a period of three years, unless those agreements are for the replacement of a temporarily absent employee, finalization of work on the project that includes financing from the European Union funds, or for another legitimate reason expressly set out in the law or an applicable collective agreement.

Every modification or amendment to a definite term employment agreement that affects the duration of the agreement is treated as a new, consecutive definite term employment agreement. Interruption of employment shorter than three months shall not be deemed as an interruption of the foregoing three years' period of time.

The employer must provide definite-term employees with the same working conditions as indefinite-term employees who share the same or similar professional qualifications and skills and who perform the same or similar work position at the employer.

If a definite-term employment agreement is not made/entered in accordance with the rules set out by the law (see above), or if the employee continues to work for the employer after the expiry of a definite-term employment agreement, the employment will convert into an indefinite-term employment.

Form and content of the employment agreement

According to the Labor Act, every employment agreement must be concluded in a written form. Otherwise, before the commencement of work, the employer is obligated to provide the employee with a written certificate that the employment agreement has been entered/concluded.

However, the omission of the parties to conclude the employment agreement in a written form does not affect the existence and validity of the agreement. If the employer did not enter into a written agreement and did not issue a written certificate, it is presumed that the agreement has been concluded for an indefinite period.

The mandatory content of every written employment agree-

ment/written certificate on the concluded employment agreement is:

- information about the contracting parties, their personal identification number (OIB), and their place of residence or registered office;
- place of work, and if, due to a nature of work, there is no permanent nor main place of work or such place of work is changeable, an indication that the work is performed in different places;
- job title, nature or category of work for which the worker is employed, or brief list or job description;
- day of the conclusion of the employment agreement and the day of the actual commencement of employment;
- whether the employment agreement is concluded for an indefinite or for a definite period of time, and in the latter case, the date of expiry (end-date) or the expected duration of a definite term employment agreement;
- duration of paid annual leave to which the employee is entitled, or the method for determining the duration of annual leave;
- procedure in case of termination of the employment agreement, notice periods that must be observed by the employee and the employer, or the method for determining the duration of notice periods;
- basic gross salary, salary supplements, and other remuneration paid to the employee for the work performed, and periods of payment of such incomes;
- duration of a regular working day or week (in hours);
- indication whether the employment agreement is concluded for full-time or part-time;
- employee's right to education, training, and improvement in accordance with the Labor Act, if applicable;
- duration and conditions of the probation period, if stipulated by the employee.

An employment agreement may include a general reference to the other law, regulations, collective agreement, or the internal employment rulebook (*pravilnik o radu*) of the employer regarding the duration of paid annual leave, notice periods, basic salary and the duration of a working day or week.

In addition, the employer is obligated to provide the employee with a copy of the registration of the employee with the Croatian Pension Insurance Fund (HZMO) and the Croatian Health Insurance Fund (HZZO) within eight days after the expiry of a time period for registering the employee to mandatory social insurance in accordance with special law and regulations.

According to the Labor Act, the employment agreement must be in writing and signed by a wet signature. Given that only a QES (qualified electronic signature, as defined by the *EU Regulation 910/2014*) is considered equivalent to a "wet" signature, using anything but a QES or a wet signature for signing the employment agreements and other employment documentation would not suffice. If an employee were to sign agreements electronically, the employee also needs to use a signature obtained as a QES. A QES includes a digital certificate, and a digital certificate can only be issued by a Qualified Trust Service Provider (QTSP).

An exception from the above general rule is the unilateral notice on termination of the employment agreement (provided by both the employer and the employee), where only a wet signature is allowed. The draft proposal of the new Labor Act indicates that this issue will potentially be regulated differently, i.e., there is a possibility that QES (together with wet signature) would also be applicable in case of a unilateral notice on termination of the employment agreement.

Nevertheless, due to the scarcity of electronic forms in practice, and if the employer would decide to sign its employment-related documents by a QES, a recommendation would be to include a clause on electronic signatures in the employment agreement or any other employment document signed by QES itself, to avoid misunderstandings.

Language

According to the Croatian Constitution, the Croatian language and Latin alphabet are in official use in Croatia. Since employees must be fully aware and must understand their employment rights and obligations, all employment-related documents (agreements, decisions, internal acts, and policies of the employer) must be provided/made available to employees in the Croatian language – especially to employees who are native speakers of the Croatian language (at least in bilingual form, i.e., in both English and Croatian language).

Probation period

The probation period must be expressly stipulated in a written employment agreement with the employee. A minimum probation period is not prescribed (i.e., formally, can be only one day, or even one hour). The maximum probation period prescribed by the law is six months.

Exceptionally, the probation period duration can be extend-

ed in case of temporary absence of the employee during the probation period (e.g., temporary incapacity for work, usage of maternity or paternity leave, usage of paid leave), in which case the probation period duration can be extended in proportion to the duration of the absence of the employee, in a way that the total probation period duration before and after its interruption cannot be longer than six months.

In the case of an employment agreement for a definite period of time, the probation period duration must be in proportion to the expected duration of the agreement and the nature of the work performed by the employee.

In case of employment termination due to an unsatisfactory of the employee on the probation period, a notice period of a minimum of one week shall apply. Parties can agree on a different notice period, but not on a shorter notice period than the minimum prescribed by the law (one week).

Engagement of managing directors

A person serving as management board member/director of the company may be employed with the company (indefinitely or for a definite period of time), but may also be engaged by the company outside the employment context: **(i)** merely by being appointed as a management board member/director of the company pursuant to the special companies law regulations, or **(ii)** pursuant to a separate managerial agreement, that is (by its legal nature) being treated as a service contract rather than an employment agreement.

However, if a management board member/director of the company would enter into an employment agreement with the company, provisions of the Labor Act regulating employment termination, notice periods, and severance pay do not apply to the employment agreement entered with the management board member/director of the company. Instead, those matters are determined solely by the terms of the employment agreement, thus providing the parties more flexibility than would be the case with "ordinary" employees.

Moreover, provisions of the Labor Act regulating maximum weekly working hours, night work, and daily and weekly rest periods shall not apply to employees who exercise managerial functions (including company directors), if the employment agreement gives them independence in setting their work hours.

Within the meaning of the foregoing rule/provision, "employee exercising managerial functions/key employee" is an employee who is authorized to manage the employer's affairs/business, to independently conclude transactions in the name and on behalf of the employer, whose working hours schedule cannot be determined in advance and who independently decides on such a schedule.

1.2. Employees versus independent contractors

The primary differences between an employment agreement and a contract with an independent contractor (i.e., a service contract) are as follows:

- An employee works exclusively under the employer's guidelines and instructions (i.e. the employee is subordinate to the employer), and usually with resources and equipment provided by the employer. In contrast, an independent contractor works independently (i.e., for its own account and at its own risk), and often with its own resources.

- An employee provides work on an indefinite or long-term basis and within predetermined working hours. An independent contractor usually provides a one-time job or an occasional service and sets their own working hours.

- An employee performs their work obligations exclusively personally, whereas independent contractors may delegate some of their obligations to a third party.

- An employee is entitled to a monthly salary, while an independent contractor usually receives payment when the contract is fulfilled (or at another time set by the contract).

- An employee works at the employer's premises or another predetermined place of work designated by the employer, while independent contractors typically choose their own work location (unless the contract provides it differently).

It is important to distinguish these two types of contracts in practice, in order to prevent employers from using service contracts to simulate an employment relationship without proper protection of the employee's rights.

A labor inspection authority may determine that a contract, although identified by the parties as a service or other type of contract, by its content and nature actually represents an employment agreement (which is determined on a case-by-case basis according to the above criteria).

In that event, the employer may be subject to misdemeanor fines (approximately EUR 8,200-13,500 for a legal entity and approximately EUR 940-1,350 for an authorized representative of the company), obligations related to tax and social contribution rules, and an obligation to recognize all the rights and benefits set out in Croatian labor law for employees. Moreover, in that event, a labor inspection authority may also issue a prohibition to the employer to perform its business activity until the identified irregularities are eliminated (this prohibition is very rarely imposed in practice, however, a possibility cannot be excluded).

1.3. Foreign employees

Before employment commences, in order to work and reside in Croatia, the third-country nationals (non-European Economic Area (EEA) nationals) must, in general, obtain a residence and work permit (*dozvola za boravak i rad*), work registration certificate (*potvrda o prijavi rada*), an EU Blue Card, or to obtain the status of a seconded employee (*upuceni radnik*). As of January 1, 2021, a novelty introduced in the *Foreigners Act* is a so-called "digital nomad visa," i.e., a residence permit that can be issued for a period of up to one year to a third country (non-EEA) nationals performing work remotely for a company, which is not registered and does not operate in Croatia.

Until December 31, 2020, residence and work permits could have been issued based on the annual quota or outside the annual quota. On the annual basis, the Croatian Government decided on the number of residences and work permits for particular occupations in which new employment will be allowed. In contrast to the system of annual quotas, residence, and work permits could have been issued outside the annual quota, but only in cases that were specifically prescribed by the law (e.g., in the case of professional athletes who work in Croatia, case of internal staff relocation, etc.).

However, the new Foreigners Act (which came into force on January 1, 2021) abolished the model of government quotas for the issuance of residence and work permits to third-country (non-EEA) nationals and introduced a new model for the issuance of such permits based on a so-called "labor market test" performed by the Croatian Employment Fund (HZZ).

Namely, according to the new legislation, employers need to perform a "labor market test" before HZZ (save from exceptional cases specifically prescribed by law, predominantly corresponding with the situations where a residence and work permit could have been issued outside the annual quota based on the old legislation). Only if HZZ determines that there are no unemployed persons in Croatia who meet the requirements of the employer, the employer will be able to apply for a residence and work permit for a third country (non-EEA) national before the Croatian Ministry of the Interior.

Finally, the EU Blue Card represents a special type of residence and work permit which can be issued to a highly qualified third-country national upon fulfillment of specific requirements prescribed by the law. It shall be issued for a term of validity of up to two years.

Residence and work permit shall be issued to a foreigner for the time period necessary to perform the job, or for the term of the employment contract or other relevant contract, and at most for a period of up to one year, with a possibility of extension. An exception is the EU Blue Card, which can be issued for a period of up to two years. An application for issuance of a residence and work permit is submitted to the Police Administration or Police Station, based on the place of residence or intended residence of a foreigner.

In opposite to the above elaborated on residence and work permit, foreigners who are third-country (non-EEA) nationals may also stay and work in Croatia based on a work registration certificate, however only up to 90, 60, or up to 30 days in one calendar year, depending on their profession and/or purpose of work (e.g., in case of directors, procure holders, supervisory board members and other key staff of the company if they are not employed with the Croatian company, volunteers, etc.).

A foreigner who is a third-country (non-EEA) national (presuming it is legally employed by the employer established in the EEA member state) may also reside and work in Croatian as a seconded employee, i.e., employee remaining in the employment relationship with the employer – a natural or legal person established in the EEA member state other than Croatia, who is seconded to Croatia: **(i)** to a branch office or to a company owned by the same group to which belongs the employer; or **(ii)** based on a contract concluded between the employer and the service user doing business in Croatia. A seconded employee who is posted in Croatia for no more than three months does not need to obtain a residence and work permit.

Such employees may use their European health insurance card (or an S1 Form (formerly, E106 Form)) to benefit from certain health insurance in Croatia. Furthermore, such employees need to obtain A1 (formerly, E101 Form) secondment forms to demonstrate in the host EEA member state that they are already subject to the social security system of another EEA member state.

On the other hand, EEA nationals may work and reside in Croatia if they meet much simpler requirements (e.g., possession of a valid ID or passport and the confirmation/certificate of employment or proof that the employee is self-employed).

Namely, since Croatia entered into a full membership within the EU, foreigners who are EEA member states' nationals (along with their family members), are entitled to work and take up activities in Croatia without residence and work permit.

1.4. Home office

The Labor Act differentiates two types of work for an employee from an alternative/separate place of work:

(a) work from home – where an employee performs their work duties from home or other space/premises of a similar purpose determined in the employment agreement between the employee and the employer, and which are not the employ-

er's premises/premises under the control of the employer;

(b) remote working – where an employee performs their work duties through information-communication technology (ICT), whereby the employer and the employee agree on the entitlement of the employee to independently determine from where they will perform their work, which can be variable and depend on the will of the employee, which is the reason why such work shall not be considered as work from an alternative/separate place of work in accordance with the occupational health and safety regulations.

Only exceptionally, in extraordinary circumstances (pandemic included) employers can unilaterally impose an obligation to work from an alternative/separate place of work to their employees, but only for the duration of such extraordinary circumstances.

Outside of such situations, in order to introduce work from an alternative/separate place of work in accordance with the law, the employer and the employee must enter into a written employment agreement/an addendum to the existing employment agreement. This employment agreement or an addendum must, in addition to the usual mandatory content of every written employment agreement according to the Labor Act, contain additional provisions with regard to:

a) Organization of work, enabling availability of the employee and their unhindered access to business premises and information and professional communication with other employees and the employer, as well as with third parties in the business process.

b) Manner of recording of working hours.

c) Machinery, tools, and equipment for the performance of work need to be obtained, installed, and maintained by the employer.

d) Usage of employee's own machinery, tools, and equipment and reimbursement of costs associated with usage thereof.

e) Reimbursement of costs/allowance, in the name of compensation for expenses, occurred due to the performance of work by the employee on an alternative/separate place of work, in case the period of work of the employee on an alternative/separate place of work lasts longer than seven working days during one calendar month.

f) Manner of exercising the right to participate in decision-making at the employer.

g) Duration of work on the alternative/separate place of work, or the manner for determining the duration of such a work.

As an exception, an employment agreement or an addendum entered with employees working remotely must contain an express indication about the employee's entitlement to independently determine from where they will perform their work, and does not have to contain information indicated under c), d) and e) above.

The employee working in the office of the employer may, for the purpose of harmonizing work and family obligations, request from the employer to temporarily work from home, especially for the purposes of **(i)** protection of health due to a diagnosed illness or established disability, **(ii)** parental obligations towards children up to the age of eight, or **(iii)** providing personal care that, due to serious health reasons, is needed by an immediate family member of the employee or is needed by a person who lives in the same household with the employee.

In the foregoing cases, the employer can dismiss a work-from-home request of the employee only based on an objective and justified reason (e.g., the employee's nature of work does not allow it) that needs to be elaborated in the employer's written answer/response to the employee's request that must be delivered to the employee no later than 30 days upon receipt of the employee's request.

The employer is not obligated to perform a risk assessment and its liability in the event of a homeworking injury shall be limited where an employee who performs administrative, office, or similar work (classified as "low risk") works from home on an occasional basis. However, regardless of the risk assessment, employers must always impose general health and safety measures and the employee must always follow those measures to ensure their own health and safety, even while working from home. The employer would, however, be required to perform a risk assessment of the employee's home if a teleworking arrangement lasts continuously for a longer period of time.

For that purpose, in order for the employer to fulfill its obligations under the occupational health and safety regulations, in the employment agreement the employee can agree to allow authorized representatives of the employer and/or its occupational health and safety experts to enter the home or other premises or a place from where the employee performs work to maintain equipment or perform pre-determined supervision, provided that the employer informs the employee in writing (including by e-mail sent to the business e-mail address of the employee) in a reasonable period before the intended supervision.

2. Contract Modification

Employment terms expressly stipulated in the employment agreement can be amended only based on the prior consent of the employee, i.e., the employment agreement cannot be amended unilaterally by the employer. In practice, this is usually done by offering the employee a written annex/addendum to the existing employment agreement specifying the condi-

tions to be amended. If the employee would refuse to willingly sign the annex/addendum offered by the employer, the employer would be entitled to terminate the existing employment agreement and offer a new employment agreement with changed/altered terms.

In court practice, there were situations where the employment agreement modification was deemed valid even if made through a written e-mail correspondence (i.e., an e-mail offer of the employment agreement modification and an express acceptance thereof by the other contracting party). In their practice, the courts have also recognized the employment agreement modifications made through an implicit acceptance of conduct. The foregoing especially refers to the implicit performance of other/different jobs by the employee (i.e., different than the ones expressly stipulated in the employment agreement) through a certain, longer period of time.

In order to avoid/mitigate eventual doubts or ambiguities in practice, the recommendation would be to have every employment agreement modification covered by a relevant written annex/addendum to the employment agreement.

Exceptionally, unilateral modifications of certain aspects of the employment agreement (e.g., temporary/fixed-term modification of working place, fixed-term change of the job/work position, etc.) by the employer are allowed, only if such a possibility of the employer is expressly stipulated in a written employment agreement.

Employment terms determined in the internal employment rulebook (*pravilnik o radu*), or in any other internal policy/regulation of the employer can be unilaterally amended by the employer and shall be binding for the employee only if adopted and published in accordance with the law. According to the Labor Act, internal employment-related policies/regulations (employment rulebook included) must be rendered by the employer in writing and published on all notice boards and/or intranet pages of the employer, or in any other manner in which internal rules and/or policies are made available to all employees at the employer in practice, thereby securing the availability of the policy to all employees, at all times. According to mandatory Croatian law rules, internal policy/regulation of the employer shall come into force upon expiry of eight days after its publication at the employer.

Employment terms determined in the collective agreement (if applicable) can be changed/amended by the employer only by signing a relevant annex/addendum to the collective agreement with the labor union that signed the collective agreement with the employer.

3. Termination

3.1. Termination types

Termination types

The employer's decision on unilateral dismissal/employment termination needs to be rendered and delivered to the employees in a written form, and must always contain a justified reason for a termination/dismissal prescribed by the law. According to the Labor Act, these are the types of dismissal (depending on the reason/s for termination):

A) Regular dismissal

- business-related dismissal – if a need (necessity) for the performance of a certain work by the employee ceased to exist due to economic, technological, or organizational reasons,

- dismissal based on personal grounds – if the employee is not able to fulfill its work obligations accordingly due to its specific personal characteristics or capacities,

- dismissal based on employee's misconduct – if the employee violates its employment-related obligations, and

- dismissal due to employee's underperformance (incapacity) during the probationary period – needs to be rendered and delivered to the employee during the probationary period (if agreed). The maximum duration of a probationary period according to Croatian law is six months.

B) Extraordinary dismissal

This type of dismissal is reached and delivered to the employee only exceptionally, in cases where the employer determines that continuation of employment with the employee is not possible due to a severe breach of its employment obligations. This dismissal is provided to the employee without an obligation to respect a contractual or a statutory notice period and needs to be rendered and delivered to the employee within 15 days since the employer gained knowledge of a severe employment obligation breach by the employee, representing a justified reason for such extraordinary employment dismissal.

C) Dismissal of the employee

An employee can also provide a unilateral dismissal of the employment agreement. Unilateral dismissal of the employee also needs to be rendered and delivered to the employer in written form. However, unlike the employer's regular dismissal, a regular dismissal of the employee does not need to contain justified reasons for dismissal.

Termination entitlements

A) Notice periods

The notice period starts to run with the delivery of a notice of employment termination to the employee.

In case of a regular, unilateral notice on employment termination, statutory notice periods are: **(i)** a minimum of two weeks, for less than one year of the employee's consecutive tenure with the same employer, **(ii)** a minimum of one month, for one year of employee's consecutive tenure with the same employer, **(iii)** a minimum one month and two weeks, for two years of employee's consecutive tenure with the same employer, **(iv)** a minimum two months, for five years of employee's consecutive tenure with the same employer, **(v)** a minimum two months and two weeks, for ten years of employee's consecutive tenure with the same employer, and **(vi)** a minimum three months, for twenty years of employee's consecutive tenure with the same employer.

Notice periods can be determined in longer duration than the above indicated statutory minimum in the individual employment contract, collective agreement (if applicable), or in the internal employment rulebook (*pravilnik o radu*) of the employer.

There is no notice period entitlement in case of extraordinary employment termination.

In the case of unilateral employment termination, the termination end date can be set at a specific period such as the end of the month (regardless of the contractual or statutory notice period) only based on a separate agreement between the parties.

It is possible to stipulate in the employment agreement a longer notice period for the employee and a shorter one for the employer, as long as notice periods are in line with statutory minimums prescribed by the law.

B) Severance

The employer must pay severance to the employee employed with the employer for two or more consecutive years, in case of employment dismissal by the employer based on either:
a) regular, unilateral employer's business-related dismissal, or
b) regular, unilateral employer's dismissal based on personal grounds.

In the foregoing cases, the employee shall be entitled to at least a minimum severance prescribed by the Labor Act, which is the amount of one-third average monthly salary paid to the employee in a period of three months prior to the termination of the employment contract, for each full year of employment with the employer. In case of regular dismissals under **a)** and **b)** above, severance is paid as a lump sum only and together with the last salary, as the severance amount is considered due on the day of employment termination.

Employees have no severance payment entitlements in case of extraordinary employment termination, nor in case of a regular employment termination due to misconduct of the employee.

C) Annual leave compensation

Regardless of the manner of employment termination, the employer shall always be obligated to pay the employee compensation for eventually accrued, but unused days of annual leave, if the employee was unable to use the entire annual leave until the last day of employment.

Non-compete agreement

The Labor Act recognizes the contractual ban of competition of the employee with the employer, for a certain time period after employment termination. The contractual ban of competition (non-compete) must be expressly agreed with the employee in a written employment agreement, or in a separate written non-compete agreement.

Under such clauses, employees are not allowed to establish employment with the employer's market competitors, nor enter into business transactions (for their own account, or for the account of third parties) regarded as competitive with the employer's business for a period of a maximum of two years after termination of employment with the employer, whereas the employer must commit itself to provide monetary compensation to the employee for the duration of the non-compete period in the minimum amount of 50% of the average monthly salary paid to the employee in the last three months before employment termination.

According to the Labor Act, as a rule, the post-employment non-compete clause shall not be binding upon the employee if the employer does not contractually commit to compensate the employee on a monthly basis for the duration of the ban of competition in the amount of at least of 50% of average monthly salary paid to the employee in the last three months before employment termination.

However, as an exception, in the case where only a fixed amount of the contractual penalty is envisaged in the agreement as a sanction for breach of the non-compete obligations by the employee (and not compensation of further/additional damages), and the employee receives a monthly salary in the amount exceeding the average salary in Croatia (EUR 1,367 gross I), non-compete provisions shall oblige the employee even though the employer did not at the same time undertake payment of monthly non-compete compensation (as described above).

3.2. Collective dismissal

Rules on the collective dismissal will need to be adhered, i.e., the collective redundancy procedure will need to be performed by the employer (by adhering to the below-described rules/steps) only if the works council is established, or a labor union trustee is appointed (in the absence of the works council) at the employer.

A collective dismissal procedure must be performed by the employer if, in the time frame of 90 days, a necessity for work of at least 20 employees will cease to exist, out of which at least five employees are expected to be dismissed due to economic, technological, or organizational reasons (i.e., business-related or a redundancy dismissal).

In the foregoing circumstances/terms are fulfilled, before moving forward with individual dismissals/terminations the employer must perform prior consultations with the works council/labor union trustee regarding collective redundancies. Information that needs to be provided to the works council/labor union trustee by the employer is:

(i) reasons due to which a necessity for work of certain employees could cease (i.e., reasons for collective dismissals);

(ii) the total number of employees employed at the employer;

(iii) number, vocation, and tasks of employees who could be made redundant;

(iv) criteria for the selection of redundant employees;

(v) amount and calculation method for calculating severance pay and other payments to redundant employees;

(vi) measures that the employer has undertaken to alleviate dismissal consequences for redundant employees.

Upon finalization of consultations with a works council/labor union trustee, the employer must notify the public authority competent for employment (i.e., the Croatian Employment Bureau) about the collective dismissals and prior consultations performed with a works council/labor union trustee.

The employer cannot move forward with individual redundancy dismissals in the period of 30 days after the notification to the Croatian Employment Bureau. Exceptionally, the Croatian Employment Bureau can postpone individual redundancy dismissals for a further period of 30 days, if it deems that the employer can secure the continuance of employment to employees for this further time period.

3.3. Unlawful termination

Protection of rights/judicial protection

Under the Labor Act, an employee who believes that their employment agreement has been unlawfully terminated by the employer has the right to seek the protection of employment rights (i.e., to seek reconsideration of the notice of termination and reinstatement) from the employer, within 15 days after receipt of the employer's notice on termination.

If the employer does not reconsider within the above deadline, the employee is entitled to bring an action against the employer before the court within further 15 days after the expiry of the first 15-day deadline. The employee may bring such an action only if they have first sought reconsideration from the employer.

In this court action, the employee can request from the court to: **(i)** determine that the termination was unlawful/inadmissible and that the employee has not been terminated, **(ii)** reinstatement of employment, i.e., reinstatement of the employee back to work, **(iii)** payment of the compensation for all unpaid salaries and other regular employment monetary payments that the employee has lost/would have received from the employer from the date of unlawful employment termination until the date of reinstatement of the employee back to work, pertaining statutory interest included (no caps on damages prescribed), and **(iv)** payment of procedural costs.

"Other regular employment monetary payments" mentioned under **(iii)** above also include the stimulative part of the salary (bonus), if the employee is able to prove that they would have regularly received these amounts from the employer in the period from the date of unlawful termination until the date of reinstatement of the employee back to work if there had been no unlawful termination.

If ordered to be paid by the employer to the employee based on the court judgment, compensation for all unpaid salaries and other regular employment monetary payments that the employee has lost/would have received from the employer from the date of unlawful employment termination until the date of reinstatement of the employee back to work shall be taxed as a lost income (i.e., in the same manner, and by applying the same taxation and social contribution rates as for regular monthly salary).

According to the Labor Act and standpoints developed through court judgments of the Croatian courts, the employer can lawfully unilaterally revoke its notice of termination before the expiry of the 15-days' period when the employee has the right to seek the protection of employment rights (i.e., to seek reconsideration of the notice on termination and reinstatement) from the employer (as explained above), and after that only if acting based on the employee's request for the protection of employment rights (as explained above) before the employee raises action against the termination before the court.

Protected categories of employees

It is unlawful to terminate the employment of a pregnant employee or an employee who is on maternity or parental leave, during the leave period and for 15 days thereafter. It is also unlawful to terminate the employment of an employee who is on sick leave due to a work-related injury or illness.

Certain categories of employees can be terminated by the employer only after obtaining prior approval of the works council or (in the absence of a works council) the labor union trustee. These include employees who are 60 years of age or over, disabled employees and employees who are members of the works council.

Employees also cannot be terminated in retaliation for participating in legal procedures against the employer or for informing the authorities of the employer's illegal activities.

Prior written warning

The employer cannot provide both a warning and a notice of dismissal for the same misconduct of the employee.

Namely, if the employer determines the existence of reasons for a dismissal based on the employee's misconduct (see Section 3.1.), before dismissing the employee the employer must deliver a formal written warning to the employee, making him/her aware of their work obligations, as well as indicating the determined breaches thereof and a possibility of termination of their employment should they commit further violations of employment obligations/misconducts (same or similar) in the future.

4. Wage And Hour

4.1. Wage

The statutory minimum wage is determined by the Croatian Government every year. For 2023, the minimum gross monthly wage for a full-time working employee amounts to HRK 5,274.15/EUR 700, corresponding to a minimum net monthly wage in the amount of HRK 4,219.32.

The statutory minimum wage does not include salary increments for overtime work, night work, and work on Sundays, holidays, or any other day determined as a non-working day by the law.

The statutory minimum wage is revised by the Croatian Government every calendar year, no later than October 31 of the current year for the following calendar year. The revised minimum wage must not be less than the minimum wage for the previous year. Even though not explicitly stated in the law, the purpose of this provision is to keep the minimum wage in line with inflation and other macroeconomic shifts. However, wages are not automatically adjusted in line with inflation unless otherwise stipulated in the individual employment agreement, an applicable collective agreement, or the employer's internal rulebook.

There are different types/amounts of minimum wages determined for certain industries (e.g., for employees employed in the construction business, as regulated by the applicable *Collective Bargaining Agreement for Construction*), however, these amounts cannot be lower than the statutory minimum wage prescribed by the law.

According to Croatian law, wages and other employment benefits must always be paid to employees in the official currency of the Republic of Croatia: until December 31, 2022 – Croatian Kuna (HRK), from January 1, 2023 – Euro (EUR). Generally, employment agreements can stipulate wages and other employment benefits in some other (foreign) currency, however, these amounts must always be calculated (based on a certain exchange rate) and actually paid to employees in the official currency of the Republic of Croatia (EUR).

According to the Labor Act, every employee is entitled to receive an increased salary (i.e., salary increments) for night work, overtime work, work on Sundays, holidays, and any other day determined as a non-working day by the law.

In practice, such an increased salary amount is usually determined in the relevant increment percentage rates (e.g., 30%, 35%). However, the Labor Act itself does not prescribe the exact amount/percentages of such salary increments, so this is usually regulated either in the collective agreement (if applicable), internal employment rulebook, or some other internal policy of the employer or in the individual employment agreement entered into between the employer and the employee.

The increment percentages that are standardly used in practice are:

- for overtime work – 30%
- for night work – 30%
- for work on Sundays – 35%
- for work on holidays or on other non-working days prescribed by the law – 50%

It is also usually prescribed that the foregoing salary increments are cumulative, with the exception of increments for work on Sundays and increments for work on holidays or on other non-working days prescribed by the law, in which case only the more beneficial increment for the employee is applicable.

Payment of the foregoing salary increments cannot be considered a part of the regular monthly base salary of the employee. Such payment is considered a salary increment/supplement and, although in most cases paid to the employee together with a regular monthly base salary, it must be separated from the regular monthly base salary of the employee and must be indicated/treated as a salary supplement/increment. Such a manner for calculating payment of the foregoing salary increments (on top and separately from the regular monthly base salary) must be visible on the payment list (pay slip) that the employer provides to the employee.

There are situations in practice where employees are compensated for overtime work, night work, work on Sundays and other non-working days by a lump sum, paid to the employee on a monthly basis (regardless of the exact number of overtime, etc. hours performed by the specific employee per month) on top of their regular monthly base salary for regular working hours. This manner of compensation shall not be contrary to the Labor Act provisions, as in this case overtime, night work, work on Sundays, etc. are still being recognized and paid to employees as an increased salary.

However, such a compensation/lump sum: **(i)** must be paid to the employee in an appropriate amount, **(ii)** the employer must at all times respect the overtime working hours limits of the employee laid down by the Labor Act, and **(iii)** the employer is still obligated to register overtime, night work, etc. working hours of a certain employee in its records on working hours.

4.2. Working time

Working hours and overtime – general rules

According to the Labor Act, the employee can work a maximum full-time of 40 hours per week, which is at the same time a standard in Croatia (i.e., 40 hours per week as five working days per week, eight hours per day). Any working hours performed by the employee that exceed the foregoing full-time of 40 hours per week shall be considered as overtime, and the employee shall be entitled to receive an increased salary/pay for such overtime working hours (see Section 4.1.).

If the employee works overtime, the weekly maximum must not exceed 50 working hours (i.e., the weekly limit of overtime working hours is 10). The Labor Act also prescribes an annual overtime maximum of 180 hours per year, which can exceptionally exceed up to a maximum of 250 hours per year if stipulated by the applicable collective agreement.

Should the employee work overtime over/beyond the foregoing limits, the employer may be imposed with fines for a misdemeanor up to the amount of HRK 100,000 (approximately EUR 13,330) for the employer-company, and with the additional fine of HRK 10,000 (approximately EUR 1,330) for a responsible person of the company (i.e., company director).

Every employee working at least six hours per day shall be entitled to a minimum 30 minutes' daily break/pause on every working day, which must be calculated in the regular daily working hours of the employee and, therefore, must be paid as regular working hours to the employee.

The law does not prescribe the minimum and maximum daily working hours, but only maximum weekly working hours. However, the Labor Act sets a limitation for daily working hours prescribing that the employee is entitled to a daily rest period of a minimum of 12 continuous hours from the end of the last working day to and beginning of the next working day.

The total cumulated working hours limit of an employee working for several employers is also 40 hours per week. However, based on the employer's consent, the employee working full-time (i.e., 40 hours per week) for one employer can work for another employer up to eight additional hours per week and up to additional 180 hours per year.

A night worker cannot perform night work (i.e., any work performed between 10 p.m. and 6 a.m. on the next day) for more than an average of 8 hours in 24 hours period during a period of four months. If a night worker is exposed to a specific risk or heavy physical or mental effort, the employer is obligated to determine a working hours schedule in a way that the employee does not perform night work for more than eight hours during 24 hours.

A minor cannot work for more than eight hours during a period of 24 hours. Night work is prohibited for minors. Even though night work is prohibited for minors, a minor may work at night if such work is necessary for certain activities, and it cannot be performed by adult employees. A minor may not work between midnight and 4 a.m. or work for more than eight hours during the 24 hours at night. In the case of night work, the employer is obligated to ensure that such work is performed under the supervision of an adult.

Unequal working hours schedule and redistribution of working hours

in order to mitigate the application of working hours' limits by the employer, according to the Labor Act the employer has the possibility to introduce an unequal working hours schedule (*nejednaki raspored radnog vremena*) or a redistribution of working hours (*preraspodjela radnog vremena*), so the employees could work more hours during the period/months of high work demand and fewer hours in periods/months where there is a lower work demand. In case of unequal distribution or redistribution of working hours, in one period employees work shorter working hours or do not work at all, whereas in another period

the same employees work longer working hours and therefore compensate for previous shorter working hours.

Unequal distribution or redistribution of working hours would, in the essence, not result in financial savings for the employer, because during the unequal distribution or redistribution, the employer must pay the agreed salary to employees also for the period when working hours of employees are shorter.

An unequal working hours schedule can last for a minimum of one month and for a maximum of one year, and in that case, the employer must adhere to the following limitations: **(i)** weekly working hours of the employee must never exceed 50, overtime included, **(ii)** in every time period of consecutive four months, the employee must not work more than 48 hours per week in average, overtime included.

As a difference from the unequal working hours schedule, working hours exceeding the agreed full-time working hours that the employee performs within a redistribution of working hours shall not be considered overtime work (and, therefore, shall not be recognized/paid extra to the employee by the employer).

Redistribution of working hours: where the nature of work so requires, full-time or part-time working hours of the employee may be redistributed in a way that in the course of one calendar year, there may be a period of time wherein working hours are longer (e.g., 48 hours per week) and another period of time wherein working hours are shorter (e.g., 32 hours per week) than full-time working hours of the employee (40 hours per week), provided that average working hours in the course of redistribution period may not exceed full-time working hours (i.e., 40 hours per week).

For example, within the redistribution of working hours, the working hours of a certain employee during the summer/seasonal period from May-August can be 48 hours per week (with no overtime recognized), whereas during the autumn/winter seasonal period from September – December working hours can be 32 hours per week, and in the remaining period of the calendar year (January – April) regular full-time of 40 hours per week.

Redistributed working hours, during the period when they last longer than the full-time working hours, may not exceed 48 hours per week. Only exceptionally, they may last up to a maximum of 56 hours per week or 60 hours per week if the employer performs seasonal business activities, all under the condition that this is provided for by a collective agreement and that a written statement regarding voluntary consent to such work exceeding 48 hours per week is submitted to the employer by the employee.

In order to introduce a redistribution of working hours, the employer must establish a plan of redistributed working hours indicating jobs and the number of employees included in such redistributed working hours, and submit such a plan to a labor inspector.

Working time banking

A "working time banking" concept also exists in Croatia – however, it can be introduced at the employer only based on the collective agreement. Therefore, in practice, this concept does not benefit small employers who do not have a union-organized workforce and are not subject to any collective agreements.

According to these rules, an unequal working hours schedule can be regulated by a collective agreement as a total pool/bank of working hours performed by the employee during the period of unequal schedule, without the restrictions/limitations of the working hours' duration prescribed by the law in case of a "regular" unequal working hours schedule – however, in that case, the total pool/bank of hours, including overtime, cannot exceed an average of 45 hours per week for a period of four months.

Annual leave/vacation

Employees are entitled to an annual leave for a duration of at least four weeks per calendar year. This means that, for example, employees working five days per week are entitled to a minimum of 20 days of annual leave.

Minors (employees under 18 years of age) and employees working on jobs where, even with the application of occupational health and safety measures, it is not possible to protect them from adverse effects to their health, are entitled to an annual leave in duration of at least five weeks per one calendar year.

More beneficial entitlements for employees (i.e., longer annual leave duration) can be determined in other applicable legal sources, i.e., collective agreement, employer's rulebook, or individual employment agreement.

During annual leave, employees are entitled to receive salary compensation in the amount determined by the applicable legal source, i.e., a collective agreement, employer's rulebook, or an individual employment agreement. However, this salary compensation cannot be lower than the average monthly gross salary received by the employee in the last three months preceding annual leave (this includes all salary increments and other benefits in kind which are considered as salary compensation).

Allocation of annual leave/vacation days

An employee who is employed for the first time or who has a period of interruption of work between two consecutive employments longer than eight days acquires the right to annual leave after six months of uninterrupted work. While on annual leave, the employee has the right to salary remuneration in an amount determined by a collectively bargained agreement, employment rulebook, or employment agreement. The salary compensation may be no less than the employee's average monthly salary in the preceding three months (also taking into account any other monetary or in-kind benefits, which represent remuneration for work done).

The annual leave may be accumulated, i.e., transferred from one calendar year to the next, following the calendar year. However, it is prescribed by the Labor Act that an employee is entitled to carry over the unused portion of annual leave and use it by 30 June of the following calendar year, at the latest (there are special rules for certain situations, e.g., maternity leave). Conditions of carrying over annual leave are regulated in detail by the Labor Act. In general, if an employee does not use up the days he is entitled to, the employee loses that entitlement. It is also possible to split the annual leave; however, the general rule is that the employer must enable the employee to use at least two consecutive weeks of annual leave in the calendar year for which it exercises that right to annual leave. Furthermore, it should be noted that the employer is allowed and obliged to prepare an annual leave schedule by June 30 of the current year, at the latest.

In case of employment termination, the employer is obligated to compensate the employee for accrued, but unused annual leave days, in the amount proportional to the unused annual leave (i.e., one day of unused annual leave equates to one day of work). Employment termination is the only situation recognized under Croatian law where an employee can be monetarily compensated for unused annual leave days.

Sick leave pay

Paid sick leave is governed by the provisions of Croatia's mandatory health insurance laws, including the applicable bylaws regarding the temporary inability to work. In short, a sick employee must contact their family medical care practitioner, who will confirm that the employee is temporarily unable to perform work activities due to illness (or other relevant causes). After the inability to work is confirmed, the employee is not obligated to come to work and is entitled to receive salary compensation in an amount determined by the law.

Salary compensation in case of temporary inability to work cannot be lower than 70% of the salary compensation basis, which is determined based on the regular monthly salary amount of the employee. When paid at the expense of the Croatian Health Insurance Fund, salary compensation in case of temporary inability to work cannot be higher than HRK 4,257.28 (approximately EUR 565). Exceptionally, the employee is entitled to a 100% salary compensation in case of temporary inability to work due to injury at work or a professional illness.

The cost of such salary compensation is covered either by the Croatian Health Insurance Fund, the state, or the employer, depending on the circumstances (especially the cause of the inability to work) and the duration of the paid sick leave. For the first 42 days of consecutive temporary inability to work (i.e., sick leave) due to regular sickness, salary compensation is paid by the employer. From the 43rd day of consecutive temporary inability to work (i.e., sick leave) due to regular sickness onwards, salary compensation is paid by the employer at the expense of the Croatian Health Insurance Fund.

Salary compensation is paid by the employer at the expense of the Croatian Health Insurance Fund from the first day of temporary inability to work in case of **(i)** temporary inability to work for the purpose of caring for a sick child or a sick spouse, **(ii)** temporary inability for work due to injury at work or a professional illness.

Salary compensation is paid to the employee directly by the Croatian Health Insurance Fund from the first day of temporary inability to work in case of **(i)** isolation of the employee as a carrier of infection, or due to the occurrence of infection in their environment, **(ii)** complications related to pregnancy or childbirth, **(iii)** death of employee's a child.

5. Collective Labor Law

5.1. Trade unions

Trade unions are established as legal entities (i.e., associations), independent of the employer. If there are no members of any trade union at the employer, the employer is not required to establish one.

Employees are entitled, on their own free choice, to establish a trade union and to join it, subject to conditions that can be prescribed only by the statute or rules of that trade union. Employees are free to decide on joining or withdrawing from the trade union. No one may be put in a disadvantageous position due to membership in the trade union, or participation or non-participation in the activities of a trade union.

A trade union can be established by at least 10 natural persons of full legal capacity, and it is considered established at the moment of its entry into the relevant associations' registry.

Unionization of workforces varies from one sector to another. In Croatia, relatively strong unionization of workforces exists

in the lumber and paper industry, and in the construction, agriculture, hospitality, and tourism sectors.

If only one trade union operates at the level for which a collective agreement is being negotiated (employer, regional, or national level), such a trade union shall automatically be considered representative, and its representativeness shall not be determined.

If more trade unions operate at the level for which a collective agreement is being negotiated (employer, regional, or national level), all trade unions operating at that level can determine, by a written agreement, which trade unions are considered representative, and the representativeness of these trade unions is not determined.

If more trade unions operate on the level for which a collective agreement is being negotiated (employer, regional, or national level), and they do not reach a written agreement, each trade union may initiate a procedure for determining the representativeness of a trade union before the competent Commission for Determining Representativeness (the Commission).

In the procedure for determining the representativeness of a trade union, a representative trade union shall be considered a trade union that, at the level for which representativeness is determined, has at least 20% of member employees out of the total number of unionized employees employed at the level for which representativeness is determined.

The main role of a trade union is to achieve and protect the interest of its members. A trade union represents its members, negotiates on their behalf, organizes, and leads strikes, and enters into collective agreements (subject to conditions, primarily the level of representation of the particular trade union at the employer).

Trade unions have the right to organize and undertake strikes for the purpose of protecting and promoting the economic and social interests of its members, or in response to the non-payment of salary or other remuneration, when due. In the event of any dispute related to the conclusion, amendment, or renewal of a collective agreement, trade unions will be deemed as representatives for the negotiation and conclusion of a collective agreement, and for the right to organize and undertake a strike.

Before being undertaken, a strike must be announced to the employer in writing. The announcement must state the reasons for the strike, the place, the date and time of its commencement, and the method of its execution.

In the event of a dispute which may result in a strike or other form of industrial action, the mediation procedure prescribed by the law must be conducted, except where the parties have agreed on an alternative amicable method for the resolution of the dispute.

A trade union can also give employment-related advice to its individual members. Also, if authorized by its members, a trade union can represent its members in employment-related disputes before the employer, before the courts and state authorities, and in mediation and arbitration procedures.

The employer has to work and cooperate with an established trade union if any of its employees are members of that union, especially if the union has at least five members at the employer, and if it has appointed one or more trade union trustees at the employer. Trade union trustee protects and promotes the rights and interests of trade union members at the employer.

The collective bargaining agreement regulates the rights and obligations of the parties who have entered that agreement, and it may also contain legal rules governing the conclusion, content, and termination of the employment relationships, social security issues, and other issues from or related to the employment relationship.

The legal rules contained in the collective agreement shall apply directly and mandatorily to all persons to whom the collective agreement applies in accordance with the provisions of the Labor Act.

If there is a conflict between the individual employment agreement and the collective agreement provisions, i.e., if a certain right arising from employment is differently regulated in the individual employment agreement and in the collective agreement, the most favorable right shall apply to the employee, unless otherwise expressly prescribed by the Labor Act or another law.

5.2. Works councils

Works council is the main form of employee representation at the employer in Croatia. If established at the employer, the works council protects and promotes the interests of all employees employed at the employer (regardless of their trade union membership). The Works council is obligated to cooperate, with full trust, with all trade unions whose members are employed at the employer.

The threshold for triggering employees' entitlement to establish a works council within the employer – the employer needs to employ at least 20 employees. If employees did not use their entitlement to establish the works council at the employer, the employer is not required to establish one on its own initiative. The establishment of a works council entirely depends on the

discretion of employees.

The existence of the works council results in the employer's obligations to: **(i)** inform (e.g. on business situation, results of work organization, etc.), **(ii)** consult (e.g. on the adoption of internal employment-related acts, plan an employment development and employment policy, relocation and termination of employment contracts with employees, on collective redundancies etc.), and **(iii)** co-decide with the works council (decision-making powers of the works council) on certain employment issues (e.g. on termination of employment with employee over 60 years of age, on termination of employment with employees' representative in supervisory board of the employer, on termination of employment with employee who is a member of the works council, on termination of employment with employee having reduced work capacity due to accident at work or occupational illness, or with a disabled employee, etc.).

In the absence of the works council at the employer, the trade union trustee (if appointed at the employer) undertakes the above-indicated rights and obligations ((i) – (iii)) pertaining to the works council.

Employers in Croatia are obligated to provide and secure all the conditions and resources necessary to exercise the right of employees to participate in decision-making in the European Works Council. Members of the European Works Council employed in Croatia have the same level of protection from unequal treatment as the members of the "local" works council.

6. Transfer Of Undertakings

The Labor Act prescribes that in the event of the transfer of an undertaking or business (or a part of an undertaking or business which retains its economic integrity after the transfer) to a new employer as a result of a legal transaction, all employment agreements of the employees of that undertaking or business are automatically transferred to the new employer.

In the foregoing case, transferred employees retain all rights arising from the employment relationship that they acquired up to the transfer date. The transferee employer assumes all of the rights and obligations arising from the transferred employment agreements in unaltered form and scope, as of the transfer date. The new employer and the old employer are jointly and severally liable to transferred employees for any liabilities and obligations that arose before the date of transfer and which exist on the date of the transfer.

Collective agreements (and any rights and benefits under those agreements) also transfer automatically, but for no longer than one year after the date of transfer. In contrast, rights and benefits that arise under the old employer's internal policies do not automatically transfer.

Before rendering a final decision on a transfer of an undertaking or business, the transferor employer must consult the works council (if established at the transferor employer) or the trade union representative (in the absence of a works council) about the proposed decision, and must communicate to the works council or trade union representative all information important for rendering a decision and understanding its impact on the position of the employees.

In practice, the prior consultation typically lasts for a few weeks. However, unless otherwise provided in the agreement between the employer and the works council or labor union, the works council or the union representative must provide the employer with a response within eight days after receipt of the employer's request for consultations. If it does not provide any response within this eight-day deadline, it will be presumed to have no objection and the prior consultation procedure will be considered completed.

Moreover, the transferor employer must submit a written notification to the works council and to all the affected employees about the transfer of the employment agreements. The notification must contain information concerning:

- the date of transfer of the employment agreements;
- the reasons for the transfer of the employment agreements;
- the legal, economic, and social implications of the transfer for the employees; and
- any measures envisaged in relation to the employees whose employment agreements are being transferred.

This notification must be made to employees in good time and prior to the date of transfer.

Regarding dealings between two employers, the old (transferor) employer is obligated to fully and truthfully notify the new (transferee) employer in writing regarding the rights of the employees who are to be transferred.

If the old employer fails to fully and truthfully inform the new employer in writing regarding the rights of the employees who are to be transferred, the old employer will be held liable for a fine ranging from HRK 31,000 to HRK 100,000 (approximately EUR 4,150 to EUR 13,350), and an individual representative of the employer can be liable for an additional fine ranging from HRK 7,000 to HRK 10,000 (approximately EUR 1,000 to EUR 1,350). However, if the old employer does not inform the new employer accordingly, this omission does not affect the rights of the transferred employees but may result in monetary sanctions against the old employer.

Failure of the transferor employer to perform the required

prior consultation procedure with the works council or trade union representative before the transfer of the affected employees makes the transfer decision null and void.

Further, if the employer fails to comply with the requirements regarding information and consultation with the works council or union representative, it can be held liable for a fine ranging from HRK 31,000 to HRK 60,000 (approximately EUR 4,150 to EUR 8,000), and an individual representative of the employer can be liable for an additional fine ranging from HRK 4,000 to HRK 6,000 (approximately EUR 550 to EUR 800).

The employee is entitled to oppose/dispute the transfer of their employment to the new employer. However, this dispute must be based on justified reasons, i.e., the employee must have a certain legal interest for such a dispute. The employee can oppose the transfer through a court challenge of the decision or a notification of the employer related to the transfer of their employment if they consider that this violates their employment rights.

Moreover, the transferee employer needs to retain all rights of the employee from the employment relationship with the transferor employer, i.e., needs to retain all rights and obligations arising from the transferred employment agreement, in unaltered form and scope. If the foregoing would not be fulfilled, the employee may ask for protection before the court.

According to the Labor Act and the relevant court practice, if the transfer of employment includes a change in working conditions to the detriment of the employee, the employer shall be held responsible for terminating the employment relationship. For example, if the employee provides their unilateral employment dismissal because their employment rights have been reduced as a result of the transfer, it shall be considered that the reasons for termination lay with the employer and that the employee should be granted the right to severance pay and other rights it would have in the event of unilateral employment termination provided by the employer for reasons other than the misconduct of the employee.

The employee may ask to be recognized with such rights/entitlements before the court. The employee can request such protection after completion of the asset deal and the pertaining transfer of the employee resulting in the change of working conditions to their detriment. Consequences for the transferor would not be significant, as the new (transferee) employer would take most of the risk. However, the transferor employer might be held jointly and severally liable with the transferee employer if proven that the transferor employer fraudulently avoided fulfilling its obligations towards the employee by way of such a transfer. The transferor employer may also be at risk if such lower employment entitlements were caused by false and incomplete information on employment-related rights and entitlements of the affected employees provided by the transferor employer to the transferee employer.

Even if granted, such protection would not affect the legality of an asset deal and the pertaining transfer of employees itself – of course, provided that other legally prescribed requirements for the transfer have been met.

7. Labor Investigation

Internal labor investigations (performed by the employer)

Under current legislation, two separate regimes on internal investigations in the context of employment exist: (i) with regard to discrimination and protection against workplace harassment (which includes sexual harassment, "mobbing", and other forms of unwarranted behavior which violates the dignity of an employee, causing fear or hostile, humiliating, or offensive surrounding for the employee), governed by the provisions of the Labor Act and the Anti-discrimination Act (*Official Gazette 85/08, 112/12*, – the Anti-Discrimination Act), and (ii) with regard to whistleblowing, governed by the Act on the Protection of Reporters of Irregularities (Official Gazette 46/22 –the Whistleblowers Act), in force since 23 April 2022.

Pursuant to the Labor Act, an employer with 20 or more employees shall adopt an internal act/regulation which sets out the procedure and measures for the protection against workplace harassment and measures for protection against discrimination, unless this is regulated by the applicable collective bargaining agreement. Such an employer shall also appoint a person which can, apart from the employer itself, receive and resolve workplace harassment complaints. Employers employing over 75 employees must appoint two designated persons, of a different gender. The Labor Act stipulates that workplace harassment complaints shall be resolved, and adequate measures are taken to protect the employee, within eight days of receiving the employee's complaint. No other statutory provisions regulate the details of internal investigations of this kind. Instead, such processes/investigations shall be regulated either by **(i)** the relevant internal act/regulation of the employer, **(ii)** the applicable collective bargaining agreement, and/or **(iii)** the agreement between the works council and the employer.

Furthermore, under the Whistleblowers Act, an employer with 50 or more employees shall adopt the relevant internal act/regulation by which it shall establish rules and internal channels for reporting irregularities and appoint a person responsible for receiving and handling complaints on irregularities, which includes conducting investigations ("Designated Person). The Designated Person shall investigate any complaint on irregularities covered by the Whistleblowers Act. These irregularities include violations of any laws and regulations as well as mis-

management of public goods and/or national or EU funding connected with the performance of work for the employer, provided that such a violation/mismanagement is a threat to the public interest.

Moreover, the employer can introduce its own rules for the internal investigations of other misconducts/breaches of employment obligations performed by its employees, i.e., for the investigation of misconduct/breaches that occurred outside the context of anti-harassment and whistleblowing.

Investigation of labor law irregularities (performed by state authorities) and sanctions

The State Inspectorate of the Republic of Croatia (State Inspectorate) is the governing body responsible for the inspection supervision of the implementation and enforcement of the Labor Act and other regulations that deal with relations between employers and employees in the field of employment, including workplace discrimination.

Furthermore, the administrative supervision over the implementation of the Labor Act and the regulations adopted on its basis, as well as other laws and regulations governing relations between employers and employees, is performed by the state administration body responsible for labor affairs (currently, the Croatian Ministry of Labor, Pension System, Family, and Social Policy).

While performing its inspection duties/audit over the employer, the State Inspectorate can impose the following fines:

- a prohibition for the employer from performing its business activities until the identified irregularities are eliminated (e.g., in case of illegal or "hidden" employment, or case of employment of a third-country national without the relevant residence and work permit for Croatia),

- monetary fines, in the amounts expressly prescribed by the law for every separate breach/misdemeanor:

(i) the heaviest misdemeanor of the employer – approximately EUR 8,200-13,500 for a legal entity and approximately EUR 940-1,350 for an authorized representative of the company, per one breach/misdemeanor,

(ii) heavy misdemeanor of the employer – approximately EUR 4,110-7,960 for a legal entity and approximately EUR 530-790 for an authorized representative of the company, per one breach/misdemeanor, and

(iii) a minor misdemeanor of the employer – approximately EUR 1,320-3,980 for a legal entity and approximately EUR 130-390 for an authorized representative of the company, per one breach/misdemeanor, and

- administrative measures, by which the State Inspector orders the employer to eliminate the identified irregularity within the set deadline.

Andrej Zmikic
Attorney, Head of Employment
Andrej.Zmikic@dtb.hr
+385 1 5391 608

Andrija Duvnjak
Trainee
Andrija.Duvnjak@dtb.hr
+385 1 5391 632

DTB
Divjak Topić Bahtijarević & Krka
Law Firm

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GREECE

Emmanouil Savoidakis
Partner
esavoidakis@politispartners.gr
+30 210 72 97 252

Kassiani Skamaga,
Junior Associate
kskamaga@politispartners.gr
+30 210 72 97 252

CEE
Legal Matters

1. Hiring

1.1. Contracting

Greek labor law does not introduce any specific provisions for background checks. In principle, however, the employer may collect the personal data of candidate employees only when this is substantially related to the purpose and function of the employment relationship and to the extent necessary for hiring them.

In view of the above and taking into consideration applicable privacy law, processing of prospective employees' data for background checks are permitted only if – and to extent that – this is necessary for the purposes of entering into an employment contract.

More specifically, the collection of information concerning special data categories (sensitive data) under the *EU General Data Protection Regulation* (GDPR), such as health, religious and political beliefs, any criminal prosecutions or convictions, and trade union membership, is in principle prohibited. It can be allowed only on an exceptional basis, under strict conditions, and to the extent that this is objectively necessary.

On the same note, there is no obligation for a candidate employee to undergo medical examinations, unless there is a special provision imposing such an obligation, such as the provisions on the protection of minors (Article 60 of *Law 3850/2010*), or the exercise of professions of health interest.

Medical checks would include the collection of medical data that are considered special category data. Thus, the legal framework is strict and the candidate's health data must be collected only if this is necessary for the recruitment procedure or the execution of the employment relationship, in accordance with the data minimization principle.

A foreign entity not having a permanent establishment in Greece may hire employees in Greece and subject them to local labor laws, in accordance with *Regulation (EC) No 883/2004*.

More specifically, under applicable EU law, the said employer must fulfill all the obligations laid down by the legislation applicable to his employees, notably the obligation to pay the contributions provided for by that legislation, as if they had their registered office or place of business in Greece.

There are several categories of employment contracts, such as fixed-term, part-time, temporary employment, and teleworking employment contacts. As a general rule, an employment agreement does not have to observe a specific contractual type and may even be oral. This does not apply to part-time, or temporary employment agreements, nor to the renewal of fixed-term employment agreements.

Employers are nevertheless always required to inform their employees in writing about the material terms of the contract. This requirement applies to both indefinite and fixed-term contracts, as well as working relationships of a duration exceeding one month. The information must be communicated to the employees no later than two months upon assumption of duties, whereas omission to do does not cause the employment to be void, but may leave the employer exposed to administrative penalties.

Although there is no standardized form delineating an employment contract, *Presidential Decree 156/1994* requires the employer to notify the employee of the material terms and conditions of the employment in writing. The main terms that should be included therein are indicatively the full particulars of the contracting parties, the place of the work and the job position, the duration of the contract, the basic salary, severance and notice obligations, bonuses and other benefits, working hours and any applicable collective labor agreement.

The written form is required only in part-time agreements, temporary employment agreements, fixed-term employment agreements, and remote working arrangements. Moreover, the termination of fixed-term agreements is exceptionally made in writing.

Given that there are no mandatory formalities governing employment contracts, these qualify as private documents and are considered valid when they are drafted and duly countersigned by the contracting parties.

There is no specific provision for an employment contract to be drafted in Greek. However, this is a standard practice, for the employer to mitigate any legal exposures and consolidate the validity of the contractual terms. That being said, if the employee has a fluent command of a foreign language and is, therefore, able to fully understand the content of the employment contract, then this may be concluded in a foreign language.

The Greek labor law provides that in the event of an indefinite-term employment contract, the probation period may not exceed twelve months, during which time the contract may be terminated without due notice and any compensation for dismissal unless otherwise agreed between the parties.

Employees who exert a significant influence and have decision-making power may qualify as executive employees. More specifically, these employees may fall under the following categories:

A. Executives, who **(a)** exercise managerial rights vis-a-vis other employees of the undertaking; **(b)** represent and bind the undertaking towards third parties; **(c)** are members of the employer's Board of Directors, or equivalent management

body; or **(d)** shareholders or partners of the employer.

B. Executives who manage directorates, units, or other independent departments of the employer's enterprise as structured in the latter's organizational chart, provided that the employer's enterprise entrusts them with the supervision of a certain part of essential operations, and remunerates them with agreed monthly salaries not less than six times higher than the respective minimum statutory salary.

C. Employers, who are remunerated with agreed monthly salaries not less than eight times higher than the respective statutory minimum salary.

There should be stressed, that regardless of the above, executive employees are in any case considered employees, i.e. they provide dependent work and therefore fall under the protective provisions of labor law. However, because of the position they hold and the nature of duties they perform in the undertaking, they are exempt from the application of certain provisions and are in some cases treated in the same way as employers.

In particular, managing employees have been found by competent courts to be exempt from the provisions on working time limits, weekly rest, compensation for overtime or work on Sundays and holidays, as well as on the granting of annual leave. Nevertheless, the rest of labor legislation, such as the provisions on the termination of an employment contract, still applies.

1.2. Employees versus independent contractors

An employee is subject to a dependent service agreement, by virtue of which the contracting parties agree in advance to the provision of services against a salary, with a strong dependence element. This dependence derives from the employer's right to give the employee binding commands and directions regarding the manner, place, and time the services are executed, and to monitor and control the employee to ascertain whether they comply.

On the other hand, a free-lance service provider provides their services without being under anyone's control and without being obliged to comply with any commands or directions. There is no statutory checklist to distinguish dependent work from freelance services. The characterization is made by competent courts that assess on an ad hoc basis the terms and conditions under which work is carried out, taking under consideration the type and nature of such work.

A misclassification might leave the employer exposed to considerable statutory and contractual risks, such as the imposition of administrative fines, or claims emanating from a terminated employment relationship.

1.3. Foreign employees

Under Greek law, there are different provisions applicable depending on whether a foreign national qualifies as an EU or European Economic Area (EEA) citizen or a non-EU/EEA citizen. In particular, EU and EEA citizens may freely reside and work in Greece. The only requirement for their lawful residence is the possession of a valid EU citizen passport. EU/EEA nationals, who wish to stay and work in Greece for more than three months, are provided with an EU national registration certificate, for indefinite period of time from the police department of their residence. While for an EU/EEA citizen, the prior issuance of a visa is not required to enter Greece, a non-EU/EEA citizen who wishes to work in Greece must be provided with a visa before traveling to Greece by the Greek consulate authorities of their country of residence. Given that the employment of non-EU nationals in Greece is heavily regulated, only certain types of visas and/or residence permits provide employment rights.

1.4. Home office

A teleworking arrangement may be agreed upon in writing either upon hiring or by means of an amendment to the employment contract. Exceptionally, teleworking can also be unilaterally applied, either by the employer for public health reasons, or by the employee, in case of evidenced health risk that can be otherwise prevented. Moreover, the employer covers all costs related to remote working (i.e., professional equipment, internet access, and communication costs). Within eight days following resuming of remote working, the employer shall provide the employee in writing with the terms of the employment that are different due to the nature of remote working, including the employee's right to disconnect, an analysis of the additional costs related to remote working, how these costs are covered by the employer, any restrictions related to use of equipment or network, health and safety rules related to remote working, obligations related to confidentiality and personal data law provisions, etc. In addition, the employer is responsible for the health and safety of employees working remotely. Particular emphasis should be given to the recently introduced "right to disconnect," which is a significant provision of Greek labor law entitling employees to completely refrain from their work duties outside working hours.

Contract Modification

An email falls under the category of an electronic document that consists of mechanical representations. Pursuant to this provision, mechanical representations are equated to and qualify as private documents. If the employee's declaration of intent to modify the employment contract clearly derives from the e-mail, then such declaration is considered valid.

Given the above, a contract modification performed within the ambit of managerial prerogative cannot be always considered valid, unless explicitly accepted by the employee. Any modification in the employment contract that is to the detriment of the employee and has been performed without their prior consent, can be regarded as a unilateral termination of the employment contract.

In the performance of an employment contract, the employer has in principle the right to determine the type, place, time, and other conditions governing the provision of work, as well as to regulate any matter relating to the proper organization and pursuit of legitimate business objectives. Therefore, the employer is entitled to transfer employees and place them in other units of the undertaking if this is appropriate and necessary from a business perspective.

However, the above right is not unconditional but is instead confined by the terms of the individual employment contract, applicable labor laws, collective labor agreement (if any), and/or work rules policy (if any), as ruled by the competent civil courts.

In case the employees' tasks are described in the employment contract in a broad and general way, a contract modification may not be required.

The restrictions on modifying employer policies/internal regulations are imposed by law, good faith, and the prohibition of abusive exercise of rights. In the case of a work rules policy, this is modified by means of an administrative procedure followed before the Labor Inspectorate.

2. Termination

2.1. Termination types

An employment relationship may be terminated either mutually or unilaterally. The main termination types are; **(i)** termination of an employment contract by the employer, **(ii)** resignation, and **(iii)** termination of the employment contract following the agreement of the parties.

Terminating an employee does not require specific reasoning but is nevertheless subject to certain statutory restrictions. In this respect, it can be challenged before competent courts as either illegal or abusive.

Article 1 of *Law 2112/1920*, as in force, provides that the notice period depends on the employee's completed years of service within the enterprise. Employee termination is valid only if made in writing and upon simultaneous payment of the exact amount of the statutory severance due. There is an exception when the employee has committed a criminal offense and consequently, the employment contract can be terminated without the payment of any severance amount. The termination document should be notified electronically to the labor authorities through *ERGANI* (the electronic platform of the Ministry of Labor).

The termination of the contract with prior notice includes the right of the employer to discharge the employee from the obligation to work during the notice period until the effective date of termination. In that case, the employer is obliged to pay the employee all salary amounts until the effective date of termination.

A mutual termination agreement should be signed by both parties and be electronically notified within four working days to the labor authorities on the *ERGANI* platform.

During employment, restrictive clauses can be agreed upon in the employment contract that may include non-competition, non-solicitation as well as confidentiality obligations. In addition, there can be provisions prohibiting the worker to be employed by another employer at the same time.

Following termination, the employee has the obligation to refrain from competing practices during the employment relationship only if there is an explicit provision in the terminated employment contract. Pursuant to well-established jurisprudence, for any such provision to be deemed valid and survive the termination of the employment contract, there are specific requirements that are taken into account, such as the duration of the respective obligation, the qualifications and the previous work experience of the employee, the employee's position within the enterprise, whether the said employee has been receiving any kind of compensation for undertaking said obligations, etc.

2.2. Collective dismissal

Collective redundancies as described in *Law 1387/1983* mean dismissals made by establishments or enterprises employing more than twenty workers, for reasons that do not relate to the individual workers dismissed, and exceed in the course of each calendar month the following numerical thresholds: **(i)** up to six employees for establishments employing from twenty to one hundred and fifty employees, and **(ii)** up to 5% of staff and 30 persons for establishments for enterprises employing more than 100 employees.

Before any collective dismissal is carried out, the employer is obliged to provide information and enter into consultations with employers' representatives, in order to explore the option of either avoiding or reducing dismissals. More specifically, the employer is required to provide in writing the reasons redundancies are in order, the number and categories of employees to be made redundant, the number of employees normally employed, the period over which the redundancies shall be

effected, and the criteria proposed for the selection of the employees to be made redundant.

The above procedure is monitored by the Ministry of Labor and Social Affairs and is limited by the restrictions set by good faith.

2.3. Unlawful termination

Given that an unlawful termination is invalid and does not develop legal effect, there derives that the employment contract is not terminated but remains in force. The same goes for the rights and the obligations of the parties deriving thereunder, such as the employee's right to salary. In this respect, in case of unlawful termination, employees have the right to be reinstated to their duties, since their employment contract continues to apply. Respectively, the employer is obliged to pay the employee the legal or agreed wage, including benefits, for the period that the employee's services were not accepted.

The reference income for the calculation of the damages is the wage that is agreed upon in the employment contract between the parties. It does not, however, include benefits that the employer voluntarily grants, or benefits granted for the operational needs of the undertaking.

Any damages for lost income are taxed as income deriving from salaries or business activity, in accordance with applicable legislation (*Court of Cassation Judgment no. 1121/1994*). On the other hand, any amount awarded for non-pecuniary damages is not considered income (*Independent Authority for Public Revenue, Administration of Dispute Resolution Decision no. 2971/2022*).

Dismissals can be revoked in case the employee has not received notice of the termination of the employment contract yet. If the employee has been notified of the termination of the employment contract, a new employment contract is required as the previous one will have been terminated.

Employees are protected during annual holiday leave, when exercising the right to parental leave or family obligations, when exercising the right to refuse the amendment of an employment contract from full-time to part-time, and when the termination is threatened as a penalty against complaints against an omission to apply the equal treatment principle. Moreover, for the following categories of employees, the termination of an employment relationship is in principle prohibited: **(a)** pregnant employees, new-parent employees (for a period of 18 months as of the date of birth), **(b)** war veterans, and disabled employees in a mandatory employment relationship, **(c)** members of the board of directors of a union or works council, **(d)** employees on military service. The termination of the employment contract for the aforementioned categories of employees is permitted only on serious grounds.

Employers can discipline an employee with a warning and a termination for the same conduct since there is no such restriction under Greek law.

3. Wage And Hour

3.1. Wage

There is a national minimum wage in Greece, which as of today amounts to EUR 713 for employees. The minimum daily salary for unskilled workers is EUR 31.85 and their monthly wage amounts to EUR 713.

The salary must be paid in the local currency, i.e., in Euros.

The allowances cannot be included into the base monthly salary, since the salary paid (hourly wage) is used under Greek law as the basis for calculating remuneration for overtime work (Article 1 of *Legislative Decree No. 435/1976*, Article 1 Paragraphs 3 and 4 of *Law 3385/2005*).

3.2. Working time

The weekly working time is 40 hours, eight hours per day for a five-day working week, and six hours and 40 minutes per day for a six-day working week.

Employers may, at their discretion, request work over the above-mentioned working times, and employees are obliged to provide such work as follows: **(a)** for a five-day working week: one additional hour per day, amounting to nine hours (i.e., 41 to 45 hours per week); and **(b)** for a six-day working week: one hour and 20 minutes, amounting up to eight hours (i.e., 41 to 48 hours weekly).

Where the daily working time exceeds four hours, a break of not less than 15 minutes and not more than 30 minutes is in place, during which workers are entitled to leave their post. The lunch break is not within working hours and consequently, is not paid unless otherwise agreed in the employment contract.

Under *Article 58 of Law 4808/2021*, the maximum limit for overtime In Greece is set at 150 hours per year for all employees in Greek territory.

There are no rules on working time banking under Greek law.

For each calendar year, employees on a five-day working week are entitled to 20 to 26 working days, whereas employees on a six-day working week are entitled to 24 to 31 working days, depending on the years of service and the year of employment with the employer.

To be eligible for compensation for sick leave, an employee must be employed for at least 10 days by the employer. Em-

ployers must notify their employers about their absence due to illness by any means and verify their condition by furnishing supporting medical documentation. Employees can claim half salary in case they are employed for a period longer than 10 days and shorter than a year, and one salary in case they have been employed for over a year. If the duration of sick leave is longer than three days for the first time within a year, the employer must cover half of the daily salary for the first three days. From the fourth day of leave and up to a month, the employee receives daily compensation from the Social Security Fund. After setting-off, the amount paid to the employee by the Social Security Fund, the employer pays the rest of the amount until the covering of the actual payment of the employee.

4. Collective Labor Law

4.1. Trade unions

The establishment of a trade union in Greece entails the following steps:

(a) at least 20 employees, who are employed in the same enterprise and are considered as the founding members. The founding members of a trade union must have completed two months within the last year in the enterprise or branch. The association of at least 20 employees is made by a founding act, which contains the decision of the founding members to establish a trade union following the procedure laid down by law and to be subject to the provisions of the statutes.

(b) The founding members must then elect a five-member provisional Board of Directors by secret ballot.

(c) The provisional Board of Directors prepares a draft of the Articles of Association, which comes to the General Meeting for consultation. The Articles of Association shall contain the conditions to admit new members, the profession that the employee must perform, the enterprise, and/or the holding in which the employee must be employed, in order to be eligible as a member of the trade union.

Greek law provides for three levels of trade union organization. On the base, there are first-level trade unions, which are legally autonomous, and their activities are governed by law. Then, there are the second-level organizations, which are either sectoral or occupational federations or regional organizations, known as work centers. Lastly, the third-level structures are confederations such as the GSEE, made up of second-level organizations. The two main confederations in Greece are: **(a)** the GSEE (General Confederation of Greek Workers) for workers in the private sector and **(b)** the ADEDY (Civil Servants' Confederation) representing only public sector employees (i.e., education, public hospitals, ministries).

The main rights of trade unions are the right to strike, the right to internal autonomy, and the right to form their will.

Collective bargaining agreements are the base of individual employment agreements since they provide a general framework of mandatory rules for the protection of employees, from which no deviation is allowed. Such mandatory rules provide for the minimum wage, working days and hours, compensation for overtime work, employee leaves, severance payments, etc.

4.2. Works councils

Works councils can be set up by the employees in companies that employ at least 50 employees, where a trade union already exists in that company, or at a company employing at least 20 employees if there is no such trade union. Works councils have three to seven members, who are elected by the employees during general assembly convocation. They have an advisory role contributing to the improvement of working conditions and the development of the enterprise.

The most prominent rights of works councils are rights relating to information, consultation, and participation in decision-making. This means that the employer should inform the works council before implementing any decisions regarding matters such as changes to the company's legal status, the introduction of new technology, any change in the staff structure, any increase or decrease in the number of employees, the annual budget for company health and safety measures, etc.

5. Transfer Of Undertakings

In case of transfer of a business or undertaking, employees are automatically transferred to the buyer under the same terms and conditions. Such a transfer is under the scope of the *European Community's Acquired Rights Directive*, as applicable.

Employers have the obligation to inform only the employees' representatives (i.e., works councils) about the transfer and not every employee.

The legal consequences for failing to comply with the information process of the employees' representatives provide for an administrative fine which can vary between EUR 147 to EUR 8,804 per violation.

Under the applicable labor law, the employment relationship is transferred automatically, without requiring the consent of any of the parties involved, namely old and new/successor employer and employee. In other words, the rights and obligations arising from dependent employment relationships are automatically (*ipso iure*) transferred to the successor employer (beneficiary), including rights related to seniority, service development, length of service, etc. Nevertheless, the transfer of business is a rather complicated legal matter that is approached

on a case per case basis, in accordance with applicable EU and national labor law.

6. Labor Investigation

The most significant employment law violations are divided into four categories and refer to violations regarding **(a)** common labor law infringements (e.g., late or incomplete submission of forms to public authorities); **(b)** violations and harassment at work; **(c)** violations in connection with the digital card system; and **(d)** provable infringements of labor law regarding health and safety at work.

These violations incur administrative fines imposed by the Labor Inspectorate.

The labor authority fines may start at EUR 300 for minor infringements and can go up to EUR 8,000 in case of a serious violation. The amount of such fines is consolidated by means of a decision issued by the Minister of Labor and Social Affairs and depends on the type of violation, the number of employees, the number of persons that are affected by the infringement, and the size of the enterprise.

Emmanouil Savoidakis
Partner
esavoidakis@politispartners.gr
+30 210 72 97 252

Kassiani Skamaga,
Junior Associate
kskamaga@politispartners.gr
+30 210 72 97 252


POLITIS & PARTNERS
Law Firm

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HUNGARY

Nora Ovary-Papp
Counsel
nora.ovarypapp@bakermckenzie.com
+36 1 302 3330

Gabor Hajduk
Junior Associate
gabor.hajduk@bakermckenzie.com
+36 1 302 3330

Gergo Halasz
Junior Associate
gergo.halasz@bakermckenzie.com
+36 1 302 3330

Dominik Csascsu
Junior Associate
dominik.csascsu@bakermckenzie.com
+36 1 302 3330

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www.ceelegalmatters.com

1. Hiring

1.1. Contracting

The primary source of Hungarian labor law is *Act I of 2012 on the Labor Code* (Labor Code). In addition to the Labor Code, collective bargaining agreements, work agreements, and other Hungarian legislation concerning labor matters, health and safety, and social benefits and immigration issues may also govern certain employment relationships.

Employment contracts

In Hungarian labor law, the central element of establishing an employment relationship is the employment contract. The Labor Code clearly states that an employment relationship is deemed established by entering into an employment contract. The Labor Code also requires that employment contracts be concluded in writing, which is to be arranged by the employer. An employment contract not concluded in writing can be cited as invalid by the employee within a period of 30 days from the commencement of work.

An employment contract shall be regarded to have been concluded in writing if it includes the names of the parties and the details relevant to the performance of the contract and has been signed by the parties. According to the Labor Code, a legal statement (such as the employment contract) is also deemed to have been made in writing:

- if executed by means of an electronic document with facilities for retrieving the information contained in the legal statement unaltered, and for identifying the person making the legal statement and the time when it was made (electronic document) or
- in certain specified cases if published by means considered customary for, and commonly known in, the area.

The employee's base salary and position must always be defined in the employment contract. The place of work also shall be defined in the employment contract or failing this, the place where work is normally carried out shall be considered the workplace. The place of work can be a permanent location or a wider geographic area as specified in the employment contract.

Upon concluding the employment contract, the employer must inform the employee of certain important information related to the working conditions and must confirm those in writing within seven days.

The Labor Code does not explicitly require an employment contract to be concluded in Hungarian if the employee understands the English language. However, in order to avoid interpretation issues and potential labor law disputes, it is always recommended that a Hungarian version is prepared.

Besides the employment contract, the following important statements and actions are required to be made in writing

- informing the employee in certain cases – processing of personal data and data obtained from criminal records, restriction of personality rights, monitoring the employee by technical means,
- determining the starting and finishing date of the working time frame,
- determining work schedules,
- ordering overtime work (or, according to the terminology of the Labor Code, "extraordinary work"),
- ordering stand-by duty for the employee and determining the duration of the availability,
- determining the performance requirements and performance-based wage factors.

Probation period

Upon concluding an employment contract, a probationary period may be agreed upon between the employer and the employee. The probationary period cannot be longer than three months, except in the case of a collective bargaining agreement, which can stipulate a probationary period of six months. A probationary period that is shorter than three months can be extended once, provided that together with the extension the total term does not exceed three months. Extension of the above-mentioned probationary periods is prohibited and will be deemed null and void.

In case of the extension of fixed-term employment or the re-establishment of fixed-term employment within six months of the termination of the previous fixed-term employment, no probationary period can be agreed upon if the employee is being employed in the same or in a similar position as before.

Typical and atypical employment relationships

Full-time employment concluded for an indefinite period of time is considered the typical employment relationship. Full-time means that the working time is eight hours per day (regular daily working time) and 40 hours per week.

Any employment relationship which is not typical is considered an atypical employment relationship. The most important atypical relationships are the following.

- Fixed-term employment: The period of fixed-term employ-

ment shall be determined according to the calendar or by other appropriate means. The duration of a fixed-term employment relationship may not exceed five years, including the duration of an extended relationship and that of another fixed-term employment relationship concluded within six months of the termination of the previous fixed-term employment relationship.

■ Part-time employment: Parties may agree to work part-time, which is less than the regular full-time employment of eight hours per day. The fact that the employee works part-time must be stipulated in the employment contract.

■ Call for work: Part-time workers whose daily working time does not exceed six hours a day may establish a call for work, where they perform work at times the employer deems necessary to best accommodate the function of their jobs.

■ Teleworking: see Section 1.4. – Home office

■ Outworkers: Outworkers are employed in jobs to be performed independently and remunerated exclusively on the basis of the work done. The employment contract must define the work performed by the employee, the place where work is carried out, and the method and extent of covering expenses. The place construed as the place of work is either the employee's home or another place designated by the parties. Unless otherwise agreed, the employer's right of instruction is limited to specifying the technique and work processes to be used by the employee. In the absence of an agreement to the contrary, the employee carries out the work using their own means.

■ Job sharing: The employer may conclude one employment contract with two or more employees for carrying out the tasks pertaining to one position. Where any of the employees to the contract is unavailable, another employee to the contract will fill in and perform the functions of the position. Job-sharing employees work in a flexible working arrangement. The job share employment relationship terminates when the number of employees is reduced to one.

■ Employee sharing: Two or more employers may conclude one employment contract with one employee for carrying out certain tasks. The employment contract must clearly indicate which employer is responsible for paying the employee's wages. The liability of employers in respect of the employee's employment claims is joint and several. The employment relationship may be terminated by either of the employers or by the employee unless otherwise agreed. The employment relationship terminates if the number of employers is reduced to one.

Executive employees

A special mention should be made for executive employees because in their case parties are entitled to derogate from the statutory provisions of the Labor Code to a much larger extent than in the case of other employees.

For the purposes of the Labor Code, an executive employee includes:

■ the head of an employer, i.e., the managing director(s), in the case of a limited liability company, and the members of the board of directors, in the case of a company limited by shares;

■ their deputies who perform their work under their supervision and have certain substitution rights.

In addition, an employee may qualify as an executive employee if this fact is explicitly included in their employment contract and if the employee is in a position considered to be of material importance for the employer's operations, or holds a position of trust, and their salary is at least seven times the mandatory minimum wage at any time.

The specific provisions of the Labor Code relating to executives are as follows:

■ collective bargaining agreements do not apply to executives;

■ the employment of an executive may be terminated by notice without providing any reasons for the termination, provided the executive is not **(i)** pregnant, **(ii)** on maternity leave, or **(iii)** undergoing treatment related to in vitro fertilization procedures;

■ the employment of an executive may be terminated by notice with immediate effect within three years following the occurrence of the cause of action, instead of the one-year limitation applicable under the general rules;

an executive may not validly establish further employment or another legal relationship aimed at the performance of work;

■ An executive may not acquire an ownership interest in any business organization – except for public companies – whose business activities are the same or similar to those of the employer or which maintains a regular business relationship with the employer;

■ an executive may not enter into any contract in favor of themselves within the employer's scope of business;

■ an executive is required to notify the employer if any of their next of kin (as defined in the Labor Code) acquires equity in a company whose business activities are the same or similar to those of the employer or that maintains a regular business

relationship with the employer or establishes an employment relationship with such company as an executive.

If the requirements of the final item of the above are violated by the executive employee, the employer is entitled to terminate the executive's employment.

Save as set out above, the executive and the employer may derogate from the provisions of the Labor Code (even in a manner less favorable to the employee) and the executive employee's employment contract is subject to the parties' agreement.

Executives may determine, at their sole discretion, their working schedule (i.e., the executive has a flexible working schedule). However, because executives have a flexible working schedule, they are not entitled to compensation for overtime work.

Executives are also liable for the total amount of damages caused within the scope of their executive activities in accordance with the applicable provisions of civil law and have unlimited liability for damages caused by their negligent conduct.

General Background checks before contracting

According to Hungarian and EU legislation, the background check of potential or already hired employees (employee) may be carried out in accordance with the principles of necessity and proportionality and subject to certain legal conditions. The necessity and proportionality of screening must be assessed individually for each job.

In connection with the background check, the employer may only require the employee to make a statement or provide personal data that is relevant for the establishment or fulfillment of the employment relationship or for the enforcement of the employer's claims under the Labor Code.

The employee may be asked to provide certain documents during the background check, but in the vast majority of cases, copies of the documents cannot be made nor requested (e.g., the employee's ID card or university degree cannot generally be copied, or the document cannot be requested to be sent by e-mail).

The employer bears the burden of proving that the request for the employee's personal data is necessary and proportionate having regard to the employee's duties and responsibilities, and objectively suitable for the purpose. Provided that all data protection provisions are complied with, the background check may include the following elements:

- Checking social media profiles: subject to the above-mentioned principle of necessity and proportionality and purpose limitation, the employee's social media profiles can be checked if the employee has not restricted the disclosure of personal data on them (e.g., data cannot be collected from closed groups). Based on the related practice of the Hungarian Data Protection Authority (NAIH), the employer may not save, store, or transmit to others data from the social media profile page of the employee.

- Checking professional licenses: it is permitted to check from the relevant public registers whether the employee has the professional licenses indicated in their CV.

- Checking litigation proceedings of the employee: in Hungary, the details of the parties to the litigation proceedings are not public, but information on barred persons is publicly available.

- Checking if an employee holds a position as an executive officer in a company: the *Hungarian Trade Registry* provides publicly available information regarding this.

- Passport validity check: in the case of a third-country national, the employer has the right and the obligation to obtain the employee's passport and to submit it to the competent Government Office as part of the process of obtaining a work permit for the said employee.

- Qualifications check: the employee can be asked to provide the certificate of their qualifications (e.g., university degree) required for the position to which they applied. However, the institution issuing the certificate cannot be contacted, because these institutions are not authorized to disclose such information to third parties.

- Checking previous workplaces: the employer cannot visit previous employers to obtain information about the employee. Requests for performance appraisals from previous employers may only be made with the employee's prior permission and a related authorization from the employee (provided that the conditions for requesting a performance appraisal are met and it is relevant to the establishment of the employment relationship, e.g., similar job title).

- Verification of identity: the employer may ask the employee to prove their identity, which can be done by means of an identity card, driving license, or passport.

Criminal history check

Under Hungarian law, the employer can only check the criminal record of the employee in connection with the employment relationship by obtaining a certificate of good conduct, but it is important to note that the processing of personal data obtained from the criminal record is only lawful if one of the conditions set out in the legislation is met.

As a result of the above, the employer may require the employee to provide a certificate of good conduct if the job is restricted or excluded on the basis of the criminal record for one of the following reasons:

- by law (e.g., in the case of an executive officer); or
- based on the decision of the employer, which it bases on the fact that in the absence of a restriction on the occupation of the position there would be a risk:
  - of harming the employer's substantial monetary interest (e.g., the employees in the job hold a substantial amount of money or work with high-value assets),
  - that legally protected secrets (e.g., trade secrets, know-how, personal data) would be violated, or
  - of harming legally protected interests [e.g., the position in question involves **(i)** the guarding of firearms, ammunition, or explosives, **(ii)** the guarding of toxic or dangerous chemicals, or **(iii)** biological materials or nuclear materials].

The employer may restrict the occupation of a position on the basis of the above only if such restriction is necessary and proportionate. The lawfulness of such restrictions must be examined on an individual basis.

Medical check

A pre-employment medical check-up must be conducted for each new person the employer wishes to hire before they commence work. It is prohibited to oblige the employee to undergo pregnancy testing.

Foreign employers in Hungary

Under Hungarian law, there are no specific restrictions on foreign entities hiring employees in Hungary. There is also no legal requirement for the foreign employer to establish a legal entity in Hungary in order to hire employees.

1.2. Employees versus independent contractors

Under Hungarian law, an employee is a natural person who performs work on the basis of an employment contract. The employment relationship is governed by labor law – mainly the Labor Code, collective bargaining agreements, and the employment contracts concluded between individual employees and the employer.

Contrary to the above an independent contractor performs work under a contract governed by civil law – mainly *Act V of 2013 on the Civil Code* (Civil Code). In general, it can be said that this is a much more flexible legal arrangement than an employment relationship for various reasons and has numerous advantages and disadvantages for both sides.

The two legal relationships are not always easy to differentiate from each other. According to judicial practice, the authorities and the courts examine so-called "qualifying marks" concerning the relationship between the parties. Two types of qualifying marks are distinguished: primary and secondary. Primary qualifying marks are given more weight in determining the nature of the legal relationship. However, it is important to stress that one or more qualifying marks alone do not necessarily classify the relationship between the parties into one or the other type of relationship. Thus, the qualification will always depend on all the circumstances of the case.

Qualifying marks

The way how the parties define the work to be performed under the contract is considered a primary qualifying factor. In the case of an employment relationship, this is usually a repetitive activity that is connected to the position of the employee. An independent contractor is usually contracted to perform one specific task or to achieve one specific result through work.

Another primary qualifying mark is that in an employment relationship, the employee is required to perform their work personally, whereas an independent contractor does not have a such obligation.

A further primary qualifying mark is that the employer has an employment obligation, i.e., it must provide the employee with work. At the same time, the employee has a stand-by duty, the obligation to be ready to do the work. In addition, in an employment relationship, there is a strict hierarchy between the employer and the employee. The employee, being subordinate to the employer, is integrated into the employer's organizational units. Whereas in the case of an independent contractor, the client does not have an employment obligation and the parties are on the same level, not subordinate to each other.

Secondary qualifying marks are including the extent of the right to instruct and control, who determines the working hours, where the work is carried out, whose equipment is used, whether there is a written contract, and whether the work is regularly remunerated.

In an employment relationship, the employer's right to give instructions is usually extensive, the work is carried out with the employer's equipment, the working hours are allocated by the employer and the employee receives regular remuneration for the work. In the case of an independent contractor, the contractor usually performs the work with their or her own equipment and schedules their or her own working hours, the client has a limited right to give instructions and the work is

usually not regularly remunerated.

Differences between the contents of the two legal relationships

One of the most important reasons for the differentiation is that labor law regulations are much stricter than civil law ones and much more protective towards the employees (i.e., protection of the wages, reasoning obligation in case of termination of employment).

The main legal concepts of the Labor Code that significantly protects the rights of employees are known as the "cogency" and "unilateral cogency" employment rule. Cogency means that parties cannot derogate from the statutory provisions of the Labor Code at all, while unilateral cogency provides that the parties to an employment contract may only agree on terms different from the statutory provisions of the Labor Code when this is expressly allowed by the Labor Code, and only if such terms are more favorable for the employee than the statutory provisions. Civil law is based on the concept of contractual freedom, so the parties can basically agree on any terms in a contract, if not explicitly prohibited by the Civil Code.

The employment relationship creates a mandatory insurance relationship under *Act CXXII of 2019* and because of this, it is obligatory to report it to the Hungarian National Tax Authority (NAV). In the case of an independent contractor, the contractual relationship does not necessarily create an insurance relationship (only in certain cases) so not all of these relationships must be reported to the NAV.

The amount of the public charges and the taxes can differ significantly between the two legal relationships, generally speaking, employees tend to pay more. The administrative and tax burdens of the employers are usually also much higher in an employment relationship while in the case of a civil law contract, the client has to bear almost none of these.

From the above, it follows that the differentiation of the two legal relationships arises mostly in the context of tax and labor audits, and partly in labor disputes.

Miscategorizing employment and independent contractor relationships

Due to the more favorable taxation, public charges, and more flexible regulations, sometimes parties stipulate a civil law contract in order to try to disguise that they in fact entered into an employment relationship. This is called a sham contract.

If, for example, a person working under a civil law contract (as an independent contractor) works in the company's customer service department during fixed working hours, from 8 a.m. to 4.30 p.m., and uses the company's tools and IT databases in such a way that if they work overtime, they are entitled to a wage supplement and also receives holiday leave on the basis of their or her work, the civil law contract is, in fact, an employment contract.

This is problematic, because – as mentioned above – the "independent contractor" in this case pays less tax and public charges and also does not have the same protections as an employee would have.

In case of a sham contract, the competent authority may impose a fine, the amount of which depends on the duration of the unlawful situation, its frequency, the number of employees concerned, and the amount of unpaid public contributions.

1.3. Foreign employees

Hungarian immigration legislation provides different solutions to help employers of foreign nationals and assist foreign nationals entering the country for business purposes.

Depending on their nationality, as well as the purpose and length of their stay in Hungary, foreign nationals may need a specific visa or residence permit to enter the country. However, some foreign nationals do not need a visa or residence permit.

Key Government Agencies

If the foreign national must obtain a visa, the application must be processed in accordance with the *Visa Code* adopted by the European Parliament and the Council in July 2009 (Visa Code). This regulation aims to unify all European legislation on visa matters into one document, therefore, increasing transparency, enhancing the rule of law and the equal treatment of visa applicants, and harmonizing the rules and practices of Schengen countries where common visa policy is applicable.

Pursuant to the *Visa Code*, the visa application must generally be submitted at the Hungarian embassy (*Nagykovetseg*) or consulate (*Konzulatus*) where the foreign national resides abroad. The visa application can also be processed by various forms of cooperation among Member States, such as limited representation, co-location, common application centers, recourse to honorary consuls, and cooperation with external service providers.

The application for a residence permit is forwarded to the regional office of the National Directorate-General for Aliens Policing (*Orszagos Idegenrendeszeti Foigazgatosag*), which is authorized to issue such permits in Hungary.

The issuance of a visa or residence permit is only a preliminary requirement for entry and does not ensure automatic entry for

foreign nationals. At the Hungarian border, foreign nationals must prove that they meet the specific requirements set out in the *2016/399/EU* (i.e., they hold a valid passport and visa, can justify the purpose of their stay, the cost of their living in Hungary is covered by sufficient financial resources, no alert has been issued in the Schengen Information System (SIS) for the purposes of refusing entry for them and they are not considered to be a threat to public policy, internal security, public health or the international relations of Hungary).

If the purpose of a foreign national's entry into Hungary is to work, a work permit or joint work and residence permit (joint permit) is required provided that the performance of such activities is not exempted from work permit requirements. Usually, no work permit is required if the foreign national is an executive officer or a member of the supervisory board of a Hungarian company operating with foreign participation.

Current trends

Foreign nationals from a privileged or semi-privileged country (for which the European community has abolished or simplified the visa requirement) may enter Hungary without a visa and submit the application for a residence permit/joint permit directly to the regional office of the National Directorate-General for Alien Policing. Notwithstanding this, the foreign national cannot work until a work permit/joint permit has been issued.

Foreign nationals from non-privileged countries must obtain a visa for a short-term stay in Hungary. These are generally issued within 15 calendar days but may take up to 30 days if the application is scrutinized or a diplomatic delegation processes the visa application and consults certain authorities of Hungary. In exceptional situations where additional documentation is necessary, the period may be extended up to 60 days.

For long-term residence in Hungary, non-EEA nationals must obtain a residence permit/joint permit. There are various residence permits depending on the purpose of stay in Hungary (i.e., work, intra-group transfer, study, reunification, start business, training). Applicants can easily choose a category that accommodates their stay in Hungary. Additionally, the applicable laws also contain specific provisions for foreign nationals intending to work seasonally or whose residence is related to the care or study of the Hungarian language, culture, or family relations (except in the case of family reunification).

Currently, foreign nationals seconded within the same group of undertakings can only obtain a residence permit in Hungary are an executive, expert, or trainee. If seconded employees are not employed in any of the above positions, or if the secondment is not intra-group, they must have a local employment contract with the Hungarian receiving entity in order to be issued work and residence permits

As of January 1, 2019, family members of EEA nationals (who are not themselves EEA nationals) must obtain a residence permit to reside within Hungary. They also must have a work permit if they want to work in Hungary. Prior to January 1, 2019, they enjoyed the same rights as EEA citizens.

Summary procedures are available for certain limited immigration procedures. However, if the background facts and documents for an application are clear and theadministrative deadline is less than two months (60 days), the immigration bureau will decide whether to grant the permit within eight days which can accelerate certain residence permit procedures.

In line with *Council Directive 2009/50/EC* of May 25, 2009, regarding conditions of entry and residence of foreign nationals for the purposes of highly qualified employment, the National Directorate-General for Aliens Policing issues EU Blue Cards for foreign nationals to work and reside within Hungary, especially those that are highly skilled.

As of January 1, 2019, residence permit applications can be submitted electronically unless the application is filed with the Hungarian embassy or consulate abroad.

From January 1, 2023, *Act II of 2007 on the entry and residence of third-country nationals* and *Act I of 2007 on persons with the right of free movement and residence* will be amended. According to the amendment, applications for the issue or renewal of national and EC permanent residence permits, applications for the renewal of residence permits, registration certificates, residence cards for family members of EEA nationals, and applications for permanent residence cards can only be submitted electronically, after electronic registration via the electronic platform called Enter Hungary.

In addition to the above, in the case of a change of residence of third-country national and other application procedures, if the third-country national's proxy is a legal representative or a legal person, the application can only be submitted via the Enter Hungary platform.

The European Travel Information and Authorization System (ETIAS) is also expected to be operational from November 2023. ETIAS will be an electronic system that allows and keeps track of non-EEA citizens who do not need a visa to enter the Schengen Zone. Visa-free non-EEA citizens will need to make a registration electronically by filling out a form, uploading their passports, and paying a fee before they can travel to the Schengen Zone.

1.4. Home office

Teleworking employees perform their job duties at a place other than the employer's office. In the employment contract, the parties shall agree that the employee performs their job duties by means of teleworking.

Employers cannot unilaterally order teleworking but are obligated to inform the employees if teleworking is an available form of employment for them. Except during the first six months of employment, employees may request the amendment of their employment contract to teleworking on the basis of the aforementioned information. Except during the first six months of employment, employees may also request the change of their form of employment to teleworking up to the age of eight of their child.

Employees shall give reasons for their above requests in writing and also indicate the planned date of the change. At the employee's request, the employer shall provide a written statement for the employee's request of change to teleworking within fifteen days. If the employers refuse the employees' request for change in their statement, they are obligated to give the reasoning for the refusal. In the event of an unlawful refusal or failure to provide a statement, the court shall replace the employer's statement of consent.

In the absence of an agreement to the contrary in a teleworking employment relationship:

- the employer's right of instruction is limited solely to the definition of duties to be discharged by the employee, including specifying the technique and work processes to be used by the employee, unless otherwise agreed;
- the employer exercises the right of supervision remotely, via computing equipment;
- the employee can only perform work from the employer's facilities in no more than one-third of all working days in a given year;
- the employee is entitled to enter the employer's premises and to communicate with other employees.

If the employer exercises the right of supervision at the place of teleworking, the inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of teleworking. The employer is obligated to provide all information to persons employed in teleworking as is provided to other employees.

Subject to an agreement with the employer, work equipment for teleworking may be provided by the employee as well. As regards such work equipment, the employer shall conduct a risk assessment in order to ascertain that the work equipment is in a safe state from the perspective of occupational safety and health. To that end, the responsibility to ensure that the work equipment is in a safe state at all times from the perspective of occupational safety and health lies with the employee.

If teleworking is carried out by means of computer equipment, the employer must inform the employee in writing of the rules on safe working conditions. In such cases, the employee may choose the place of work in such a way that the working conditions set out in the information are met. The employer can also monitor compliance with the health and safety rules remotely using a computerized device unless otherwise agreed with the employee.

In case teleworking is carried out using non-computerized means, the place of teleworking may only be a place that has been previously certified by the employer as suitable for safe and healthy work. In this case, the parties must agree in writing on the place of teleworking. The employee may not change the working conditions at the place of work without the employer's consent. The employer or its representative is obligated to routinely inspect work conditions at the place of teleworking and ensure that they conform with requirements and that the employees have knowledge of and observe the provisions pertaining to them. Apart from the aforementioned inspection, the employer or its representative is entitled to gain admission to and remain on the property where teleworking is performed for the purpose of risk assessment, the investigation of accidents, and checking working conditions. The workers' representative for occupational safety may enter the property where teleworking is performed upon the employee's consent.

According to the Labor Code, the employer is obliged to reimburse the employee for expenses reasonably incurred in the performance of the employment relationship (i.e., internet usage, rental fees, heating, and energy costs. This reimbursement can happen through itemized billing or with flat-rate reimbursement. In the case of itemized billing, the employee must justify the costs incurred with invoices. In the case of flat-rate reimbursement, the monthly amount of reimbursement can be up to a maximum of 10 percent of the monthly minimum wage on the first day of the tax year (23,000 HUF/ per month in 2023).

2. Contract Modification

The Labor Code states that employment contracts may be amended only by the mutual consent of the parties. The provisions on the conclusion of employment contracts shall be duly applied for the amendment thereof.

Mutual consent

The parties are free to decide on the amendment of the employment contract, neither the employer nor the employee can oblige the other party to do so. The amendment of the employment contract must include the clear and unambiguous expression of the parties' mutual understanding and intention to modify the contract. This must be proved by the party who invokes the fact of the amendment (i.e., during a labor law dispute). The amendment of the employment contract must not be made by deceiving the employee or by abuse of rights.

An employer cannot terminate an employee's employment relationship on the grounds that the employee has not accepted the employer's offer to amend the employment contract.

Formalities of amending the employment contract

As mentioned in Section 1.1., the Labor Code states that the provision on the conclusion of the employment contract must be applied for the amendment as well. Employment contracts must be concluded in writing, but an employment contract not concluded in writing can be cited as invalid only by the employee and only within a period of 30 days from the commencement of work.

As it was also mentioned in Section 1.1, the employment contract shall be regarded to have been concluded in writing if it includes the names of the parties and the details relevant to the performance of the contract and has been signed by the parties. A legal statement (such as the employment contract) is also deemed to have been made in writing if executed by means of an electronic document with facilities for retrieving the information contained in the legal statement unaltered, and for identifying the person making the legal statement and the time when it was made (electronic document).

As a consequence of the above, if an offer to amend the employment contract is made through e-mail and the e-mail correspondence includes the employer's and the employee's clear, unambiguous, and mutual intent to amend the employment contract, then it is possible to amend the employment contract this way. This is, however, subject to the condition that the e-mail correspondence fully complies with the three requirements of the electronic document (unalterable traceability, identifiability of the parties, and of the date of the declaration).

In addition to the above, as an employment contract not concluded in writing can be cited as invalid only by the employee, it is technically also possible to amend the employment contract verbally if it is not challenged by the employee, but this form of modification is considered unusual and not advisable.

Temporary changes to the employee's tasks

Under Hungarian labor law, employers are entitled to temporarily reassign their employees to jobs and workplaces other than what is contained in the employment contracts, or to another employer. This does not require an amendment to the employment contract.

The reassignment cannot exceed a total of 44 working days or 352 scheduled hours during a calendar year. This proportionately applies if the employment relationship commenced during the year if it was entered into for a fixed term or in the case of irregular daily working time and part-time work.

The employee affected must be informed of the expected duration of work in derogation from the employment contract. There are also situations when the employee cannot be reassigned (i.e., from the time her pregnancy is diagnosed until her child reaches three years of age).

Permanent changes in the employee's tasks

Whether the permanent changes in the employee's tasks require an amendment to the employment contract is based on multiple factors.

The first thing to consider is where the tasks to be performed are indicated. If they are included and detailed in the employment contract itself, they are forming part of the contract and because of this modifying them also means modifying the employment contract, which needs the mutual consent of the parties.

If only the name of the position is included in the employment contract, but the tasks to be performed are indicated in a separate job description, then the job description and the tasks as well can be unilaterally modified to a certain extent. Tasks can be removed and new tasks can be added to the job description, but with the limit that the new task(s) must connect to the position, cannot be in conflict with the nature of the position.

For example, if the employee's position is secretary, then their job description cannot be amended to include the task of cleaning the office building, because cleaning is not connected to the normal tasks of a secretary.

Employer policies/internal regulations

The employers' policies and internal regulations are considered unilateral statements of the employer. The judicial practice generally differentiates between those policies and internal regulations which contain statements of the employer on the management of the work (for example, mandatory specifications for the performance of a work process) or other

statements (i.e., information) and orders of the employer, and those policies containing the employer's unilateral commitment (i.e., bonus payment and vacation).

It is generally accepted that the former can be modified unilaterally by the employer (i.e., the orders of the employer), but as for the latter (especially for bonuses and other benefits) it has to be pointed out that the judicial practice is not uniform. The common practice among employers is that they stipulate in the policies and regulations that they are based solely on the employer's discretion and provide only for the possibility that the employer may, from time to time and within its sole discretion, pay bonuses to the employees in addition to their salaries, furthermore also they retain the right to withdraw the bonus or modify the terms of the policy or regulation anytime.

3. Termination

3.1. Termination types

3.1.1. Main termination types in Hungary

In Hungary, employment may be terminated by a) mutual consent b) termination notice, or c) termination notice with immediate effect.

The reasons for the termination shall be indicated clearly in the termination notice. The reality and reasonability of the reasoning indicated in the termination notice shall be proved by the party that issued the termination notice. It is a main rule in Hungary to provide real, reasonable, and clear reasoning when terminating employment by either party if it is not expressly excluded by the law (e.g., termination during the probation period).

Even if it is not required by the law, the employee may request the employer to provide reasoning for its termination notice, if the termination of the employment

a) was based on Section 55 (1) l) of the Labor Code;

b) was performed during the term of paternity leave;

c) was performed during the term of parental leave;

d) was performed during the term of unpaid childcare leave;

e) was performed due to the unsuccessful modification request of the employment agreement by the employee pursuant to Section 61(2)(4) of the Labor Code.

The reasoning may be requested by the employee within 15 days from the date when the employer communicated the termination notice to the employee. The employer shall provide the reasoning within 15 days from the receipt of the employee's request.

3.1.2. Termination ground categories in Hungary

i) Termination by the employer

The employer may terminate their employment agreement based on the termination grounds specified in the Hungarian Labor Code. The ground of the termination by the employer may be **a)** the employee's behavior in relation to the employment relationship, **b)** the employee's ability to perform work, or **c)** the employer's operation.

The employer may terminate the employment relationship without providing any reasons in the case **a)** the probation period has not expired yet or **b)** a definite term of employment.

If the employer terminates the employee's definite term employment relationship, the employer shall pay an absentee fee in an amount of 12 months. If the term of the definite period is shorter than 12 months, the absentee fee due for the remaining time shall be paid to the employee.

ii) Termination by the employee

The employee is not obliged to provide reasons for their termination notice in case of an employment relationship is established for an indefinite period. The termination of a definite period employment relationship may be terminated by the employee only if it was justified by the employee. The reason given for termination may only be of such a nature as would render the maintaining of the employment relationship impossible or that would cause unreasonable hardship in light of their circumstances.

The employee shall not justify the termination of the employment if the termination notice was provided during the term of their probation period.

iii) Termination with immediate effect

An employer or employee may terminate an employment relationship without a notice period if the other party

a) willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or

b) otherwise engages in conduct that would render the employment relationship impossible.

The right of termination without notice may be exercised within a period of 15 days of gaining knowledge of the grounds therefore, in any case within not more than one year of the occurrence of such grounds, or in the event of a criminal offense up to the statute of limitation for criminal liability. If the right of termination without notice is exercised by a body, the date of gaining knowledge shall be the date when the body, acting as the body exercising the employer's rights, is informed regarding the grounds for termination without notice.

3.1.3. How easy it is to terminate an employment relationship?

Generally, we may argue that it is much easier for the employee to terminate their employment relationship than for the employer. Whilst the Labor Code makes it easier for the employee to terminate the employment relationship, there are several rules and case laws that must be taken into consideration by the employer before providing a termination notice to the employee.

3.1.4. Notice period

Once the employment relationship is terminated by either party, the 30-days notice period shall commence, if not otherwise agreed by the parties. The parties may extend the notice period up to six months.

If the employee was terminated by the employer, the notice period shall be prolonged with further:

a) five days after three years;

b) 15 days after five years;

c) 20 days after eight years;

d) 25 days after 10 years;

e) 30 days after 15 years;

f) 40 days after 18 years;

g) 60 days after 20 years.

The period of notice for the termination of a fixed-term employment relationship by termination notice may not go beyond the fixed term.

In case of termination with immediate effect, the provisions relative to the notice period shall not apply.

3.1.5. Severance pay

An employee shall be entitled to severance pay if their employment relationship is terminated **a)** by the employer, **b)** upon the dissolution of the employer without succession, or c) in case of a change of employer if the new employer does not operate under the provisions of the Labor Code.

Severance pay shall be the sum of the absentee pay due for:

a) one month, in the case of at least three years;

b) two months, in the case of at least five years;

c) three months, in the case of at least 10 years;

d) four months, in the case of at least 15 years;

e) five months, in the case of at least 20 years;

f) six months, in the case of at least 25 years

of employment.

The amount of severance pay shall be increased by one to three months of absentee pay if the employment relationship is terminated as specified under B) inside the five-year period before the date when the employee reaches the age limit for old-age pension.

The employee shall not be entitled to receive severance pay if:

a) they are recognized as a pensioner at the time when the notice of dismissal is delivered or when the employer is terminated without succession, or

b) they are dismissed for reasons in connection with their behavior in relation to the employment relationship or on grounds other than health reasons.

In the event of dismissal, the employer shall excuse the employee concerned from work duty for at least half of the notice period. Any fraction of a day shall be applied as a full day. The exemption from work duty shall be allocated in not more than two parts, at the employee's discretion.

For the period of being excused from their duties, the employee shall be entitled to absentee pay, except if he would not be eligible for any wages otherwise. The wages already paid out may not be reclaimed, if the employee was excused from their duties permanently and the circumstance precluding payment of wages occurred subsequent to having the employee excused from their duties.

3.1.6. Other

The employee, upon termination (cessation) of employment, shall relinquish their position as ordered and settle accounts with the employer. Upon termination of the employment relationship by notice, the employee shall be paid their work wages and other emoluments from the last day of work, in any case on the fifth working day at the latest after the termination of the employment relationship, and shall be supplied the statements and certificates prescribed by employment regulations and other relevant legislation.

The employer shall issue a certificate proving the term of the paternity leave or parental leave in which the employer indicates the term of the paternity leave or parental leave provided by the former employer.

It is mandatory to include in the mutual termination the followings:

a) the parties' unconditional, explicit, unambiguous, and real intention to terminate the employment relationship;

b) the parties' agreement on material matters or matters which is considered to be material by any of the parties;

c) the date of the termination of the employment relationship.

The parties may include in the mutual termination any other agreement relative to the employment relationship (e.g., severance pay, termination period, etc.) if it is not prohibited by the law.

As a main rule, the employee may not conduct any activity which is against the employer's economic interest if not otherwise provided by the law. However, this provision does not prohibit the employee to be employed by another employer if it does not harm the economic interest of the employer. Therefore, the employer may prohibit the employee's employment at another employer if it is against its economic interest. With reference to the executive employees, they are not allowed to establish another employment relationship other than the employer.

The parties may agree that the employee will not establish another employment relationship following the termination of the employment with the employer (non-compete agreement). The non-compete agreement may be concluded either at the establishment or the termination of the employment relationship. The parties shall determine the term, which cannot be longer than two years, geographical area, and job covered by the non-compete agreement. The employer shall pay an agreed amount as consideration for the employee which cannot be lower than one third of the monthly base salary for the same period.

Non-compete considerations included in monthly salaries are not applicable under the Hungarian Labor Law, however, the employer may pay more salary to the employee in order to ensure that they do not change their job. However, paying a non-compete consideration during the employment relationship is not typical.

3.2. Collective dismissal

The collective dismissal is a set of procedural rules which establish information and consultation obligations against the employees by the employer in the event of dismissal of employees in a number set forth below.

Collective dismissal shall mean when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship:

a) of at least 10 employees, when employing more than 20 and less than 100 employees,

b) of 10% of the employees, when employing 100 or more, but less than 300 hundred employees,

c) of at least 30 employees, when employing 300 or more employees,

in accordance with the provisions of the Labor Code, within a period of 30 days, for reasons in connection with its operations.

The employer shall consult with the work council in the event it plans to execute a collective dismissal. The work council shall be informed by the employer eight days prior to the commencement date of the consultation regarding:

a) the reason for the collective dismissal;

b) the number of employees to be made redundant broken down by categories; or

c) the number of employees employed during the preceding six-month period;

d) the period over which the projected dismissals are to be affected, and the timetable for their implementation;

e) the criteria proposed for the selection of the employees to be made redundant;

f) the conditions for and the extent of benefits provided in connection with the termination of employment relationships, other than what is prescribed in employment regulations.

The employer's obligation of consultation shall apply until the conclusion of an agreement, or failing this for a period of fifteen days after the beginning of negotiations.

In order to reach an agreement, the negotiations shall, at least, cover:

a) the possible ways and means of avoiding collective dismissals;

b) the principles of redundancies;

c) the means of mitigating the consequences; and

d) the reduction of the number of employees affected.

The employer shall notify the government employment agency of its intention regarding collective dismissals, and its details and aspects, and shall supply a copy thereof to the works council.

The employer shall notify in writing the employees affected of its decision regarding collective dismissals at least thirty days prior to delivering the notice of dismissal or the dismissal without notice. The notice of dismissal or the dismissal without notice may be delivered after thirty days following the time of notification.

3.3. Unlawful termination

3.3.1. Consequences of unlawful termination by the employer

In the event of unlawful termination by the employer, the employer shall pay compensation for damages that occurred in connection with the termination of the employment relation-

ship.

On the basis of unlawful termination, the employee may demand the employer to pay the employee's salary as lost income in an amount not more than 12 months base salary. When calculating the amount of lost income, any income shall be deducted that the employee has earned or could reasonably have earned in the given situation, and any severance payment paid at the termination of the employment. The basis of the lost income is the employee's absence fee.

Severance pay must be made by the employer if **a)** the employee's employment relationship was wrongfully terminated by means other than termination notice or **b)** the employee did not receive any severance pay pursuant to Paragraph b) of Subsection (5) of Section 77 of the Labor Code at the time their employment relationship was terminated.

At the request of the employee, the court may reestablish the employment relationship of the employee if

a) the employment relationship was terminated in violation of the principle of equal treatment;

b) the employment relationship was terminated in violation of the prohibition of abuse of rights;

c) the employment relationship was terminated in violation of the prohibition of the termination of the employment relationship;

d) the employment relationship of an employee holding an elected trade union position was terminated in violation of the consultation obligation with the trade union;

e) if the employee served as an employee's representative at the time their employment relationship was terminated;

f) if the employee successfully challenged the termination of the employment relationship by mutual consent or their own legal statement therefor.

The period between the termination and the re-establishment of the employment relationship shall be deemed as time spent in employment.

3.3.2. Consequences of unlawful termination by the employee

The employee, if having terminated their employment relationship unlawfully, shall be liable to pay compensation in the sum of absentee pay due for the notice period when the employment relationship is terminated by the employee.

The employee, if having terminated their fixed-term employment relationship unlawfully, shall be liable to pay compensation in the sum of absentee pay due for the time remaining from the fixed period, up to three months of absentee pay at most.

Employers shall be entitled to demand payment for damages if such are in excess of the amount described above. However, these sums in total may not exceed the employee's absentee pay due for twelve months.

The reference income comprises of:

a) the unpaid salary; and

b) the regular allowance to which the employee is entitled based on its employment relationship provided that it was regularly received prior to the damage occurring.

Generally, damages granted by the court or agreed upon by the parties are paid without the deduction of personal income tax or any other contributions.

However, if the damages are granted to the employee to supplement the employee's income, personal income tax shall be deducted by the employer before paying it.

In case of lost income, all contributions shall be deducted and paid from the amount of damages.

The dismissal may be revoked unilaterally until it arrives to the addressee (e.g., when it was sent by post and it was not delivered yet). Once the addressee received the dismissal, it may be revoked only with the addressee's consent.

3.3.3. Restriction of Termination

Pursuant to the Labor Code there are two categories of restrictions of termination: A) Prohibition of termination and B) Restriction of termination

A) Prohibition of termination

In case of prohibition of termination, the employer may not provide the employee a termination notice due to reasons based on the employee's legitimate personal interest. Pursuant to the Labor Code, the employer may not terminate the employment relationship:

(a) in case of the employee's pregnancy;

(b) during the term of maternity leave;

(c) during the term of paternity leave;

(d) during the term of parental leave;

(e) during the term of leave of absence taken without pay for caring for a child;

(f) during the term of any period of actual voluntary reserve military service; and

(g) in the case of women, while receiving treatment related to a human reproduction procedure, for up to six months from the beginning of such treatment.

We may consider the regulation of collective dismissal as a

means of prohibition of termination. Namely, the employer may not provide a termination notice or, in case of an employment relationship established for a definite period, termination notice with immediate effect to the employee for 30 days from the date of making a decision regarding collective dismissal.

In the case of executive employees, paternity leave is the only one which does not protect them against the employer's termination notice

In the event of **A)**, the employer may not legally terminate the employment relationship at all.

B) Restriction of termination

There are three main types of restrictions of termination in the Labor Code: **a)** when the employment relationship may be terminated only if further conditions are met, **b)** third party's approval is necessary for the termination, or **c)** the notice period is delayed until an exact event.

a) The Labor Code also establishes circumstances in which case the termination may be permitted by the law, however, the employer may refer to only specific grounds for termination set forth in the Labor Code as follows.

(i) The employer shall be permitted to terminate the employment relationship of employees, other than pensioners, concluded for an indefinite duration inside the five-year period before the date when the employee reaches the age limit for old-age pension on the grounds of the employees' behavior in relation to the employment relationship only for the following reasons:

(a) the employee willfully or by gross negligence commits a material violation of any substantive obligations arising from the employment relationship;

(b) the employee otherwise engages in conduct that would make the maintenance of the employment relationship impossible.

(ii) The employment relationship of the employees referred to in **(i)** hereof may be terminated in connection with the employees' ability or for reasons in connection with the employer's operations if the employer has no vacant position available at the workplace suitable for the employee affected in terms of skills, education, experience required for their previous job, or if the employee refuses the offer made for their employment in that job.

(iii) Where the employment relationship of a mother or a single father is terminated by notice provisions set forth in **(i)** and **(ii)** shall apply until the child reaches the age of three, if the employee is not taking up maternity leave or leave of absence without pay for the purpose of caring for the child.

(iv) The employer may terminate by notice the employment relationship of an employee who is receiving rehabilitation treatment or rehabilitation benefits due to the employee's capacity related to medical reasons only if the employee can no longer be employed in their original position and no other job is available that is considered appropriate for their medical condition, or if the employee refuses to accept a job offered by the employer without good reason.

The employment relationship of employees described above may be terminated only if the conditions set forth in (i)-(iv) are met.

b) If a work council is established at the employer and there is an elected chairman of the work council or an employee holding a trade union position, these employees' employment relationship may be terminated only with the prior approval of the work council or trade union.

c) Where employment is terminated by the employer, the notice period shall begin at the earliest on the day after the expiry of the following periods:

(i) duration of incapacity to work due to illness, not to exceed one year following the expiration of the sick leave period;

(ii) absence from work for the purpose of caring for a sick child;

(iii) leave of absence without pay for providing home care for a close relative.

The restrictions established above do not restrict the termination of employment by the employee or with mutual consent in general.

Once a warning was provided for misconduct, it may not serve as a basis for termination.

4. Wage And Hour

4.1. Wage

Under Hungarian labor, law employees are entitled to a salary. As a general rule, unless otherwise agreed by the parties or stipulated in labor regulations, the salary must be paid, at the latest, by the 10th day of the month following the relevant month.

In 2023 the minimum statutory gross salary for a full-time employee is HUF 232,000 per month. Employees employed in a position requiring medium-level education or technical qualification are entitled to receive a monthly salary of at least HUF 296,400. In the future, the government may establish different statutory minimum wages for certain groups of employees and certain geographical areas.

With the exception of work performed abroad or unless otherwise prohibited by the relevant legislation, salary shall be established and paid in forints. The employment contracts of the executive employees can derogate from this.

Fixed (time-related) salary

The employee may receive a fixed salary (e.g., monthly or weekly), which is not related to either their or the company's performance.

Performance-related salary

The salary of an employee may also be linked to their performance. In this case, the performance requirements and factors for calculating the performance-related salary (Requirements and Factors) must be established.

The Requirements and Factors must be established in advance in a procedure that takes into account objective criteria and assesses whether the Requirements and Factors are achievable. When establishing the Requirements and Factors, conditions such as work organization and applied technology at the employer have to be considered.

Before establishing or amending the Requirements and Factors applying generally to employees, the employer must request the opinion of any relevant works council.

If an employee receives a performance-related salary, a guaranteed salary must be defined and paid, which must be at least half of the base salary of the employee.

The determination of whether a performance requirement is achieved must be objective and may not merely depend on the employer's determination, at its discretion, as to such achievement.

Combination of fixed and performance-related salary

An employee's salary may also be defined as a combination of fixed and performance-related salaries, as described above.

Wage supplements

In exceptional cases, the employee may be required to perform extraordinary work. Extraordinary work is work beyond the normal scheduled working hours, or beyond the working hours that can be scheduled in a reference period; work performed on weekly days off and on public holidays; and work on stand-by at defined places for a specific period of time. Employees are entitled to wage supplements if they perform extraordinary work, these wages supplements must be paid in addition to the base salary.

In addition to regular wages, employees are entitled to a 50% wage supplement for extraordinary work performed on normal working days. However, in consideration for extraordinary work performed on normal working days, the employer may decide to grant additional days off work to the employee instead of a wage supplement if the employment contract allows, or the employee consents, or if it is compulsory according to the applicable regulations on the employment relationship. In consideration for working on the employee's weekly days off, employees are entitled to a 100% wage supplement for extraordinary work for each additional day worked, or if the employee receives additional days off, they are also entitled to a minimum supplement of 50% on their salary.

Instead of paying the applicable supplement after each and every hour of overtime, a lump sum compensation may be agreed upon by the employee and the employer, which is payable to the employee irrespective of the actual amount of extraordinary work. Said lump sum compensation must be indicated separately from the base salary. In the case of paying to an employee a lump-sum compensation for extraordinary work, the limitations on the maximum amount of extraordinary work must still be complied with.

Bonuses

The employer may grant an employee a bonus (premium) in addition to their salary. Usually, a bonus is granted in addition to a fixed salary. The granting of a bonus is normally at the employer's sole discretion and may not be claimed by the employee, provided that the parties so agreed and the employer reserved the right to do so. However, if a bonus is promised in advance to an employee upon completing a specific task, such a bonus can be claimed by the employee.

The terms and conditions of the bonus may be included in the employment contract or a separate bonus policy. If the employer prefers to have a bonus system based solely on its discretion, the respective governing document should provide only for the possibility that the employer may, from time to time and within its sole discretion, pay bonuses to the employees in addition to their salaries and should retain the right to withdraw the bonus or modify the terms thereof (as mentioned above, the judicial practice is not uniform regarding the unilateral modification of the policy).

4.2. Working time

The general statutory limitation on the length of a normal working day is eight hours per day. However, the employer and the employee may agree on a shorter length of daily and weekly working time.

If the employee is required to carry out stand-by duties or is a close relative of the employer, the employer and the employee may agree on longer working hours not exceeding 12 hours per day or 60 hours per week.

Work Schedule (work pattern)

As a general rule, the rules relating to work schedules (work

patterns) shall be laid down by the employer, but the employer may permit – in writing – the employee to schedule their working time in the interest of an autonomous work organization (flexible working arrangement).

Employers shall ensure that the work schedule of employees is drawn up in accordance with occupational safety and health requirements and in consideration of the nature of the work. The employer shall communicate the work schedule for at least one week in writing, at least 168 hours in advance before the start of the scheduled daily working time. In the absence of such communication, the last work schedule shall remain in effect.

If the employer schedules working for five days a week, from Monday through Friday, that is considered as the regular work pattern. Where working time is defined within the context of working time banking or payroll period arrangement, working time may be scheduled irregularly.

The work schedule shall be considered irregular if the employer schedules:

- the working time in derogation from the daily working time;
- the weekly rest day or period in derogation from the provisions of the Labor Code.

Working time banking

The employer may define the working time of an employee in terms of the "banking" of working time as well. When working time is defined within the framework of working time banking, the beginning and ending date shall be specified in writing and made public by the employer.

If working time banking is applied, the maximum working hours (without overtime) within the banking period shall be calculated on the basis of the standard daily working time (eight hours) and standard work patterns (five working days a week). Public holidays falling on working days according to the standard work patterns as well as the duration of absence (for example due to training provided by the employer, compulsory health check, breastfeeding, etc.) should not be taken into account.

As regards the actual working time arrangement within the banking period, the employer should ensure that daily working time is not shorter than four hours, and not longer than 12 hours, including overtime.

The maximum duration of working time banking is four months/16 weeks. The maximum duration of working time banking is six months/26 weeks in the case of employees:

- working in continuous shifts;
- working in shifts;
- employed for seasonal work;
- working in stand-by jobs; and
- in special jobs in aviation, road transport, carriers, and traffic control or harbors.

The maximum duration of working time banking if justified by technical reasons or reasons related to work organization and if there is a collective agreement in place is 36 months.

Daily break

Should the daily working time or the duration of the overtime work exceed 6 hours, the employee is entitled to at least 20 minutes of rest. In addition to this, the employee is entitled to at least 25 minutes of continuous break after 9 hours of work. This can be increased to up to 60 minutes if the parties agree or this is stipulated in the collective bargaining agreement.

The employees must be allowed at least 11 hours of rest between the end of the daily work and the commencement of daily work on the next day. However, if the employee:

- is employed in a position where the working time is split up over the day;
- works for an employer that operates in continuous operation or applies a multiple shift operation; or
- is employed in seasonal work,

they are entitled to have at least eight hours of rest. Although a collective bargaining agreement or the agreement of the parties may depart from the above rule, a minimum of eight hours of rest must be provided to the employee.

Weekly days off

The employee is entitled to two days off weekly or 48 hours' uninterrupted rest period (weekly rest period). As a general rule, at least one weekly day off per month must fall on a Sunday.

Generally, normal work may not be scheduled on Sundays. However, there are statutory exceptions to the Sunday work prohibition, i.e., in the case of employees employed:

- at an employer normally operating on Sundays due to the nature of its business;
- in seasonal work;

- in multiple shifts;
- in continuous operation;
- in an on-call position; and
- in part-time only on Saturday and Sunday.

In addition to the above, working on Sundays may also be allowed if the work of the employee is related to services performed by the employer overseas, the employee works overseas, or the employer performs public services or services overseas.

Where the work schedule is determined on the basis of irregular work pattern, instead of permitting twi weekly rest days, the employer may permit 40 hours of uninterrupted weekly rest, which should include one full calendar day each week and at least one Sunday each month, in which case the employer must also ensure that the employee receives at least 48 hours of weekly rest calculated over the reference period.

Overtime (extraordinary work)

As mentioned in Section 4.1. – Wage supplements, extraordinary work is work beyond the normal scheduled working hours, or beyond the working hours that can be scheduled in a reference period; work performed on weekly days off and on public holidays; and work on stand-by at defined places for a specific period of time.

Even if the employer orders the employee to perform extraordinary work, the working time cannot exceed 12 hours per day and 48 hours a week. The employer may order up to 250 hours of extraordinary work unilaterally per annum (in case of a collective bargaining agreement it can be 300 hours), but the employer and the employee may agree in writing that an additional 150 hours of extraordinary working time can be ordered by the employer (voluntary extraordinary working time). If the collective bargaining agreement allows 300 hours of extraordinary working time, the maximum amount of voluntary extraordinary working time maybe 100 hours.

The law strictly defines when extraordinary work may be ordered. Employees may be required to do extraordinary work only under justified and unexpected extraordinary circumstances. Extraordinary work on public holidays can be ordered only if the employee can typically be required to work on such day, or in the interest of preventing or mitigating any imminent accident, natural disaster, serious damage, or danger to life, health, or physical integrity.

Extraordinary work cannot be ordered if it imposes any danger to the physical integrity or health of the employee, or if it causes any unreasonable hardship to the employee in respect of their personal, family, or other circumstances.

Extraordinary work cannot be required:

- from the time the employee's pregnancy is diagnosed until her child reaches three years of age;
- in the case of a single parent until the child reaches three years of age;
- for any employee who works under conditions that may be harmful to their health as defined by the relevant employment regulations.

Annual leave (vacation)

Annual leave consists of base vacation, additional vacation, and public holidays. An employee is entitled to 20 days' base vacation per year. Employees are entitled to extra vacation time from one to 10 days depending on the age of the employee (age 25 – one day, age 45 – 10 days) according to the Labor Code. Parents will receive supplementary leave depending on the number of children below the age of 16 (one child – two days, two children – four days, three children – seven days).

Fathers are entitled to 10 working days of leave (paternity leave), to be granted to them at the latest by the end of the second month following the birth of their child or, in the case of adoption, the finalization of the decision authorizing the adoption, in no more than two installments at the time requested by them. Fathers are also entitled to paternity leave if the child is stillborn or dies.

Mothers are entitled to 24 consecutive weeks of maternity leave, of which two weeks must be taken. In the absence of an agreement to the contrary, maternity leave shall be allocated to allow that not more than four weeks fall before the expected time of birth. The duration of maternity leave, except where entitlement is specifically connected to work, shall be recognized as time spent at work. Maternity leave is also provided to a parent who provides care for a child under a court decision or resolution of the guardian authority capable of enforcement on account of the mother's health condition or death.

Parents are also entitled to 44 workdays of leave until their child reaches the age of three. To be eligible for parental leave, the employee must have been employed for at least one year at the same employer.

Allocation of vacation days

The general rule is that vacation time must be allocated in the year in which they are due, except the paternity and parental leave. Vacation time shall be allocated by the employer upon hearing from the employee. With the exception of the first

three months of the employment relationship, employers shall allocate seven working days of vacation time in a given year in not more than two installments, at the time requested by the employee.

Unless otherwise agreed, vacation must be allocated to contain at least fourteen consecutive days once in a calendar year, where the employee is exempted from the requirement of availability and work duty. To this end, in addition to the vacation days allocated, the weekly rest day (weekly rest period), the public holiday, and any day off under an irregular work schedule must be taken into consideration. The employer is obliged to inform the employee concerning the scheduled vacation days 15 days in advance.

If the employee falls ill or if there is another personal and unavoidable reason for the employee, the vacation may be taken later, in which case the vacation must be taken within 60 days of the termination of the cause for the delayed vacation. If the employment started on or after October 1, the annual leave can be allocated until 31 March of the following year.

In the event of economic reasons of particular importance or any direct and consequential reason arising in connection with its operations, the employer:

- may postpone the granting of leave, except for paternity leave, for a maximum of 60 days;
- may recall the employee from vacation;
- may allocate one-fourth of the employee's vacation time by March 31 of the following year if so stipulated in the collective agreement.

Upon termination of the employment relationship, the employee shall be compensated for the untaken vacation which is due (with the exception of paternity and parental leave). With the exception of the aforementioned, vacation time shall not be financially compensated.

Sick leave

Employees shall be entitled to 15 working days of sick leave per calendar year for the duration of time during which the employee is incapacitated to work. In respect of employment relationships beginning during the year, employees shall be entitled to sick leave as commensurate for the remaining part of the year.

Employees will be paid 70% of the so-called absentee fee (to be calculated on the basis of the base salary and the performance-based compensation and wage supplements received in the last six months) for the duration of sick leave. For a period of sick leave exceeding 15 days, employees are entitled to receive support from the social security authorities. The maximum period of sick leave is one year under the current social insurance system. Employees are required to submit a doctor's certificate for the time of their illness.

5. Collective Labor Law

5.1. Trade unions

According to the Labor Code trade union shall mean:

- all organizations of employees whose primary function is the enhancement and protection of employees' interests related to their employment relationship; and
- local trade union branch represented by the employer which means a trade union that, according to its statutes, operates an organization authorized for representation or has an office at the employer (local trade unions).

The rights afforded by the Labor Code to trade unions are, with the exception of the local bargaining agreements, due only to the local trade unions. Representation at the employer is the key requirement for trade unions to be able to exercise their rights provided by labor law. If a trade union does not have a local branch and thus has no representation at a certain employer, then generally it cannot exercise its rights.

Formation of trade unions

The formation of trade unions is regulated in *Act CLXXV of 2011 on the Freedom of Association, on Public-Benefit Status, and on the Activities of and Support for Civil Society Organizations* and in the *Civil Code*.

Under the above regulations, trade unions are considered associations and the rules on establishing associations are also applicable to forming trade unions. An association, and thus a trade union, shall be considered established upon the adoption of its statutes, for which the unanimous declaration of intent of at least 10 persons is required.

As trade unions are also considered legal persons it is obligatory for them to be registered to the public register by the competent court. The application for registration must be submitted to the court electronically, which the court will examine within 15 days of its receipt. After the registration, the trade unions' details are available in a nationally standardized electronic public register, accessible free of charge to anyone.

Rights of the trade unions

- Trade unions have the right to provide information to employees relating to industrial relations or employment relationships.

- Employers – upon consulting the trade union – shall provide the means for the trade union to display information connected to its activities at the employer.

- Trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment.

- Trade unions are entitled to express their position and opinion to the employer concerning any employer actions (decisions), or the draft of such decisions, and to initiate talks in connection with such actions.

- Trade unions have the right to represent their members before the employers or their interest groups concerning the employees' rights and obligations relating to their financial, social, as well as living and working conditions.

- Trade unions are entitled to represent their members – under their authorization – before the court, the relevant authority, and other organs with a view to protecting their economic interests and social welfare.

- Trade unions have the right to use the employer's premises after or during working hours, as agreed with the employer, for the purposes of interest representation activities.

- Trade unions are entitled to conclude collective bargaining agreements in accordance with the regulations set out in the Labor Code.

Protection of union officials

Trade unions are entitled to designate officials to the employer from among the union officials employed at a fixed establishment (see below at works council) of the employer that is considered independent if the average statistical number of employees – on the first day of the calendar year – employed during the previous calendar year is at least 500. Based on the number of employees the number of designated officials can be up to five.

These union officials are protected in a way, that the prior consent of the higher-ranking trade union body (specified in the statute of the trade union) is required for terminating their employment relationship by notice or reassigning them. The same protection is applicable to one other union official designated by the supreme body of the local trade union branch (also specified in the statute) represented at the employer.

Trade union officials are entitled to the above protection for the duration of their term in office and for a period of six months thereafter, provided that the officials held the office for at least 12 months.

Collective bargaining agreements

A trade union is entitled to conclude a collective bargaining agreement if its membership of employees at the employer reaches 10%:

- of all employees employed by the employer;

- of the number of employees covered by the collective agreement concluded by the employers' interest group.

The effect of a collective bargaining agreement shall apply to any employer who:

- is a party to the collective agreement; or

- is a member of the employers' interest group that concluded the collective agreement.

The effect of the provisions of the collective bargaining agreement governing the means of communication of the parties is applicable to the undersigning parties of the collective agreement, but the effect of the provisions governing the employment relationships is applicable to all employees employed by the employer.

The collective bargaining agreement must be concluded in writing and enters into effect when published.

The scope of collective bargaining agreements may cover:

- the rights and obligations arising out of or in connection with employment relationships;

- the conduct of the parties relating to the conclusion, implementation, and termination of the collective agreement, and concerning the exercise of their rights and obligations.

In the absence of any provision to the contrary, in the collective bargaining agreement, derogations are allowed from the provisions of Part Two and Part Three of the Labor Code (Part Two covers the employment relationship, Part Three the industrial relations) either to the advantage or the disadvantage of the employees.

An employment contract may derogate from a collective bargaining agreement only for the benefit of the employee. If the content of the employment contract is affected by the collective bargaining agreement, the employer is obliged to amend the employment contract. The repeal of the benefits and advantages provided for in the collective bargaining agreement does not affect the benefits and discounts provided for in the employment contract.

5.2. Works councils

According to the Labor Code, the rights of the employees shall be represented by the shop steward or the works council (works council).

A shop steward or a works council must be elected if, during the half-year prior to the date when the election committee was established, the average number of employees at the employer or at the employer's independent establishment or division (fixed establishment), is higher than 15 or 50, respectively. A fixed establishment of the employer shall be considered independent if the head of the establishment is vested with competence in respect of the works council's rights of participation. The number of works council members is between three and 13 based on the number of employees.

The rules applicable to electing a works council are specifically detailed in the Labor Code. Works councils are elected for terms of five years. The justified expenses incurred in connection with the election and operation of the works council are borne by the employer.

Most important rights of works councils

- Works councils monitor compliance with the provisions of employment regulations.
- To the extent required for their responsibilities, works councils are entitled to request information and to initiate negotiations, with the reason indicated, which the employer may not refuse.
- The employer is obligated to notify the works council semi-annually regarding:

a) the issues affecting the employer's economic standing;

b) changes in wages, liquidity related to the payment of wages, the characteristic features of employment, utilization of working time, and the characteristics of working conditions;

c) the number of employees in employment and the description of the jobs they perform.

- The works councils inform the employees concerning their activities semi-annually.
- The employer and the works council collectively decide concerning the appropriation of welfare funds.
- Employers are required to consult the works councils prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees.
- In the case of transfer of employment upon the transfer of enterprise the transferring and the receiving employer are obligated to inform the works council, within fifteen days before the effective date of transfer, concerning:

a) the schedule or proposed date of transfer;

b) the reasons;

c) the legal, economic, and social consequences affecting the employees.

At the time referred to above, the transferring and the receiving employer must – with a view to the conclusion of an agreement – enter into negotiations with the works council concerning other proposed actions affecting employees.

Works agreements

The employer and the works council may conclude a works agreement for the implementation of the provisions of the Labor Code and for promoting their cooperation.

The works agreement may be concluded for a fixed term, extending up to the term of the works council's mandate. The works agreement may be canceled by way of a three-month notice. The works agreement shall be terminated when the works council ceases to exist.

If the employer is not covered by a collective bargaining agreement that has been concluded by it, or there is no trade union at the employer entitled to conclude a collective agreement, the works agreement concluded by the works council and the employer may regulate the rights or obligations arising from or in connection with the employment relationship, with the exception of matters relating to the remuneration of work. The collective agreement is subject to the above rules referred to at the collective bargaining agreements.

6. Transfer Of Undertakings

Pursuant to the provisions of the Hungarian Labor Code, as amended, which implements the *European Community's Acquired Rights Directive*, the employees shall be transferred to the acquiring employer in the event of a transfer of enterprise provided that all conditions set out in the Labor Code are met.

Therefore, it is not the right or entitlement of the employee to have transferred to the new employer but a legal consequence by the effect of the law.

If a work council is established at the employer, it is the transferor and the acquiring employer's joint responsibility to inform the work council established at the acquiring employer in writing not more than fifteen days before the date of transfer regarding the following information:

a) the date or proposed date of the transfer of enterprise;

b) the reason for the transfer;

c) the legal, economic, and social implications of the transfer

for the employees; and

d) any measures envisaged in relation to the employees.

With the same timing, the transferor and the acquiring employer shall initiate a consultation with the work council regarding the proposed measures affecting the workers. The consultation shall cover the principles of the measures, the way and means of avoiding the adverse consequences of the transfer, and the measures taken in order to mitigate the consequences of the transfer (I&C obligation).

If a work council is not established at the transferor employee, the I&C obligation shall be provided to the transferor employer's employees concerned by the transfer.

Upon the transfer of enterprise, the receiving employer shall inform the employees concerned regarding the transfer of employment, changes in working conditions, and the receiving employer shall also disclose the employer's identification data.

In case of non-compliance with the I&C obligation, the work council or the employee may initiate a civil proceeding before the court against the employer within five days. The court decides within 15 days and the parties may file an application of appeal within five days from the date of the court judgment. The court of appeal will decide within 15 days. The court can establish the violation, but cannot oblige the employer to consult.

As an objection, the employee may terminate its employment relationship in case of material and adverse changes in the working conditions due to the transfer of enterprise and the employee states that maintaining its employment relationship:

(i) would cause disproportionate damage; or

(ii) would be impossible with the current conditions.

The termination notice shall have reasoning which justifies that the above-mentioned conditions are met. The employee may exercise the right of termination within 30 days from the date of the transfer of enterprise.

If the employee decides to terminate the employment relationship on the basis of the transfer of enterprise, the employer shall exempt the employee from the obligation of performing work at least for half of the notice period.

The employee is entitled to an absence fee for the period of exemption. The employee will also be entitled to receive severance pay if the conditions set forth in the Labor Code, or in the employment agreement if the parties agreed otherwise, are met.

7. Labor Investigation

The *Act CXXXV of 2020 on the Labor Inspection Authority* (Labor Inspection Authority Act), as amended, establishes those minimum requirements of employment which might be considered as a blacklist of the most significant employment law violations in case of breaching them by the employer.

The most significant employment law violations are including but are not limited to:

(a) the breach of the prohibition on child labor;

(b) the breach of obligation of notification of the employment to the Hungarian Tax and Customs Authority;

(c) the breach of the law relative to the payment of consideration for the employee's performance of work;

(d) the breach of the law relative to performing temporary work agency activities;

(e) the breach of the law relative to the employment of third-country nationals.

With respect to the consequences, those employers **(i)** breaching the obligation of notification of the employment to the Hungarian Tax and Customs Authority, **(ii)** the principle of equal treatment, or **(iii)** having been subject to a final and non-appealable fine imposed by the Labor Inspection Authority two years prior to applying for state aid for breaching:

(a) the prohibition on child labor;

(b) the law relative to the payment of the consideration for the employee's performance of work;

(c) the law relative to the registration of a temporary work agency; or

(d) the law relative to the registration of being a qualified temporary work agency

are not compliant with the requirement of an appropriate employment relationship as defined in the *Act CXCV of 2011 on Public Finance* (Public Finance Act) pursuant to *Government Decree No. 115/2021. (III. 10.) on the activity of the Labor Inspection Authority* (Government Decree), as amended.

In addition to the exclusion from state aid, those employers having been subject to a final and non-appealable fine imposed by the Labor Inspection Authority not later than two years prior to the application for public procurement for breaching the laws of employing a third-country national shall be excluded from participating in a public procurement procedure.

The two significant authorities investigating the employment relationship established between the employer and the employee are the Labor Inspection Authority and the Occupational Safety and Health Authority.

The Labor Inspection Authority investigates whether the minimum requirements of the employment relationship are respected by the employer and it may apply sanctions set forth in the relevant laws in the event of non-compliance.

Failing to comply with the minimum requirements of the employment may result in a fine, which may range from HUF 30,000 (approximately USD 80) to HUF 10 million (approximately USD 26,000) depending on the circumstances of the case. There may be specific cases with other additional consequences of non-compliance.

The Occupational Safety and Health Authority investigates whether the conditions of occupational safety and health and the requirements relating thereto are met by the employer.

In general, an employer's failure to comply with the applicable legislative provisions of occupational safety and health may result in a fine, which may range from HUF 50,000 (approximately USD 133) to HUF 10 million (approximately USD 26,000) depending on the circumstances of the case.

Nora Ovary-Papp
Counsel
nora.ovarypapp@bakermckenzie.com
+36 1 302 3330

Gabor Hajduk
Junior Associate
gabor.hajduk@bakermckenzie.com
+36 1 302 3330

Gergo Halasz
Junior Associate
gergo.halasz@bakermckenzie.com
+36 1 302 3330

Dominik Csascsu
Junior Associate
dominik.csascsu@bakermckenzie.com
+36 1 302 3330

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

MOLDOVA

Inna Sotchi
Managing Partner
inna.sotchi@bsp.md
+373 22 855 559

Doina Alexeev
Junior Associate
d.alexeev@bsp.md
+373 22 855 559

CEE
LEGAL MATTERS

www.ceelegalmatters.com

1. Hiring

1.1. Contracting

According to Article 57 of the *Labor Code of the Republic of Moldova* the employee, at the signing of the individual employment contract, must present to the employer the following documents:

a) identity card or another identity document;

b) study diploma, qualification certificate confirming special training – for professions that require special knowledge or skills;

c) the medical certificate, in the cases provided by the legislation in force;

d) the declaration on personal responsibility regarding the fact that, during the activity at the previous workplaces, they did not violate the provisions regarding the evaluation of institutional integrity, except in cases when the person enters the field of work for the first time.

The same Article provides that it is forbidden for employers to request from the employees documents other than those mentioned above, as well as other legislative acts.

The employers have the right to request a reference of the employee from their previous workplace.

There are certain exceptions when the employer can request the presentation of the criminal record. These exceptions must be expressly provided by law, for example for civil servants.

According to Article 48 of the *Labor Code*, if the employee is going to carry out their activity abroad, the employer has the obligation to provide them, in a timely manner, in addition to the information provided in general conditions, the information regarding:

a) the duration of work abroad;

b) the currency in which the work will be remunerated, as well as the method of payment;

c) compensations and benefits in cash and/or in-kind related to going abroad;

d) specific insurance conditions;

e) accommodation conditions;

f) round-trip travel arrangements.

According to Article 46 Paragraph (5) of the *Labor Code of the Republic of Moldova*, any natural or legal person, regardless of the type of property and legal form of organization can be part of the individual employment contract as an employer. Paragraph (6) of the same Article states that the legal person can conclude individual employment contracts from the moment of acquiring legal personality.

If the employer is a natural person, he can hire employees without forming a legal entity. If the employer is a foreign company, then it must have a legal form of an organization registered on the territory of the Republic of Moldova.

The *Labor Code of the Republic of Moldova* does not make an express reference to the types of individual employment contracts. Though, we can make an enumeration of them, emerging from the various provisions of the *Labor Code*.

I. The first contract classification criterion is according to their duration:

a) individual employment contract of indefinite duration;

b) individual employment contract with a fixed duration that does not exceed five years, according to Article 54 Paragraph (2).

II. Another classification criterion is depending on the distribution of working time. From the provisions of Articles 98-99, there are the following types of contracts:

a) contracts with a working duration of five days per week – the distribution of working time within the week is, as a rule, uniform and constitutes eight hours per day, for five days, with two days of rest.

b) contracts with a working duration of six days per week – in units where, considering the specifics of the work, the introduction of a five-day work week is unreasonable, it is accepted, as an exception, to establish, through the collective labor contract and/or the internal regulation, of the six-day work week with a rest day.

III. According to the time criterion, the individual contracts can be:

a) individual full-time eight-hour work contracts

b) individual part-time employment contracts.

IV. According to the place where the activity is carried out, they can be:

a) individual employment contracts concluded for an activity carried out at the company headquarters or in other company premises.

b) individual employment contracts concluded for activities carried out at the employee's home, as mentioned by Article 290.

The parties are free to provide for any type of clauses to sign, provided they do not contravene legal guarantees.

Article 49 of the *Labor Code* provides the provisions that must be included in the individual employment contract. The content of the individual employment contract is determined by the agreement of the parties, considering the provisions of the legislation in force, and includes:

a) the name and surname of the employee;

b) identification data of the employer;

c) duration of the contract;

d) the date from which the contract will take effect;

e) specialty, profession, qualification, function;

f) the attributions of the function;

g) job-specific risks;

h) the name of the work to be performed (in the case of the individual employment contract for the period of performance of a certain work);

i) the rights and obligations of the employee;

j) the rights and obligations of the employer;

k) the conditions of remuneration for work, including the salary of the position or the fee, supplements, prizes, and material aids (if they are part of the wage system of the unit), the forms and method of payment of salary payments, as well as the periodicity of this payment;

l) compensations and allowances, including for work performed in difficult, harmful, and/or dangerous conditions;

m) the workplace. If the place of work is not fixed, it is mentioned that the employee can have different places of work and the legal address of the unit or, as the case may be, the domicile of the employer is indicated;

n) work and rest regime, including the length of the employee's day and work week;

o) trial period, as applicable;

p) the duration of the annual leave and the conditions for granting it;

q) social insurance conditions;

r) medical insurance conditions;

s) the specific clauses, as the case may be;

The individual employment contract may also contain other provisions that do not contravene the legislation in force.

It is forbidden to establish conditions for the employee, through the individual employment contract, below the level of those provided by the normative acts in force, the collective agreements, and the collective employment contract.

The *Labor Code* provides a series of acts and actions that have to be drawn up in written form. According to various legal provisions, a non-exhaustive list is: the proposal to initiate collective negotiations (Article 26); the collective agreement (Article 30); informing employee representatives about topics relevant to their activity (Article 42 Paragraph (1)); parental consent for the employment of minors under the age of 15 (Article 46); issuing a refusal to hire (Article 47); the form of the individual employment contract (Article 58); modification of the individual employment contract; consent of the employer to the secondment (Article 71); transfer of the employee to another job (Article 74); suspension of the individual contract (Article 77, 78); termination of the contract (Article 81); resignation request (Article 85); issuing the warning (Article 86); dismissal (Article 88 Paragraph (1)); the agreement for the processing of data about the private life of the employee (Article 91, 92); attraction to additional work (Article 104); recall from leave with written consent (Article 124); the introduction of new work norms (Article 169); giving explanations regarding the act committed when applying the sanctions (Article 208); evaluating the individual performance of the employee (Article 211 Paragraph (4)); evaluation results (Article 211 Paragraph(1)); concluding professional training and apprenticeship contracts (Article 214); modification of clauses in the individual employment contract (Article 286); conclusion of the material liability contract (Article 339), etc.

"Written form" is defined by the *Labor Code* as information (certificate, document, contract, and others) displayed in letters, numbers, graphic signs on paper or in electronic format; the holographic inscription on paper; the information transmitted by fax or by other means of communication, including by electronic means, which allow reading the information.

According to Article 56 of the *Labor Code*, the individual employment contract can be signed with a holographic signature, or with a qualified advanced electronic signature – if the parties to the individual employment contract have agreed to conclude it through the exchange of electronic documents. Thus, the conclusion of the contract by electronic means is also considered to be in writing.

The individual employment contract is considered to have been concluded even without compliance with the written form. In this case, it is considered to be concluded for an indefinite period and produces its effects from the day the employee was admitted to work.

The individual employment contract can be concluded in any language. The *Labor Code* does not expressly provide the obligation to conclude the contract in the state language.

The language in which the contract is drawn up must be accessible to the employee and the authorities that supervise compliance with labor legislation. The language in which the individual employment contract is drawn up must be one of the languages of circulation in the Republic of Moldova.

In Articles 60 – 63, the *Labor Code* provides dispositions regarding the probation period. In order to verify the professional skills of the employee, at the signing of the individual employment contract, they may be given a trial period of no more than six months. In the case of hiring unskilled work-

ers, the trial period is established as an exception and cannot exceed 30 calendar days.

The trial period does not include the period of the employee being on medical leave and other periods in which he was absent from work for valid reasons, documented. The clause regarding the trial period must be provided in the individual employment contract. In the absence of such a clause, it is considered that the employee was hired without a trial period.

During the trial period, the employee benefits from all the rights and fulfills the obligations provided by the labor legislation, the internal regulations of the unit, the collective, and the individual labor contract. Only one trial period can be established during the individual employment contract.

Employees employed under a fixed-term individual employment contract may be subject to a trial period that will not exceed:

a) 15 calendar days for a duration of the individual employment contract between three and six months;

b) 30 calendar days for a duration of the individual employment contract of more than six months.

It is forbidden to apply the trial period in the case of concluding an individual employment contract with:

c) persons under the age of 18;

d) persons employed through competition, pursuant to special laws if they do not provide otherwise;

e) persons who have been transferred from one unit to another;

f) pregnant women;

g) persons elected in elective positions;

h) persons employed on the basis of an individual employment contract with a duration of up to three months.

If during the trial period, the individual employment contract has not been terminated, the action of the contract continues, and its subsequent termination will take place on a general basis.

If the result of the trial period is unsatisfactory, this is stated in the order (decision) regarding the dismissal of the employee, which is issued by the employer until the trial period expires, without payment of the severance pay. The employer does not have the obligation to justify the decision regarding the unsatisfactory result of the trial period. The employee has the right to challenge the dismissal in court.

The *Labor Code* provides in Chapter IV, special provisions regarding the work of unit leaders and members of collegial bodies.

According to Article 258, the leader of the unit is the natural person who, in accordance with the legislation in force or the establishment documents of the unit, exercises the powers of administration of the respective unit, at the same time fulfilling the functions of the executive body.

For the executive employee are specific the following rules:

The individual employment contract with the head of the unit is concluded for the duration indicated in the establishment documents of the unit or for a term established in the contract by the agreement of the parties.

The legislation in force or the establishment documents of the unit may provide for special procedures that will precede the conclusion of the individual employment contract with the head of the unit (organization of the contest, election, or appointment).

Apart from the general cases of termination of the individual employment contract on the grounds provided by the *Labor Code* and other normative acts, the individual employment contract concluded with the head of the unit may be terminated in case of:

a) dismissal from service of the head of the debtor unit in accordance with the legislation on insolvency;

b) issuance by the authorized body or the owner of the unit of the order (decision) legally founded to terminate the individual employment contract before the deadline.

In case of termination of the individual employment contract concluded with the head of the unit, in the absence of culpable actions or inactions, the head is notified in writing one month in advance and is paid compensation for the termination of the individual employment contract before the deadline, in the amount of at least three average monthly salaries. The concrete amount of the compensation is established in the individual employment contract.

The head of the unit has the right to resign before the expiration of the term of the individual employment contract in the cases stipulated by the contract, informing his employer in writing one month before.

1.2. Employees versus independent contractors

Specific to the individual employment contract is the fact that between the parties there is a relationship of subordination of the employee to the employer. In the case of civil contracts for the provision of services, the parties are in a position of legal equality. The contractor is independent and autonomous from the client and organizes and directs the process of carrying out the work independently.

The object of the individual employment contract relates to the performance of work for and under the authority of an employer, natural or legal person in exchange for a remuneration called salary. The object of the contract of the undertaking and providing services consists of the production or transformation of a good. The salary is paid according to the quantity and quality of the work, while in the case of civil contracts for the provision of work, the result of the work of the contractor or provider, delivered to the client, is paid.

The amount of income that can be obtained based on civil agreements is not limited. In the case of the individual employment contract, every time employees are remunerated, the guaranteed minimum wage is considered, which represents the mandatory minimum value of the labor remuneration.

Employment contracts are characterized by duration, the general rule in the matter being that their validity is not determined. The duration of civil contracts is limited, as a rule, to the time required for the execution of a work.

The employer is responsible for the damage caused by the employee to other people in the performance of professional obligations. During the validity of the individual employment contract, the employee may be held liable for disciplinary, patrimonial, administrative, or criminal liability.

Unlike the employee, the contractor performs the work at his own risk. The contractor runs the risk of not being remunerated, if the object of the contract, by the time it is handed over to the client, has accidentally perished or if the completion of the work becomes impossible through no fault of the parties. In the contract of employment, the results of the employee's work become the property of the employer, while in the contract of employment, the result of the contractor's work belongs to him until it is handed over to the client.

For the individual employment contract, the legislation in force stipulates the need to conclude it in written form. At the same time, the written form of the individual employment contract does not represent an *ad validatum* condition for this type of contract, but only an *ad probatione* one. The general rules regarding the form of the legal act apply to the form of the contract of employment and the contract for the provision of services.

From the fee paid to the independent contractor are charged taxes and social and medical contributions similar to those paid by the employee.

Attempts to hide an individual employment contract through the signing of a civil employment contract are often encountered in practice. In this sense, it is important for the contracting parties to be aware that the criteria for qualifying a contract as civil or labor are not limited to the name of the contract but result from the specific clauses inserted in the respective contract. According to the *Labor Code*, Article 2, if the court establishes that, through a civil contract, are in fact regulated the labor relations between the employee and the employer, the provisions of the labor legislation are applied to these relations.

Due to the fact that the same contributions are collected from the remuneration, the employee will be paid the related payments such as severance payments and other allowances provided by the labor legislation.

1.3. Foreign employees

According to Article 46 of the *Labor Code*, citizens of the Republic of Moldova, foreign citizens, and stateless persons can be part of the individual employment contract, except for the cases provided by the legislation in force. When employing foreign citizens in the Republic of Moldova, the provisions of the legislation in the field of labor migration, as well as the relevant provisions of the international treaties to which the Republic of Moldova is a party, will also be considered.

There are no differences in the employment of foreign nationals of the EEA countries and those of the non-EEA countries.

The right of residence for work purposes is granted to the following categories of employees: immigrant worker; foreigner engaged in investment projects of national importance; foreigner employed in external assistance projects; highly skilled worker; posted worker; foreigner who carries out activities in the field of teaching, culture, health or sport; the person with IT management functions; IT specialist; foreign employee of residents of free economic zones; foreigners whose specialties are included in the list of priority occupations; the person with management positions.

1.4. Home office

According to Article 292 Paragraph (1) of the *Labor Code*, remote work represents the form of work organization in the fields of activity, through which the employee fulfills the duties specific to the occupation, function, or job they hold in a place other than the one organized by the employer, including using means from the field of information and communication technology. Employees with remote work are employees who have concluded an individual employment contract or an additional agreement to the existing contract, which contain remote work clauses.

The employee with remote work enjoys all the rights and guarantees provided by the law, the collective labor contract, the

individual labor contract, or other regulatory acts at the unit level applicable to employees whose workplace is organized by the employer. The particularities regarding remote work can be stipulated in the individual labor contract, in the collective labor contract or the internal regulations of the unit, or in another normative act at the unit level.

The individual employment contract regarding remote work must contain, in addition to the general clauses mentioned above, clauses regarding:

a) the conditions for providing remote work;

b) the program within which the employer is entitled to check the employee's activity and the method of carrying out the control;

c) the method of recording the hours of work provided by the remote worker;

d) the conditions regarding the bearing of expenses related to the remote work activity;

e) other conditions agreed upon by the parties.

The employer organizes the safety and health at work of employees with remote work in accordance with the normative provisions in the field of safety and health at work.

The termination of the individual employment contract regarding remote work takes place under the general conditions provided by the *Labor Code*, including by exchanging electronic documents with the use of advanced qualified electronic signature.

2. Contract Modification

The individual employment contract can be modified by an additional agreement signed by the parties, including the use of advanced qualified electronic signature. The additional agreement is an integral part of the individual employment contract.

Modification of the individual employment contract is considered any modification or addition that concerns at least one of the general clauses provided by the *Labor Code*.

Thus, the modification of the contract must be negotiated and signed by the parties, the implicit acceptance is not recognized as valid.

If the employee confirms the modifications made to the individual employment contract by email, then it is considered that these modifications are valid.

Article 286 of the *Labor Code* provides that the employer (natural person) warns the employee about the modification of the clauses of the individual employment contract, in writing, at least 14 calendar days before. Article 68 stipulates that the individual contract may be modified by an additional agreement signed by the parties.

The employer cannot make unilateral changes without the employee's consent.

According to the *Labor Code* provision, there are some minor changes that do not require a contract modification. Article 69 provides that the employee's workplace can be changed temporarily by the employer, without making changes in the individual employment contract, in case of moving or secondment.

According to Article 34, any amendment or addition to the collective labor contract must be brought to the attention of the employees of the unit by the employer within five working days from the date of operation, through:

a) announcement sent by e-mail or by other means of communication, which can be accessed by every employee; and/or

b) public announcement placed on the unit's web page, as appropriate; and/or

c) public announcement placed on an information board with general access to the unit's headquarters, including each of its branches or representative offices.

Also, Article 199 provides that any modification or completion of the internal regulations of the unit is carried out with the consultation of the employees' representatives and is approved by the order (decision) of the employer. The modifications cannot include provisions that contravene the legislation in force, the clauses of the collective agreements, and the collective labor contract. Through the changes made to the internal regulations of the unit, limitations on the individual or collective rights of the employees cannot be established. The changes are brought to the attention of the employees within 10 days from the date of approval.

3. Termination

3.1. Termination types

There are several grounds for the termination of the individual employment contract provided by Article 81 of the *Labor Code*.

I. Circumstances that do not depend on the will of the parties, such as the death of the employee or the employer, withdrawal, by the competent authorities, of the unit's activity authorization (license), etc.

II. Termination of the contract by written agreement of the parties: The individual employment contract can be terminated at any time by the written agreement of the parties.

III. Termination of the contract at the initiative of the employee: The employee has the right to resign, on his own initiative, by notifying the employer, by written request, 14 calendar days before.

IV. Termination of the contract at the initiative of the employer, for reasons such as the unsatisfactory result of the trial period, liquidation of the unit or termination of the activity of the employer, a natural person, reducing the number of staffing levels in the unit, repeated violation, over the course of a year, of work obligations, if the employee was previously subject to disciplinary sanctions, etc.

The termination by the employee: the employee has the right to resign – notifying the employer about this, by written request, 14 calendar days before the resignation. The head of the unit, their deputies, and the chief accountant have the right to resign, notifying the employer about this, by written request, one month before the resignation. The mentioned term begins on the day immediately following the day on which the request was registered.

In the event of the resignation of the employee in connection with retirement, the establishment of the degree of disability, leave for child care, enrollment in an educational institution, moving to another site, child care up to the age of 14 or of a child with disabilities, the election to an elective position, employment through competition at another unit, the employer's violation of the individual and/or collective labor contract, of the labor legislation in force, the employer is obliged to accept the resignation in the reduced term indicated in the submitted and registered application, to which the respective document confirming this right is attached.

After the expiration of the terms, the employee has the right to stop working, and the employer is obliged to make full payment of the salary rights due to the employee and to release the documents related to his activity in the unit. During seveb calendar days from the date of submission of the resignation request, the employee has the right to withdraw his request or submit a new request, by which to cancel the first.

Termination of the contract by the employer: The grounds for the termination were mentioned above.

It is not allowed to fire the employee while they are on medical leave, annual leave, study leave, maternity leave, paternity leave, partially paid leave for the care of a child up to the age of three, on additional leave unpaid for the care of a child aged three to four years, on leave for the care of a sick family member, on leave for the care of a disabled child, during the fulfillment of state or public obligations, as well as during the secondment, except in cases of liquidation of the unit.

When dismissing employees who are union members, the employer requests in advance the advisory opinion of the trade union body in the unit, by notifying the respective body. The trade union bodies present their opinion within 10 working days from the date of receipt of the notification.

According to Article 82 Paragraph (1), the individual employment contract can be terminated at any time by the written agreement of the parties. The individual employment contract is terminated based on the order (decision) of the employer, which is brought to the attention of the employee, under signature or by another method that allows confirmation of receipt/notification, at the latest on the date of release from service, unless the employee does not work until the day of release from work (an unexcused absence from work, deprivation of liberty, etc.). The order (decision) of the employer regarding the termination of the individual employment contract must contain a reference to the corresponding article, paragraph, point, and letter of the law.

Article 53 Paragraph (1) of the *Labor Code* regulates the provisions related to the non-competition clause of the parties. By the non-competition clause, the employee is obliged, after the termination of the individual employment contract, not to perform, in their own interest or that of a third party, an activity that competes with that performed at their employer, during the period negotiated by parties, but not more than one year. During this period, the employer pays the employee a monthly allowance, the size of which will be negotiated by the employee and the employer, but which will not be less than 50% of the employee's average monthly salary. A non-competition clause that completely prohibits the employee from exercising their profession (according to his educational diplomas) will be considered null and void. The non-competition clause must expressly provide for the geographical area of the administrative-territorial units to which it applies, the activities for which it is valid, the period for which it produces its effects, the amount of the monthly non-competition allowance, the terms and method of its payment.

For the violation of the non-competition clause, the employee must return the allowance received and recover the damage caused to the employer.

If the parties have not provided otherwise through the non-competition clause, on the condition of notification and payment of three monthly allowances, the employer can unilaterally terminate the non-competition clause. The termination notice will be effective only for the future. If the parties have not provided otherwise through the non-competition clause, with the condition of written notification, the employee may terminate the non-competition clause if the employer delays, at least by one month, the payment of the allowance.

3.2. Collective dismissal

Article 88 of the *Labor Code* describes the dismissal procedure in the case of liquidation of the unit and reduction of the number or staffing levels.

The employer has the right to dismiss the employees from the unit in connection with its liquidation or in connection with the reduction of the number of staff numbers only on the condition that the employer will issue an order (decision), motivated by a legal or economic point of view. Also, the employer must issue an order regarding the prior notification, under signature or by other means that allows confirmation of the reception/notification of each employee concerned, two months before the liquidation or the reduction of the number of personnel. The employer will propose in writing another job (position) within the respective unit.

The employer will reduce, first of all, the vacant jobs; will grant the employee who is to be fired one working day per week with the maintenance of the average salary to search for another job; will present, in the established manner, two months before the dismissal, to the employment agency the information on the persons to be dismissed; will address the trade union body (organizer) in order to obtain the advisory opinion regarding the dismissal of the respective employee; if after the expiration of the two-month notice period, the order (decision) was not issued to dismiss the employee, this procedure cannot be repeated within the same calendar year. The notice period does not include the period of the employee's annual vacation, study leave, and medical leave. The reduced job cannot be restored in the states of the unit during the calendar year in which the employee who occupied it was fired. In case of liquidation of the unit, the employer is obliged to comply with the dismissal procedure.

3.3. Unlawful termination

According to Article 329 of the *Labor Code*, the employer is obliged to fully repair the material and moral damage caused to the employee in connection with their performance of work obligations, in the case of discrimination of the employee at the workplace or as a result of the illegal deprivation of the opportunity to work. The moral damage is remedied in monetary form or another material form determined by the parties. Disputes and conflicts arising in connection with the reparation of moral damage are settled by the court, regardless of the size of the material damage to be repaired.

The employer who, following the improper fulfillment of their obligations provided for by the individual employment contract, caused material damage to the employee shall repair this damage in full. The size of the material damage is calculated according to the market prices existing in the respective locality on the date of repair of the damage, according to statistical data.

The employer is obliged to compensate the person for the salary that they did not receive, in all cases of illegal deprivation of the opportunity to work.

In case of withholding, due to the fault of the employer, of the salary, holiday allowance, payments in case of release, or other payments due to the employee, they are additionally paid, for each day of delay, 0.3% of the amount not paid on time.

How are damages granted by the court or agreed upon by the parties (lost income, immaterial damages) taxed?

According to Article 332 of the *Labor Code*, the employee's written request for reparation of material and moral damage is presented to the employer. The employer is obliged to register the respective request, examine it and issue the corresponding order (decision) within 10 calendar days from the day of its registration, bringing it to the attention of the employee under signature or by another means that allows confirmation of receipt/ the notice.

If the employee does not agree with the order (decision) of the employer or if the order (decision) was not issued within the established term, the employee has the right to apply to the court for the settlement of the individual labor dispute that arose.

Can dismissals be revoked?

According to Article 211 of the *Labor Code*, the employer who applied the disciplinary sanction has the right to revoke it within one year on his own initiative, at the request of the employee, at the request of the employee's representatives, or the employee's immediate boss. If the dismissal was applied as a disciplinary sanction, then the employer can revoke it.

Who are the protected employee categories and under which circumstances is termination restricted and how?

According to Article 251 of the *Labor Code*, it is forbidden to terminate individual employment contract concluded with pregnant women, women who have children under the age of four and people who use leave for child care, except for the cases expressly provided and which are: liquidation of the unit or termination of the activity of the natural person employer; repeated violation, during a year, of work obligations, if the employee was previously subject to disciplinary sanctions; absence without valid reasons from work for four consecutive hours during the working day; showing up to work in a state of alcoholic intoxication, in a state caused by narcotic or toxic substances; the commission of a misdemeanor or crime against the unit's patrimony, established by the court decision or by the act of the body responsible for the application of the administrative sanctions; the committing of culpable actions by the employee who directly manages money or material assets or who has access to the information systems of the employer or to those administered by the employer, if these actions can serve as a basis for the loss of the employer's trust

in the respective employee.

Additionally, Article 86 Paragraph 2 provides that it is not allowed to fire the employee during their stay on medical leave, annual rest leave, study leave, maternity leave, paternity leave, partially paid leave for child care until age three, on additional unpaid leave to care for a child aged three to four, on leave to care for a sick family member, on leave to care for a disabled child, during the fulfillment of state or social obligations, as well as during the secondment, except in cases of liquidation of the unit.

According to Article 206 of the *Labor Code*, for violating work discipline, the employer has the right to apply the following disciplinary sanctions to the employee:

a) warnings;

b) reprimands;

c) harsh rebukes;

d) dismissal.

Only one sanction can be applied for the same disciplinary offense. When applying the disciplinary sanction, the employer must consider the seriousness of the committed disciplinary offense and other objective circumstances. Thus, employers cannot discipline an employee with a warning and a termination for the same conduct.

4. Wage And Hour

4.1. Wage

Article 131 of the *Labor Code* stipulates that the minimum wage represents the minimum amount of remuneration assessed in national currency, an amount established by the state for simple, unskilled work, below which the employer is not entitled to pay for the monthly or hourly work rate performed by the employee.

The minimum salary does not include additions, increments, incentives, and compensation payments. The amount of minimum salary is mandatory for all employers, legal or natural persons, regardless of the type of property and the legal form of organization. This amount cannot be reduced either by the collective labor contract or by the individual labor contract. The amount of minimum wage is guaranteed to employees only on the condition that they fulfill their work obligations (norms) during the hours established by the legislation in force.

The minimum wage per month and the minimum wage per hour, calculated starting from the monthly norm of working time, are established by the decision of the Government, after consultation with the employers and unions.

The amount of the minimum wage is determined and re-examined depending on the concrete economic conditions, the level of the average wage in the national economy, the forecast level of the inflation rate, as well as other socio-economic factors.

The salary is paid in national currency. In case the employee carries out the activity abroad, the salary can be paid in the currency provided in the individual employment contract.

In the individual employment contract, the parties can agree on the amount of salary in foreign currency, with payment in national currency at an exchange rate of the Moldovan leu agreed by the parties which cannot be lower than the official exchange rate of the Moldovan leu established by the National Bank of Moldova, valid on the date of payment.

Salary payment can be made both in cash and by transfer to the employee's account, opened at the payment service provider, with payment of the respective services from the employer's account.

Payment of wages in kind is prohibited.

According to Article 131 of the *Labor Code*, the salary includes the basic salary, additional salary (additions and increases to the basic salary), and other incentive and compensation payments.

Remuneration for the employee's work depends on the demand and supply of labor on the labor market, the quantity, quality, and complexity of the work, the working conditions, the professional qualities of the employee, the effort and responsibilities of the employee, the nature and results of their work and/or the results of the activity economic of the unit.

Work is remunerated per unit of time or in agreement both in the tariff system and in non-tariff wage systems.

The choice of the payroll system within the unit is made by the employer after consulting the employee representatives.

The employer, regardless of which salary system applies, must use within the unit a system of evaluation and classification of functions to establish salary levels.

4.2. Working time

Working time represents the time that the employee, in accordance with the unit's internal regulations, with the individual and collective labor contract, uses to fulfill work obligations. The normal duration of the employees' working time in the units cannot exceed 40 hours per week. In exceptional situations related to the declaration of a state of emergency, siege, and war or the declaration of the state of emergency in public health, the competent authorities for managing the respective state may provide for a different duration of working time for some

categories of employees.

The normal daily duration of working time is eight hours. For employees under the age of 16, the daily duration of working time cannot exceed five hours. For employees aged 16 to 18 and employees who work in harmful working conditions, the daily duration of working time cannot exceed seven hours. For people with disabilities, the daily duration of working time is established according to the medical certificate, within the limits of the normal daily duration of working time.

The maximum daily duration of working time cannot exceed 10 hours within the limits of the normal duration of working time of 40 hours per week. For certain types of activity, units, or professions, a daily working time of 12 hours, followed by a rest period of at least 24 hours, can be established by collective agreement.

For works where the special character of the work requires it, the working day can be segmented, in the manner provided by law, provided that the total duration of the working time is not greater than the normal daily duration of the working time.

Within the daily work schedule, the employee must be given a lunch break of at least 30 minutes.

Additional work is considered to be work performed outside the normal duration of working time. At the employer's request, employees can work outside of schedule for up to 240 hours in a calendar year. The maximum duration of employees' working time cannot exceed 48 hours per week, including overtime hours. As an exception, the duration of working time, which also includes additional work hours, can be extended beyond 48 hours per week, provided that the average working hours, calculated over a reference period of four calendar months, do not exceed 48 hours per week. In the event that additional work is requested, the employer is obliged to provide the employees with normal working conditions, including those regarding safety and health at work.

The recruitment to additional work is carried out based on the motivated order (decision) of the employer, which is brought to the attention of the respective employees under the signature or by another method that allows confirmation of the reception/notification of the employees in due time.

It is accepted that in the collective labor contract or in the individual labor contract the possibility of compensating the additional work hours with paid free hours is provided, with the written agreement of the parties. In this case, the free hours will be granted within 30 days of performing the additional work.

In units, the global record of working time can be entered, provided that the duration of working time does not exceed the number of working hours established by the *Labor Code*. In these cases, the record period must not be longer than one year, and the daily duration of working time (of the shift) cannot exceed 12 hours.

The manner of application of the global record of working time is established by the internal regulations of the unit and by the collective labor contract, considering the restrictions provided for some professions by collective agreements at the national and branch level, by the legislation in force and international documents to which the Republic of Moldova is a party.

The employer is obliged to keep, in the established manner, the record of the working time provided by each employee, including overtime work, work performed on rest days, and non-working public holidays.

The right to paid annual leave is guaranteed for all employees. The right to annual leave cannot be subject to any assignment, waiver, or limitation. Any agreement by which this right is waived, in whole or in part, is null and void.

Any employee who works on the basis of an individual employment contract benefits from the right to annual leave. All employees are granted annual paid vacation, with a minimum duration of 28 calendar days, excluding non-working holidays.

For employees from some branches of the national economy (education, health care, public service, etc.), by an organic law, different duration of annual leave (calculated in calendar days) can be established. All employees are granted annual paid vacation, with a minimum duration of 28 calendar days, excluding non-working holidays. For employees from some branches of the national economy (education, health care, public service, etc.), by an organic law, different duration of annual leave can be established (calculated in calendar days.

In case of suspension or termination of the individual employment contract, the employee has the right to the compensation of all unused annual leave Based on a written request, the employee can use the annual leave for one year of work, with the subsequent suspension or termination of the individual contract of work, receiving compensation for the other unused holidays.

Paid medical leave is granted to all employees and apprentices based on the medical certificate issued according to the legislation in force. The method of establishing, calculating, and paying allowances from the state social insurance budget in relation to medical leave is provided by the legislation in force.

According to Article 5 of the *Law on allowances for temporary in-*

capacity for work and other social insurance benefits no. 289 of July 22, 2004, insured persons from the public social insurance system are entitled to the following benefits:

a) allowance for temporary incapacity for work caused by common illnesses or accidents not related to work;

b) allowance for disease prevention (quarantine);

c) benefit for the recovery of working capacity;

d) maternity allowance;

e) allowance for raising the child up to the age of 3;

f) allowance for the care of a sick child;

g) death benefit.

The benefits mentioned in this article are paid by the National Social Insurance House directly to the beneficiaries.

According to Article 4 of *Law no. 289/2004*, starting with the year 2013, the payment of compensation for temporary incapacity for work caused by common illnesses or accidents not related to work is carried out in the following way:

- the first five calendar days of temporary work incapacity are paid from the means of the employer, of the self-employed practicing activity in the justice sector, but no more than 15 cumulative days during a calendar year in the case of several periods of temporary work incapacity. In the case of the unemployed, the allowance for temporary incapacity for work is paid from the means of the state social insurance budget from the first day;

- starting with the sixth calendar day of temporary incapacity for work, and in the case of several periods of temporary incapacity for work – starting with the first day after the expiry of the 15 cumulative days paid from the means of the employer, of the freelancer practicing activity in the justice sector, the allowance is paid from the means of the state social insurance budget.

5. Collective Labor Law

5.1. Trade unions

The *Trade unions law no. 1129/2000* determines the rights of trade unions, the guarantees of their activity, established by law, extend to trade union organizations and their elective bodies of all levels, provided by the statutes of the trade unions, registered in the established manner.

Citizens of the Republic of Moldova, as well as foreign citizens and stateless persons who are legally present on its territory, have the right, at their own choice, to establish and join trade unions, in accordance with their statutes, without the prior authorization of public authorities.

The primary trade union organization is established by the initiative of at least three persons, considered founders. The founding decision of the primary trade union organization is adopted by the constituent assembly.

The trade union is founded voluntarily, based on common interests (profession, branch, etc.), and is active, as a rule, in enterprises, institutions, and organizations, hereinafter referred to as units, regardless of the legal form of organization and the type of property, departmental or branch affiliation. The employer (administration) is not entitled to prevent the association of natural persons in the union.

Trade unions can associate in branch or inter-branch territorial trade union centers (at the level of district, an autonomous territorial unit, municipality, or city), as well as in national-branch and national-inter-branch trade union centers in the form of federations, and confederations.

National-branch and national-interbranch trade union centers can join international federations and confederations.

The manner of the constitution of the trade union, its organizational structure, and its functioning is regulated by the statute of the trade union.

The union represents and defends the collective and individual professional, economic, labor, and social rights and interests of its members in public authorities at all levels, in courts, in public associations, and in front of employers and their associations.

Trade unions have the right to participate in the administration of public affairs, in the formation of the social and economic policy of the state, the policy in the field of labor. Trade unions can promote their representatives in public authorities at all levels. Trade unions have the right to participate in the drafting of programs regarding social-economic development, draft laws, and other normative acts in the field of labor remuneration, social insurance, price formation, health protection, equal opportunities and treatment between men and women, and in other fields related to work and social-economic development. In public authorities, the trade union realizes this right through its bodies at the respective level. Unions have the right to collective negotiations with employers and their associations, with public administration authorities and to conclude collective labor contracts.

According to Article 49 of the *Labor Code*, it is forbidden to establish for the employee, through the individual employment contract, conditions below those provided by the normative acts in force, the collective agreements, and the collective employment contract.

5.2. Works councils

According to labor legislation, the only form of organization for the representation of employees is the trade unions. A form of organization such as the work councils is not provided by the Labor Code.

One of the important rights of employees who are union members is the fact that upon dismissal, the employer requests in advance the advisory opinion of the trade union body in the unit, by notifying the respective body. Other important trade union rights have been set out in Section 5.1.

6. Transfer Of Undertakings

The transfer of the employee to another permanent job within the same unit, with the modification of the individual employment contract, as well as employment by transfer to a permanent job at another unit or transfer to another site together with the unit, are only allowed with the written agreement of the parties.

With the written agreement of the parties, based on the order issued by the employer, the employee can be temporarily transferred to another job within the same unit, for a period of up to one month, with the possibility of extending this term up to one year. The employer will keep the position of the employee held until the transfer.

In case of transfer, the parties will make the necessary changes in the individual employment contract, based on the order (decision) issued by the employer that is brought to the attention of the employee, under signature or by another method that allows confirmation of receipt/notification, in term of three working days.

According to Article 48 of the *Labor Code*, prior to the transfer to a new position, the employer has the obligation to inform the person to be transferred about the conditions of activity in the proposed position, providing them with the necessary information and the information regarding the notice periods to be respected by the employer and the employee in case of termination of the activity. The information in question will be the subject of a draft individual employment contract or an official letter, signed by the employer with an electronic signature or with a holographic signature. The obligation to inform the person selected for employment or the employee, in case of transfer, is considered fulfilled by the employer at the time of signing the contract or the additional agreement to the individual employment contract.

Upon employment, the employee will additionally be provided with the collective agreements applicable to them, the collective labor contract, the unit's internal regulations, as well as the information on occupational health and safety requirements related to his activity.

According to Article 42 Paragraph (1) of the *Labor Code*, in order to ensure the employees' right to the administration of the unit, the employer is obliged to inform and consult them regarding the relevant subjects in relation to their activity within the unit.

The obligation to inform refers to:

a) the recent evolution and probable evolution of the activities and economic situation of the unit;

b) the situation, structure, and likely evolution of employment within the unit, as well as any anticipatory measures expected, especially when there is a threat to jobs;

c) decisions that may generate important changes in the organization of work or contractual relations, including those related to collective layoffs or the change of the owner of the unit;

The employer's refusal to provide information or undertake consultations on the mentioned subjects can be challenged in court.

According to Article 89 of the Labor Code, the employee transferred illegitimately to another job can be restored to the workplace through direct negotiations with the employer, and in case of litigation – through a court decision.

In case of reinstatement of the illegitimately transferred employee, the employer is obliged to repair the damage caused to him. The reparation by the employer for the damage caused to the employee consists of:

a) mandatory payment of compensation for the entire period of forced absence from work in an amount that will not exceed 12 average monthly salaries of the employee in case of illegitimate transfer;

b) compensation of additional expenses related to contesting the transfer (consultation of specialists, court expenses, etc.);

c) compensation for the moral damage caused to the employee.

The transfer of the employee to another permanent job within the same unit, with the modification of the individual employment contract, as well as employment by transfer to a permanent job at another unit or transfer to another site together with the unit, are allowed only with the written agreement of the parties.

According to Article 74 of the *Labor Code*, the employee who, according to the medical document (certificate/certificate/document, etc.), issued by the competent medical authority (institution), requires the granting of lighter work is to be transferred, with their written consent, to another work, which

is not contraindicated. If the employee refuses this transfer, the individual employment contract is terminated.

7. Labor Investigation

For violations of labor legislation, the employer may be held criminally, administratively, or materially liable.

For example, Article 183 of the *Criminal Code* sanctions the act of violation by a person with a position of responsibility or by a person who manages a commercial, public, or other non-state organization of security techniques, industrial hygiene, or other rules for the protection of work, if this violation caused accidents with people or other serious consequences.

The *Administrative Offences Code* punishes the following acts:

- Violation of equality in the field of work;
- Violation of labor legislation;
- Use of undeclared work;
- Payment of salary or other payments without their reflection in the accounting records;
- Violation by the employer of the legislation regarding safety and health at work;
- Violation of the rules for carrying out unqualified activities of an occasional nature carried out by day laborers;
- Violation of the legislation regarding employment and social protection of people looking for a job;
- Violation of the legislation regarding employment of persons with disabilities, etc.

Chapter II of Title XI of the *Labor Code* regulates the method of reparation by the employer for the damage caused to the employee. Thus, according to Article 331, the employer who, following the improper fulfillment of their obligations stipulated by the individual employment contract, has caused material damage to the employee shall repair this damage in full. The size of the material damage is calculated according to the market prices existing in the respective locality on the date of repair of the damage, according to statistical data.

Different categories of fines can be established for violating the labor law, depending on the severity of the violation.

According to Article 409 of the *Administrative Offences Code*, the State Labor Inspectorate is the competent authority in the labor field.

For example, for violating the labor legislation, a fine of MDL 1,500 to MDL 3,000 can be applied to a natural person, with a fine of MDL 3,500 to MDL 6,000 applied to a person with a responsible position, with a fine of MDL 7,500 to MDL 12,000 applied to a legal person.

The act of violating the labor protection rules provided by the *Criminal Code* can be punished with a fine ranging from MDL 27,500 to MDL 42,500.

Sanctions are expressly provided by the *Administrative Offences Code* or the *Criminal Code* and cannot be waived. The competent authority to apply the fine applies the sanctions only within the limits provided by law.

Inna Sotchi
Managing Partner
inna.sotchi@bsp.md
+373 22 855 559

Doina Alexeev
Junior Associate
d.alexeev@bsp.md
+373 22 855 559

BIVOL SOȚCHI & PARTNERS
LAW FIRM

Wolf Theiss

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

POLAND

Agnieszka Nowaka-Błaszczak
Counsel
agnieszka.nowak-blaszczak@wolftheiss.com
+48 22 378 89 00

Oliwia Pecht
Associate
oliwia.pecht@wolftheiss.com
+48 22 378 89 00

CEE
Legal Matters

www.ceelegalmatters.com

1. Hiring

1.1. Background checks

Background checks are permitted to a very limited extent. According to the *Labor Code*, employers are entitled to demand very limited data from a job applicant, such as name and surname, date of birth, contact details indicated by the applicant, education, professional qualifications, and history of previous employment. However, information about the education, qualifications, and employment history may only be requested if it is necessary to perform a specific type of work or in a specific position.

Data on education, qualifications, and previous employment are confirmed by documents submitted by the applicant.

Certain background checks are permissible with the job applicant's consent. Without such consent, the employer may neither contact former employers listed on the résumé nor verify references provided to ascertain the applicant's performance and character.

Nevertheless, even with the applicant's consent, the employer may not search for past criminal activity of the applicant and demand a clean record certificate from the *National Criminal Register* unless there is an explicit legal basis allowing the employer to demand such data.

1.2. Initial medical checkup

Before being allowed to work, an employee must undergo a mandatory initial medical checkup. The checkup is intended to confirm fitness for work and lack of contraindications to work in a given position. The initial medical checkup is performed at the employer's expense by occupational health care services based on a contract concluded by the employer.

1.3. Legal presence

In order to hire employees in Poland it is not required to establish any legal entity in Poland. Employees may be hired directly by foreign entities.

If the registered seat of the foreign entity is located in the EU or European Economic Area (EEA), it will be required to register the entity with the Polish Social Insurance Institution (ZUS) as a remitter of social insurance contributions. An alternative solution is to agree with an employee that the employee may fulfill the employer's contribution payment obligations on its behalf.

1.4. Employment contract

There are three types of employment contracts in Poland:

- contract for a trial period that may not exceed three months;
- open-ended contract – the most common and desired type of contract from the employee's perspective;
- fixed term contract – may be concluded only three times between the same employer and employee. The fourth contract is considered to be an open-ended contract. The total maximum duration of all fixed-term contracts is thirty-three months. From the thirty-fourth month onwards, the contract is regarded as an open-ended contract. This restriction does not apply, and a longer fixed-term employment contract may be concluded in cases specified in the *Labor Code*, in particular, to replace an employee during the employee's justified absence at work.

Mandatory elements of an employment contract include:

- parties to the contract;
- type of employment contract;
- the date of the conclusion of the contract;
- work terms and conditions, in particular: **(i)** the type of work, **(ii)** the place of work, **(iii)** remuneration for work corresponding to its type, and remuneration components; **(iv)** the working hours (full-time or part-time) and **(v)** the work commencement date.

In addition, an employer is obliged to inform an employee in writing within seven days of the conclusion of the employment contract about **(i)** the daily and weekly working hours; **(ii)** the frequency of the remuneration payment; **(iii)** the holiday entitlement; **(iv)** the length of the notice period; and **(v)** the collective bargaining agreement applicable to the employee (if any). If the employer is not obliged to adopt workplace regulations (mandatory for employers with at least fifty employees), the employee must be informed about: **(i)** the night-time hours; **(ii)** the place, date, and time of remuneration payment; and **(iii)** the manner of confirming arrival and presence at work and justifying absence from work.

Certain employment documents require a written form. These are, in particular, the employment contract or conditions as well as termination notice letter. The written form is also required under the pain of nullity for the non-compete agreement binding during and after employment, as well as for a contract based on which the employee transfers copyrights to the employer.

According to the current regulations, a handwritten signature on a document covering the content of a declaration of consent is sufficient for the written form to produce the legal

effect. Equivalent to the written form is a declaration signed with an eIDAS-compliant qualified electronic signature.

The *Act on the Polish Language* requires that employment contracts and employment documents be executed in Polish if the employee is resident in Poland on the day of the conclusion of the contract and the work is performed in Poland. Additionally, documents may be executed also in a foreign language version; however, the Polish version prevails in case of any discrepancy between the two language versions if the employee is a Polish citizen.

A fixed-term or open-ended employment contract may be preceded by a trial period contract. The purpose of this type of contract is to check the employee's qualifications and ability to be hired to perform a certain job.

The maximum duration of the trial period contract is three months. However, re-employment of the same employee for a trial period is permissible if the employee is to be hired for another type of work or is hired after a period of at least three years that lapsed from the date of termination or expiry of the previous employment contract if the employee is to be employed for the same type of work.

According to the planned amendment to the *Labor Code*, the duration of the trial period contract will depend on the duration of employment after the end of the trial period. If the employer envisages concluding a fixed-term contract for less than six months after the trial period, the trial period may not exceed one month. If the fixed-term employment contract after the trial period lasts at least six months but less than twelve months, the trial period may last two months. Only if the envisaged employment after the trial period lasts at least twelve months, will a three-month trial period be permissible. However, it is unclear when this new law will be adopted and come into force.

1.5. Executive employees

In Poland, "executive employees" have not been defined in the labor legislation. If executives are hired based on an employment contract, the general provisions of the *Labor Code* apply to them. However, they are covered by special rules regarding, in particular, overtime remuneration. Such rules apply to employees who manage the workplace on the employer's behalf and employees who manage separate business units.

Employees who fall into one of these categories have no right to overtime remuneration. An exception applies to employees who manage separate business units if overtime work was performed on a Sunday or public holiday and no day off was granted for such work.

1.6. Employees versus independent contractors

There is no statutory checklist regarding differentiating factors between employees and independent contractors. The distinction between an employment relationship and a civil law contract such as a contract with an independent contractor is primarily determined by the definition of the employment relationship in the *Labor Code*, the case law, and legal doctrine.

The *Labor Code* sets out that by establishing an employment relationship, the employee undertakes to perform work of a certain type for the employer's benefit, under the employer's direction, at a place and time determined by the employer, and the employer undertakes to employ the employee in return for remuneration.

Consequently, elements of an employment relationship include **(i)** subordination to the employer: an employee must follow the employer's orders and directions and work at the place and time determined by the employer; **(ii)** personal performance of the contractually agreed type of work by the employee with no right of substitution; **(iii)** regular payment of remuneration; and **(iv)** risk burden: the risk associated with the employment, including the economic, personal, technical and social risk, is borne by the employer.

The legal assessment of whether a relationship is an employment relationship or a civil law relationship is based on the principle of primacy of facts. By choosing a different "name" for a contract, the application of the *Labor Code* may not be avoided by the parties because the actual performance of a contract, rather than its wording, is decisive for the legal classification.

If an independent contractor is reclassified as an employee, the individual may claim employee benefits from the employer for the last three years, in particular overtime remuneration, allowance for work at night, sick pay, holiday pay, etc.

In addition, the employer will be regarded as a remitter for social and health security contributions and PIT withholdings and will be obliged to pay overdue amounts for the last five years together with default interests. The Social Insurance Institution (ZUS) may also impose on the employer an additional fee in the amount of 100% of the unpaid contributions.

Depending on whether the reclassified individual previously had the status of self-employed (sole trader, individual entrepreneur), further consequences may relate, in particular, to VAT settlement.

Moreover, entering into a civil law contract in circumstances where an employment contract should have been concluded constitutes an offense against the employee's rights and may be subject to a fine of up to PLN 30,000 (approximately EUR

6,500).

1.7. Foreign employees

As a rule, foreign nationals need a legal residence in Poland, e.g., on the basis of a visa or a residence permit, and a work permit allowing them to work in Poland. However, this rule does not apply to nationals of the EU, the EEA, or Switzerland who may work in Poland without any work or residence permit. Polish employers may employ them in the same manner as Polish citizens. Nevertheless, foreign nationals are obliged to report their stay in the territory of Poland if the stay exceeds three months.

There are some further exceptions that allow foreign nationals to work in Poland without a work permit, e.g. foreign nationals with a refugee status obtained in Poland or holding a permanent residence permit in Poland. Moreover, nationals of Armenia, Belarus, Georgia, Moldova, or Ukraine may work for up to 24 months in Poland based on a declaration of entrusting work registered by the employer with the labor office in a quick and simple procedure.

Other nationals require a work permit. There are several types of work permits in Poland, such as:

- type A work permit granted to foreign nationals who will perform work in Poland on the basis of a contract with an entity whose registered office or branch, establishment, or another form of organized business activity is located in the territory of Poland;

- type B work permit granted to foreign nationals who will perform work as a member of the management board of a legal person entered in the entrepreneurs register or of a capital company in an organization, or who will manage affairs of a limited partnership or a limited joint-stock partnership as a general partner, or who will perform work as a commercial proxy and will stay in Poland for a period exceeding in total six months within the period of twelve consecutive months;

- type C work permit granted to foreign nationals who will perform work for a foreign employer and will be posted to Poland for a period of more than thirty days in a calendar year to a branch or establishment of a foreign entity or an;

- type D work permit granted to foreign nationals who will perform work for a foreign employer who does not have a branch, an establishment, or another form of organized activity in Poland, and will be posted to Poland to provide a service of a temporary and occasional nature (export service);

- type E work permit granted to foreign nationals who will perform work for a foreign employer will be posted to Poland for a period exceeding three months within the period of six consecutive months for a different purpose than indicated for the work permit type B, C, and D;

- type S work permit – permit for seasonal work.

Foreign nationals already legally residing in Poland may apply for a temporary residence permit without the need to obtain a separate work permit, e.g. a temporary residence and work permit which is issued to foreigners whose purpose is to work in Poland or a temporary residence permit for the purpose of performing work in a profession requiring high qualifications (Blue Card).

Special rules apply to nationals of neighboring countries, such as Belarus and Ukraine as well as some further countries. Due to the armed conflict in the territory of Ukraine Ukrainian nationals who arrived in Poland after 24 February 2022 may work in Poland without the need to obtain a work permit. Moreover, nationals of Belarus, Ukraine, Armenia, Georgia, and Moldova may work in Poland for 24 months without the need to obtain a work permit based on the aforementioned declaration on entrusting work.

In addition, the Polish government supports IT specialists from Belarus, Ukraine, Moldova, Georgia, Russia, Armenia, and Azerbaijan and offers them, upon fulfilling certain criteria, the so-called Poland Business Harbor (PBH) visa. The PBH program allows for fast-tracking visa application. Under the PBH program, IT specialists apply for a long-term type D national visa which allows them to cross the border and start working in Poland for a PBH partner company.

1.8. Remote work

An amendment to the *Labor Code*, which introduces provisions for remote work into the *Labor Code*, has been currently adopted. Remote work is defined as work performed wholly or partially at a place indicated by the employee and each time agreed with the employer, including the employee's home, in particular by means of direct remote communication.

Remote work may be agreed upon by the employer and the employee either at the conclusion of the employment contract or during the course of employment. Moreover, the employer may instruct employees to work remotely during a state of emergency, a state of epidemic threat, or a state of the epidemic and for a period of three months after their cancellation or during a period in which it is temporarily impossible for the employer to ensure safe and hygienic working conditions at the employee's current place of work due to force majeure.

In addition, remote work may also be carried out on an occasional basis, at the employee's request up to a yearly limit specified by the new law.

Employers must prepare an occupational risk assessment for employees performing remote work taking into account, in particular, the impact of work on vision, the musculoskeletal system, and the psychosocial implications of this work. Prior to being allowed to work remotely, employees must confirm that they have read the risk assessment and information containing the principles of safe and healthy performing of remote work and agree to comply with them as well as confirm that healthy and safe conditions for remote work are provided at the remote workplace at the location indicated by them and agreed with the employer.

Moreover, employers are obliged to provide employees working remotely with materials and work tools necessary to perform such work and to ensure their installation, service, use, and maintenance. However, employers may agree with employees on the use of materials and tools not provided by them. In such a case, the employees are granted a cash equivalent. Furthermore, the employers may decide to cover the necessary costs related to the installation, service, use, and maintenance of work tools instead of providing these services. Costs of electricity and telecommunication services necessary for remote work must be covered by employers.

The obligation to cover the aforementioned costs may be replaced by a lump sum that should correspond to the anticipated costs incurred by the employee in performing the remote work.

2. Contract Modification

As a rule, employment contract modifications should be made in written form. However, this form requirement has no pain of nullity. If modifications are made through implicit acceptance by conduct, they are recognized by the courts.

A unilateral modification of contractual employment terms and conditions (including place of work, job position, etc.) by the employer requires special formalities and procedures. Unilateral changes must be introduced by an alteration notice. The employer terminates the existing conditions of work and/or remuneration and at the same time offers the employee new conditions with the aim of continuing the employment relationship under the altered conditions (notice with an offer of employment on new terms). If the employee refuses to accept these new conditions, the employment relationship will terminate with the lapse of the termination notice period. However, if the employee accepts the altered conditions, they become effective at the end of the notice period.

The terms and conditions of the employment may be also changed with the employee's consent by concluding an annex to the employment contract.

As a general rule, any change in the employees' tasks and duties that goes beyond the agreed type of work specified in the contract requires an amendment to the contract. As long as a minor change in the employees' tasks is still compliant with the agreed type of work, a contract modification is not required. Moreover, the employee's tasks may also be changed by an employer's order provided such a change falls within the limits defined by the type of work as specified in the contract.

The restrictions on modifying employer policies or internal regulations depend on the type of these regulations. Generally, compulsory regulations are amended in the same way they are implemented. For example, the change of remuneration regulations, which are mandatory for employers with a certain number of employees, implementation of which requires an agreement with the enterprise trade union organization(s), must also be agreed with the enterprise trade union organization(s), if any.

At companies with trade unions, the change in workplace regulations should be agreed upon with trade unions within a set time limit. If an agreement may not be reached, employers modify the regulations on their own. The same applies to the change of these regulations.

Further policies, not required by law, for example, the code of conduct, anti-bribery, and corruption policy may be changed freely by the employer and do not need to be consulted. However, employees must be made aware of the changes before they come into force.

3. Termination

3.1. Termination types

In accordance with the *Labor Code*, there are three types of employment termination: with notice, without notice, and by mutual agreement.

■ The termination with notice is regarded as a normal method of terminating an employment contract. It is not difficult to terminate an employee with notice. The main burden for this type of termination is the requirement to justify the termination. However, only termination of an open-ended employment contract with notice requires justification. No justification is needed in the case of termination with notice of a trial period contract or fixed-term contract. The termination reason(s) may not be ostensible, but must be real, specific, understandable from the employee's perspective, and important enough to justify the termination.

The termination reason(s) may relate either to the employee (for example performance or attendance issues, failure to comply with employer's instructions, using employer's property

for private purposes) or be attributable to the employer (for example restructuring, bankruptcy). In the case of termination for reasons unrelated to the employees, when the employer must choose some employees for dismissal from a pool of employees employed in the same or similar job positions, selection criteria are mandatory and must be indicated in the termination notice.

The intention to terminate an open-ended contract with notice must be consulted with the trade union provided the employee concerned is a trade union member or the employee's rights and interests are protected by the union. The trade union must be notified about the intention to terminate the contract and the termination reason. Although the trade union may present reasonable reservation within five days, such reservation is not binding on the employer. After the lapse of five days, the termination notice may be served.

- Termination without notice by the employer is permissible only in cases stipulated in the *Labor Code*. The termination reason must be indicated in the termination letter. The employer may terminate the employment contract with immediate effect due to the fault of the employee, in particular in the case of a serious violation of basic duties by the employee. Moreover, termination without notice through no fault of the employee is permissible in the event of a long-lasting justified absence of the employee, particularly due to sickness.

Before the employer decides to terminate without notice an employee who is a member of a trade union or whose rights are protected by the trade union, the employer must notify the trade union of the termination reason. The trade union may present reservations and express its opinion within three days. However, this opinion is not binding on the employer.

- Termination by mutual agreement of the parties is permissible at any time, also during the notice period triggered by a termination notice served by one of the parties.

The mandatory element of mutual termination is the determination of the last day of employment. The parties are free to decide under which terms and conditions they terminate the employment. This type of termination does not require any justification or consultation with the trade union.

The statutory notice period is the same for the employee and the employer. The notice period depends on the type of employment contract and the length of the employment. The termination notice period of fixed-term and open-ended contracts is

- two weeks if the length of employment does not exceed six months,
- one month if the employment is at least six months but less than three years,
- three months in the case of employment of at least three years.

A three months' notice period may be shortened by up to one month provided the termination is justified by reasons unrelated to the employee. The employee is eligible for compensation amounting to the remuneration for the shortened notice period.

The notice period for a trial period contract is shorter and ranges from three days to two weeks depending on the length of the trial period.

If the termination reason is not related to the employee, the employee is eligible for a statutory severance payment, but only if the employer employs at least 20 employees. The statutory severance payment depends on the length of service with the given employer and amounts to:

- one month's remuneration if the employment has lasted less than two years;
- two months' remuneration if the employment has lasted less than eight years;
- three months' remuneration if the employment has lasted at least eight years.

The statutory severance payment is capped at 15 times the minimum monthly wage. The statutory severance payment cap in the period from January 1, 2023, until June 30, 2023, amounts to PLN 52,350 and from July 1, 2023 to PLN 54,000.

An employee's activities may be restricted during employment and after termination, in particular through a non-compete agreement. The post-contractual non-compete agreement may be concluded with an employee who had access to particularly important information, the disclosure of which could damage the employer. In the agreement, the parties should specify the scope of the restriction, its time limit as well as the restricted territory.

The employee is eligible for compensation for compliance with the post-contractual non-compete obligation in the amount of at least 25% of remuneration received prior to the termination of the employment for the period corresponding to the duration of the post-contractual restriction. This compensation may not be included in the monthly salaries received by the employee during employment.

It is permissible to determine a contractual penalty for the violation of the post-contractual non-compete obligation.

3.2. Collective dismissal

Dismissals are collective if, during a period of thirty days, the dismissals cover:

- at least 10 employees, if the employer has fewer than 100 employees;
- 10% of employees, if the employer has between 100 and 299 employees; or
- 30 employees, if the employer has 300 employees or more.

These limits also include employees whose employment contracts are terminated by mutual agreement on the employer's initiative, if termination in such a manner applies to at least five employees.

The aforementioned period of 30 days starts on the day the termination notice is served on the first employee. Consequently, collective dismissals will not be triggered if dismissals are carried out over a longer period and employees are dismissed gradually, in "waves," without reaching the thresholds within any period of 30 days. Timing dismissal waves are accepted.

3.3. Unlawful termination

An employee who does not accept the termination may appeal against the termination arguing that it was unlawful and/or unjustified. The dismissed employee may claim reinstatement or compensation. However, if a fixed-term contract or trial period contract was terminated by notice only compensation may be claimed.

Reinstatement means re-employment under the same conditions as immediately before the dismissal. The labor court may reject the claim for reinstatement if it determines that it is impossible or inexpedient to grant such a claim and awards compensation instead. The reinstated employee is entitled to remuneration for the period of being out of work, but not more than two months. Only protected employees are entitled to remuneration for the entire period of being out of work.

The dismissed employee may also decide to claim compensation instead of reinstatement. In such a case, compensation may amount to a maximum of three months remuneration.

The maximum compensation for unlawful or unjustified termination amounts to three months' remuneration. The compensation is calculated according to the rules applicable to the calculation of the payment in lieu of a holiday.

Compensation for unjustified or unlawful termination of an employment contract granted by the court is exempt from personal income tax and is also not subject to social and health insurance. Compensation agreed upon by the parties through a settlement agreement is taxed.

According to the *Polish Civil Code*, it is possible to revoke a declaration of intent (e.g., termination notice) made to another person if the withdrawal reached that person at the same time as or before the declaration. Thus, if an employer sends a termination notice and then revokes it, and the latter manages to reach the employee at the same time as the termination notice or even before the termination notice reaches the employee, the termination notice is not binding, and therefore the employment relationship will continue.

Withdrawal of termination notice is also possible after the notice has been served on the employee if the employee agrees to such withdrawal.

Polish law provides special dismissal protection to certain groups of employees. A termination notice may not be served on protected employees during the entire protection period. Employment contracts of protected employees may be terminated only in the case of the employer's bankruptcy or liquidation. Protected employees include, in particular:

- employees in pre-retirement age (four years before reaching the statutory retirement age, which is 60 for women and 65 for men);
- pregnant women, employees on maternity leave, paternity leave, parental leave;
- employees on holiday leave or during any period of justified absence up to a time limit defined by law, in particular employees on sick leave;
- employees who are members of the management of an enterprise trade union organization or members of the enterprise trade union organization authorized to represent this organization before the employer;
- employees who are social labor inspectors;
- members of a works council.

The application of a disciplinary penalty does not exclude the application of other liability to the employee, even for the same misconduct. The imposition of a disciplinary penalty on an employee does not exclude the possibility of treating the same misconduct which gave rise to the warning as a ground justifying the termination of the employment contract, in particular where the employee's behavior has not changed after the warning.

4. Wage And Hour

4.1. Wage

In Poland, every year the amount of the national minimum wage is determined either by the Social Dialogue Council or the Council of Ministers. In 2022, it was PLN 3,010 (approximately EUR 642.50). In 2023, the minimum wage will increase in two stages. As of 1 January, the minimum wage is PLN 3,490 (EUR 745), and as of 1 July, it will increase to PLN 3,600 gross (approximately 770).

The parties may freely decide about the currency in which the wage is paid. However, the contractually agreed monthly wage for a full-time employee may not be lower than the national minimum wage.

Besides the monthly base salary specified in the employment contract, employees are eligible for certain additional allowances, in particular, allowance for night work, overtime allowance, per diem allowance in case of business trips, etc. In the case of employees permanently working outside the workplace, it is permissible to replace the overtime allowance or nightwork allowance with a lump sum. Though the lump sum should correspond to the expected scope of work at night or overtime work.

4.2. Working time

The standard daily working time may not exceed eight hours and an average of 40 hours in an average five-day working week in the adopted settlement period. The settlement period may not exceed four months; however, if this is justified by objective, technical, or work organization reasons, the settlement period may be extended even to 12 months. There are no minimum daily working hours.

If the daily working time is at least six hours, employees are entitled to a 15-minute rest break, which counts as working time. An employer may introduce one additional daily break from work, not exceeding 60 minutes, which does not count as working time, for employees to have a meal or to handle personal matters. Lunch allowance is not mandatory.

The total weekly working time, including overtime work, may not exceed 48 hours on average in the adopted settlement period.

Overtime work is allowed only if **(i)** such work is necessary to perform a rescue operation in order to protect human life or health, to protect the property or the environment, or to repair a breakdown, or **(ii)** to meet the special needs of an employer.

The maximum yearly overtime due to the employer's special needs is 150 hours per employee. However, this limit may be increased by workplace regulations, a collective bargaining agreement, or an employment contract up to 416 hours per year.

4.3. Vacation

The statutory vacation entitlement is either 20 or 26 days in a calendar year, depending on the overall years of employment. Employees who have worked for less than 10 years are entitled to 20 days, and employees who have worked for at least 10 years are entitled to 26 days. Any periods of former employment must be taken into account regardless of the employing entity. Also, periods of education are included, for example, graduation from university counts as eight years of employment.

During employment, vacation days may not be compensated in salary. Payment in lieu of unused holiday is permissible only if the employment is terminated and the employee still has an unused holiday.

4.4. Sick leave

Employees who are incapable to work due to sickness or injury are entitled to time off and sick pay. During the first thirty-three days of incapacity to work due to sickness or injury in a calendar year (or fourteen days in the case of employees who have reached the age of 50), the employer pays the employee a minimum of 80% of the employee's average remuneration calculated on the basis of the remuneration received for the twelve consecutive months preceding the period of incapacity to work. Employees are entitled to 100% of their remuneration if incapacity to work is caused by an accident while traveling to or from work, sickness during pregnancy; or medical tests carried out on cell, organ, or tissue donor candidates.

From the 34th day (or 15th in the case of employees aged 50 or over) of any sickness, employees are entitled to sickness benefits from the state. Sickness benefit is paid directly either by the Social Insurance Institution (ZUS) or by the employer employing over twenty persons on behalf of ZUS. The amount of sickness benefits paid by the employer on behalf of ZUS is then deducted from the social security contributions due from that employer. The employer does not finance any sickness benefits.

5. Collective Labor Law

5.1. Trade unions

A trade union may be formed by a resolution adopted by at least 10 employees or individuals performing gainful work on another basis than an employment relationship, provided that they do not employ other people for such work. In addition, those persons must adopt the trade union's statutes and elect

a founding committee of three to seven persons. Within thirty days of adopting the resolution to establish the trade union, an application for registration of the trade union must be submitted to the *National Court Register* under the pain of the founding resolution becoming invalid. The trade union acquires legal personality as of registration in the *National Court Register*.

A trade union may be either an enterprise trade union organization or an inter-company trade union organization that covers more than one employer, with each employer having at least one person who is a member of the organization. The inter-company trade union organization may be regional or national in character.

Moreover, trade unions may form federations (associations of more than one trade union) or confederations (national groups of trade unions).

A representative within the meaning of the *Trade Unions Act* is **(a)** an enterprise trade union organization which is an organizational unit or a member organization of a supra-enterprise trade union organization recognized as a representative within the meaning of the *Act on the Social Dialogue Council* which affiliates at least 8% of the individuals performing gainful work for the employer, or **(b)** an enterprise trade union organization which affiliates at least 15% of individuals performing gainful work employed for the employer. If none of the enterprise trade union organizations meets the aforementioned requirements, the trade union organization that affiliates the largest number of individuals employed by the employer is regarded as the representative organization.

The main trade unions' rights include:

- the right to conduct collective negotiations and conclude collective bargaining agreements as well as other agreements stipulated by the labor law provisions,
- the right to monitor compliance with labor law and to participate in supervising compliance with occupational safety and health rules. In the event of a justified reason to suspect that there is a danger to the life or health of people in the workplace or in the place designated by the employer for work, the enterprise trade union organization may request the employer to carry out appropriate examinations, at the same time notifying the district labor inspector.
- the right to take a position on individual employee issues within the scope set out by the labor law (e.g., in the case of termination without notice or termination of an open-ended contract with notice of an employee who is a union member and whose rights are protected by the union) and on individual issues of individuals performing gainful employment;
- managing the activities of the social labor inspection and cooperating with the state labor inspection;
- trade unions must be notified about the transfer of a business or undertaking. If the employer intends to take measures concerning the employees' terms and conditions of employment, the employer is obliged to enter into negotiations with the enterprise trade union organization.
- in the case of collective dismissals, trade unions must be notified and consulted. An agreement specifying the principles of dismissal proceeding in matters concerning employees covered by collective dismissals should be concluded with the unions.
- Certain mandatory internal labor regulations must be agreed upon with the trade unions, in particular remuneration regulations, bonus and award regulations, company social benefit fund regulations, etc.
- A trade union representative at the national level has the right to issue an opinion on drafts of legal acts within the scope of trade union tasks, as well as have the right to make proposals for the enactment or amendment of a law or other legal act in matters covered by trade union tasks.

5.2. Collective bargaining agreements

Collective bargaining agreements determine the terms and conditions to be met by the employment relationship as well as the obligations of the parties to the agreement.

Collective bargaining agreements are concluded for all employees employed by the employers covered by its provisions unless the parties in the agreement agree otherwise.

On the day the collective bargaining agreement comes into force, its more advantageous provisions replace, by virtue of law, the existing terms of the employment contract. Any provisions of the collective bargaining agreement which are less advantageous to the employees are introduced by an alteration notice. The employer must terminate the existing employment terms and offer new terms resulting from the collective bargaining agreement. If the employee refuses to accept the altered terms, the employment terminates at the end of the notice period.

5.3. Works councils

Works councils are not mandatory and may only be established in companies with more than 50 employees. Once the average number of employees in the last six months is at least 50, the employer should notify the workforce about it. In this case, at the written request of a group of at least 10% of the employees, the employer must organize an election of works council members. Without the initiative of the employees, the employer has no obligation to form a works council.

Works councils have information and consultation rights. The works council must be informed by the employer about activities and economic situation of the company and anticipated

changes in this respect and must be informed and consulted on the situation, structure, and expected developments of employment, as well as on any measures aimed at retaining the level of employment and measures that are likely to lead to substantial changes in the work organization or contractual relations (e.g., planned dismissals, transfer of undertaking, etc.). The employer shall undertake consultations with the works council in order to reach an agreement. The works council has the right to present its opinions which are not binding on the employer.

A works council may exist next to other forms of employee representation, in particular, trade unions. Works councils are not popular in Poland and their number is extremely low.

6. Transfer Of Undertakings

Poland implemented the *Acquired Rights Directive* into the *Polish Labor Code* and the *Trade Unions Act*. Consequently, upon transfer of a business or undertaking, employees are entitled to transfer to a new employer with all their acquired contractual rights and obligations and under the terms of employment agreed with the transferor.

Employers are required to inform the trade unions or, if there are no trade unions, individually each employee concerned about the transfer at least thirty days before the planned date of transfer of the business or undertaking or a part thereof. Moreover, the transfer is also subject to an information and consultation obligation with the works council (if any) at least 30 days before the transfer occurs.

Failure to inform the employees or the trade union does not affect the effectiveness of the transfer of undertaking. However, the failure to inform the employees about the transfer results in the employer's liability for damages suffered by the employees as a result of the failure.

Moreover, the person responsible for the failure to inform the trade union on time about the transfer may be subject to criminal liability.

As a rule, under Polish law employees may not generally object to the transfer. However, within two months of the date of the transfer, the employee may terminate the employment relationship without notice, upon seven-day advance notification.

7. Labor Investigation

Although there is no official blacklist of the most significant employment law violations, certain violations may result in the exclusion of public procurement. Such violations include, in particular, entrusting work to foreign nationals without legal residence in Poland, being in arrears with the payment of taxes or social and health insurance contributions, and violating obligations in the field of social or labor law. Employers may be excluded from public procurement if a member of their management or supervisory board or a commercial proxy has been validly sentenced for an offense against the rights of persons performing paid employment determined in the *Criminal Code* or a minor offense against the rights of an employee.

The National Labor Inspectorate (*Panstwowa Inspekcja Pracy* – PIP) is the authority created in order to supervise and inspect the observance of labor law, in particular occupational safety and health rules and provisions on the legality of employment. Inspectors have the right to conduct an inspection of employers and to apply legal measures if violations of labor law or provisions on the legality of employment are found. Such measures include fines imposed in the form of penalty notices as well as lodging requests for punishment with courts.

An inspector may impose a fine of up to PLN 2,000 may on a person acting on the employer's behalf who has committed a minor offense, e.g., a member of the management board or HR manager. If the person liable for the minor offense has been punished for an offense against employee rights at least twice within the last two years, a fine of up to PLN 5,000 may be imposed.

Moreover, the PIP may choose to take the matter to court. In such a case the PIP acts as prosecuting counsel. The court may impose a fine ranging from PLN 1,000 up to PLN 45,000, depending on the type of minor offense. If the infringement is not remedied, the person liable for the infringement may also be subject to criminal liability.

Wolf Theiss

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

SERBIA

Ivana Ruzicic
Managing Partner
ivana.ruzicic@prlegal.rs
+381 (0) 11 420 80 20

Lara Maksimovic
Senior Associate
lara.maksimovic@prlegal.rs
+381 (0) 11 420 80 20

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Hiring

1.1. Contracting

What are the rules on background checks? What kind of checks are allowed? Is a medical check mandatory before hiring an employee?

Pursuant to the provisions of the Labor Law (*Official Gazette of the RS no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – decision of the CC, 113/2017 and 95/2018 - authentic interpretation*), an employment relationship may be established with an individual who is at least 15 years old and who meets other conditions for working in certain jobs established by the law and the employer's rulebook on internal organization and job classification.

This rulebook (on internal organization and job classification) – *inter alia* – stipulates the type and degree of the required professional qualification, i.e., education of the employee, as well as other conditions for working in a particular position (e.g., work experience, knowledge of languages, etc.).

When establishing the employment relationship, the candidate is obliged to provide the employer with documents and other proofs of the fulfillment of conditions for working in particular jobs (for which the employment relationship is being established) determined by the employer's rulebook on internal organization and job classification.

However, the employer is not allowed to request from the candidate information about their family or marital status and family planning, i.e., to require submission of documents and other proofs which are not of immediate importance for the performance of work for which they are establishing the employment relationship. Additionally, the employer is not allowed to condition the establishment of an employment relationship with a pregnancy test, unless for the jobs with respect to which there is a significant risk to the health of the woman and the child determined by the competent health authority.

As for the minors (people under the age of 18), they can establish the employment relationship upon written consent of a parent, adoptive parent, or guardian provided that such work does not endanger their health, morals, and education, i.e., if such work is not prohibited by the law.

As regards the medical check, it is required in the event of establishing an employment relationship for performing jobs with an increased risk (which is possible solely on the basis of a health capacity to work in such jobs previously determined by the competent health authority in accordance with the law). In addition to the previous medical checks, the Law on Safety and Health at Work (*Official Gazette of the RS no. 101/2005, 91/2015 and 113/2017 - other law*) prescribes an obligation of the employer to conduct periodical medical checks of employees working in jobs with increased risk, as regulated by the by-laws passed thereunder. Also, the person under 18 years of age may establish the employment relationship only with a medical certificate establishing that they are capable to perform the activities of the specific position, provided that such activities do not harm their health.

The Labor Law stipulates that the provisions of this piece of regulation apply to the employees who work on the territory of the Republic of Serbia both with domestic or foreign employers (legal entities or natural persons), as well as to the employees who are assigned by the employer to work abroad unless otherwise specified by the law.

It is not necessary to register a legal entity in the Republic of Serbia to hire employees from the Republic of Serbia, however, such employees are in a special regime of mandatory social insurance, as established by the laws and bylaws governing the personal income tax and contributions for mandatory social insurance.

According to the Labor Law, the employment contract may be concluded for a definite or indefinite term, as well as for performing jobs with or outside the employer's premises.

The Labor Law prescribes that an employment contract includes the following elements: **(i)** business name and seat of the employer, **(ii)** personal name and permanent or temporary residence of the employee, **(iii)** type and degree of professional qualification, i.e., education of the employee (which is a requirement for establishing the employment relationship), **(iv)** name and description of the jobs that the employee shall perform with the employer, **(v)** place of work, **(vi)** type of employment (for definite or indefinite term), **(vii)** duration of employment for definite term and basis for establishing such employment relationship, **(viii)** day of commencement of work, **(ix)** working hours (full-time, part-time or reduced working hours), **(x)** monetary amount of the base salary on the day of entering into the employment contract, **(xi)** elements for determining the base salary, work performance, salary compensation, increased salary, and other earnings of the employee, **(xii)** deadlines for payment of the salary and other earnings of the employee, and **(xiii)** duration of daily and weekly working hours.

Notwithstanding, the employment contract does not have to include elements mentioned under the items xi-xiii) above if the respective elements are established by the law, collective agreement, work rules, or other enactments of the employer in accordance with the law (in which case the enactment establishing these rights must be indicated in the employment contract at the time of its conclusion).

All general enactments of the employer with respect to the employment must be passed in a written form (e.g., work rules, the rulebook on internal organization, and job classification, etc.), as well as the employment contract, amendments to the employment contract (annex), notifications regarding the mobbing and whistleblowing (that need to be delivered to the employee when establishing the employment relationship), notification on the reasons for offering an annex to the employment contract, notification on the existence of reasons for termination of employment, the decision on employment termination and agreement on mutual employment termination.

Moreover, the Labor Law prescribes that any decision on exercising rights, obligations, and responsibilities (from employment) is delivered to the employee in written form, with an explanation and instruction on the legal remedy, unless otherwise stipulated by the law, which is the case with: **(i)** decision on using the annual leave, which can be delivered to the employee in electronic form, however, upon request of the employee the employer shall be obliged to deliver this decision to them in written form and **(ii)** salary slip (document containing the calculation of the salary and/or salary compensation), which can be delivered to the employee in electronic form.

The valid written form implies a paper/printed form with the wet-ink signatures of the party/parties involved.

There is no explicit legal requirement for employment contracts and other employment documents to exist in the official language of the Republic of Serbia. However, in case of proceeding with respect to some employment matter before the competent authority, any document provided to such authority would have to be submitted with an official translation into Serbian (made by the Serbian official court interpreter). Also, it would probably be assessed whether such a document was comprehensible to the employees, i.e., whether its content was communicated to them in an appropriate manner.

The employment contract may stipulate a probation period for performing one or more associated or related activities determined by the contract, for a maximum period of six months.

Prior to the expiration of the probation period, the employer or the employee may terminate the employment contract with a notice period that may not be shorter than five working days. The employer is obliged to provide a rationale for the termination of the employment contract during the probation period.

The employee who did not demonstrate appropriate work and professional skills during the probation period shall have their employment terminated on the day of expiry of the probation period specified in the employment contract.

As regards the executive and ordinary employees, there are no differences in terms of their employment relationships, except for **(i)** the provision pursuant to which a fixed-term employment relationship of director can last until the end of the term for which they were elected, or until their dismissal, and **(ii)** possibility stipulated by the Labor Law according to which it is possible to engage director outside employment, i.e., under the agreement on rights and obligations of the director.

1.2. Employees versus independent contractors

While the employees are engaged under the employment contract as a highly formal document and registered for the mandatory social insurance by their employers, who are liable for calculation and payment of the personal income tax and contributions for mandatory social insurance with respect to the salary and other earnings paid to the employee under the employment contract, independent contractors are natural persons engaged outside the employment relationship, i.e., on the basis of the service contract, and they are subject to a different tax regime, which depends on whether their income is paid by the domestic or foreign natural person or legal entity.

According to the Labor Law, the employer is allowed to engage a natural person under the service contract for an independent production or repair of a certain item and/or independent execution of a certain physical or intellectual work, provided that such activities are outside the employer's business activity.

The Labor Law does not prescribe a particular consequence for miscategorizing someone as an independent contractor instead of an employee. However, in terms of the Law on Contracts and Torts (*Official Gazette of the SFRY no. 29/78, 39/85, 45/89 - decision of the CCY and 57/89*, *Official Gazette of the FRY no. 31/93*, *Official Gazette of SM no. 1/2003 - Constitutional Charter* and *Official Gazette of the RS no. 18/2020*), a service agreement concluded for the performance of jobs within the employer's business activity would have an impermissible subject and would therefore be void.

1.3. Foreign employees

Pursuant to the provisions of the Law on Employment of Foreigners (*Official Gazette of the RS no. 128/2014, 113/2017, 50/2018, and 31/2019*), the employment of a foreigner is possible provided that they have a long stay visa based on employment (so-called D visa), temporary or permanent residence permit, and a work permit, unless otherwise determined by this law.

The conditions and procedures for obtaining a D visa, temporary and permanent residence permit are prescribed by this piece of regulation, as well as the conditions and procedure for obtaining the work permit. It is possible to apply for a D visa and temporary residence permit online. In addition, it is possible to obtain temporary residence and work permits in a

unified procedure conducted simultaneously before the Administration for Foreigners and National Employment Service of the Republic of Serbia.

The Law on Employment of Foreigners provides for two different types of work permits: **(i)** personal work permit and **(ii)** work permit. The personal work permit enables a foreigner in the Republic of Serbia to freely employ, self-employ, and exercise unemployment rights in accordance with the law, and it can be issued to the foreigner who: **(i)** has a permanent residence permit, **(ii)** has a refugee status, or **(iii)** represents a special category of foreign citizens. As for the work permit, it can be issued as **(i)** a work permit for employment, **(ii)** a work permit for special cases of employment (for assigned persons, movement within a company, independent professionals, and education and improvement), and **(iii)** a work permit for self-employment.

As regards the neighboring countries, the Republic of Serbia is currently developing a single registration platform agreed upon within the Open Balkan initiative, i.e., between the governments of Serbia, North Macedonia, and Albania, with the purpose to simplify administrative procedures for traveling, residing and working of citizens of the other parties on their territories. Namely, pursuant to the provisions of the Agreement on Conditions for Free Access to the Labor Market in the Western Balkans, which was ratified by the National Assembly of the Republic of Serbia, citizens of the parties thereto (i.e., the aforementioned three countries) shall electronically register for exercising the right to free access to the labor market (i.e., by the appropriate electronic service established by each party, on the basis of the previously assigned unique ID number), without need to obtain the work permit. In this way, registered citizens shall be entitled to stay and work in Serbia for up to two years, with the possibility of re-registration. However, this platform is not operational yet.

Home office

The Labor Law prescribes that the employer and the employee may establish an employment relationship for performing activities outside the employer's premises, i.e., remotely or from home.

This kind of employment contract, in addition to the mandatory elements of each employment contract, needs to include the following: **(i)** working hours according to the standards of work, **(ii)** a way of supervising the work and the quality of the employee's performance, **(iii)** assets for work, i.e., for the performance of tasks that the employer is obliged to provide, install and maintain, **(iv)** using the employee's assets for work and reimbursement of expenses for this use, **(v)** compensation of other work-related costs and manner of determining them, and **(vi)** other rights and obligations.

The base salary of the employee who works outside the employer's business premises may not be established in a smaller amount than the base salary of the employee who performs the same work within the employer's premises. Also, the provisions of the Labor Law on the working hours' schedule and their rescheduling, overtime, and night-time work and leaves and absences shall also apply to the employment contract concluded for remote or work from home unless otherwise determined by the employer's general enactment or employment contract. The volume of work and deadlines for completion of tasks performed under this kind of employment contract may not be determined in a manner that prevents the employee to use the rest period in course of a working day, daily rest, weekly rest, and annual leave in accordance with the law and general enactment.

2. Contract Modification

According to the legal framework and official standings of the competent authorities, any amendments to the employment contract need to be passed in a written/paper form and signed by wet-ink signatures of both parties thereto in order to be valid unless otherwise stipulated by the Labor Law. Therefore, it is not enough to exchange email correspondence or undertake some conclusive actions in that respect.

Provided that it is necessary to perform a particular job without delay, the employer may temporarily assign the employee to other appropriate jobs (which correspond to the type and degree of the employee's education established in the employment contract), without offering them an annex to the employment contract as prescribed by the Labor Law, i.e., based solely on the employer's written decision, but for a maximum of 45 working days in the period of 12 months.

In addition, changes to the employee's personal information, employer's data, or any other information that does not modify the work conditions of the employee may be acknowledged by the annex to the employment contract concluded without following the procedure prescribed by the Labor Law (i.e., without delivering to the employee an offer for the conclusion of the annex), i.e., solely on the basis of the appropriate documentation regarding the occurred changes.

Except for the cases specifically established by the Labor Law (as described above), any other changes to the work conditions of the employee, including their work tasks, need to be established by the annex to the employment contract.

As regards the modifications to the employer's policies/internal regulations, the Labor Law prescribes that the employer's general enactments, as well as the employment contracts executed with employees, may not include provisions that grant employees less rights or provide for less favorable work

conditions than those prescribed by the Labor Law. However, there are no restrictions on the frequency of passing changes thereto.

3. Termination

3.1. Termination types

Pursuant to the Labor Law, an employment relationship shall be terminated: **(i)** by the expiry of the period for which it was concluded (in case of fixed-term employment), **(ii)** when the employee meets conditions for retirement (65 years of age and a minimum of 15 years of social insurance coverage, unless otherwise contracted between the employer and the employee), **(iii)** by mutual agreement of the employer and the employee, **(iv)** by the termination of employment contract by the employer or the employee, **(v)** at the request of a parent/guardian of the employee who is minor (under 18 years of age), **(vi)** in the event of death of the employee, and **(vii)** in other cases established by the law.

In relation to the above, the Labor Law provides for the following cases in which the employment relationship shall be terminated regardless of the will of the employer and the employee: **(i)** if it has been determined in accordance with the law that the employee lost their ability to work, **(ii)** if according to the provisions of the law or legally binding decision of a court or another authority, the employee is prohibited from performing certain tasks, while it is not possible to assign them to perform some other jobs, **(iii)** if the employee will be absent from work for more than six months due to serving a prison sentence, **(iv)** if the employee will be absent from work for more than six months due to security, educational or protective measure imposed on them, and **(v)** in case the employer terminates its business operations, as prescribed by the law.

As for mutual employment termination, i.e., by the agreement of the employer and the employee, it can be done anytime during the course of employment.

On the subject of the unilateral termination of the employment contract, while the employee is entitled to terminate it without any limitation, except for compliance with the notice period, the employer is allowed to terminate the employment agreement only in the events specified by the Labor Law, i.e., with cause, which shall be described in detail below.

As regards the termination of the employment contract by the employee, they are obliged to deliver a written termination notice to the employer, at least 15 days before the day indicated by the employee as the day of termination of the employment relationship. An employment contract or general enactment of the employer may provide for a longer notice period, but not longer than 30 days.

On the other hand, as previously mentioned, the employer may not terminate the employment contract for any reason, but solely for the reasons established by the Labor Law, i.e. for cause, which implies the following cases: **(i)** if there is a justified reason related to the employee's ability to work and their behavior (if they did not achieve work results or does not have the necessary knowledge and skills to perform their duties, if they have been sentenced by a final judgment for a crime in the workplace or related to the workplace, and if they did not return to work for the employer within 15 days of the expiry of their inactive employment status), **(ii)** if the employee violates their work duty at their own fault (established by the Labor Law, employer's general enactment or employment contract), **(iii)** if the employee disregards the work discipline at the employer (established by the Labor Law, employer's general enactment or employment contract), **(iv)** if due to technological, economic or organizational changes the need to perform certain work ceases or there is a reduction in the scope of work, and **(v)** if the employee refuses to enter into an annex to the employment contract.

In addition to the requirement of the existence of appropriate grounds for employment termination, the employer is obliged to conduct the termination procedure prescribed by the Labor Law, i.e., to deliver to the employee a written decision thereof. Furthermore, if the employment contract is being terminated for the violation of work duty or discipline, prior to the issuance of the decision on termination, the employer is obliged to deliver to the employee a written warning on the existence of reasons for termination of employment, as well as to enable the employee to respond thereto within the established deadline (which cannot be shorter than eight days following the receipt of this warning). In case the employment contract is being terminated for a justified reason related to the employee's ability to work and their behavior (as described above), the employer is obliged to previously provide the employee with a written notice regarding deficiencies in their work, including instructions and the appropriate deadline to enhance their work performance (following which the employee did not enhance work performance within the provided deadline).

Furthermore, the employee whose employment contract was terminated due to unsatisfactory work performance, i.e., lack of necessary knowledge and skills, is entitled to a notice period determined by the employer's general enactment or employment contract, depending on the length of social insurance coverage (which cannot be shorter than eight, or longer than 30 days). In case the employment contract was terminated for technological, economic, or organizational changes due to which the need to perform certain work ceased or there was a reduction in the scope of work, such employee is entitled to the severance pay as set out by the Labor Law.

In the case of termination of the employment relationship, the

employer is obliged to pay to the employee all unpaid salary, compensation of salary, and other earnings acquired by the employee until the day of employment termination, in accordance with the employer's general enactment and employment contract, no later than 30 days following the employment termination. Should the employee be entitled to severance pay, it must be paid to them prior to the employment termination.

Regulations do not stipulate the mandatory elements of the mutual termination agreement. Commonly, it should include information regarding the parties thereto, information on the employment contract that is being terminated, and the date on which the employment relationship shall be terminated. However, the Labor Law prescribes that, before signing this agreement, the employer is obliged to notify the employee in writing regarding the consequences of exercising their rights based on unemployment.

According to the Labor Law, the employee may be temporarily suspended from work: **(i)** if criminal prosecution was initiated against them for a criminal offense committed at work or in relation to work, **(ii)** if by violating their work duties or non-compliance with work discipline at the employer the employee endangered property of significant value, and **(iii)** if nature of the violation of work duty or work discipline, or behavior of the employee, is such that they cannot continue working for the employer before expiry of the deadline for providing their response to the warning on the existence of reasons for employment termination.

Suspension may not exceed three months, following which period the employer is obliged either to return the employee to work or cancel their employment contract or impose another measure on them in accordance with the law. As an exception to the aforesaid, an employee placed under police custody shall be suspended from work for as long as this custody lasts.

Additionally, if the employer finds that violation of work duty or discipline done by the employee is not of such nature that their employment relationship should be terminated, instead of terminating the employment contract, the employer may impose on the employee one of the measures specified by the Labor Law, which include temporary suspension from work without compensation of salary, for the duration of one to 15 working days.

As per the non-compete considerations, according to the Labor Law, an employment contract may stipulate jobs that the employee cannot perform in their own name and on their own account, as well as on behalf of another natural person or legal entity, without consent of the employer. However, this kind of prohibition can be established only if there are conditions for the employee to acquire new, especially important technological knowledge, a wide circle of business partners or to learn important business information and secrets by working with the employer. Territorial validity of the non-compete clause is also established by the employment contract or employer's general enactment.

In the case a non-compete clause is established solely for the duration of the employment contract, the employee is not entitled to special remuneration in that regard. However, if this clause is contracted to be valid following the termination of the employment relationship – whereby this period cannot exceed two years following the employment termination – it shall be valid solely provided that the employer undertakes to pay to the employee a monetary compensation (in the amount agreed in the employment contract).

3.2. Collective dismissal

The Labor Law stipulates that the employer is obliged to enact a so-called program of employees redundancy if it determines that due to technological, economic, or organizational changes, within a period of 30 days, the need for work of employees hired for an indefinite term shall cease with respect to at least: **(i)** 10 employees with the employer who employs more than 20, and less than 100 employees for an indefinite term, **(ii)** 10% of employees with the employer who engages a minimum of 100, and a maximum of 300 employees for an indefinite term, and **(iii)** 30 employees with the employer who has more than 300 employees engaged for an indefinite term. Additionally, this program needs to be passed by the employer who determines that, for the reasons mentioned above, the need for work of at least 20 employees shall cease within a 90-day period, regardless of the total number of the people it employs.

Content of the program of employees redundancy is prescribed by the Labor Law, which also stipulates that the respective document needs to be delivered to the representative trade union (if established with the employer) and National Employment Service, in order for the trade union to provide its opinion thereof, i.e., for the National Employment Service to deliver to the employer the proposal of measures aimed at preventing or reducing – as much as possible – the number of terminations of employment contracts, i.e., ensuring retraining, additional training, self-employment, and other measures for finding new employment for redundant employees.

3.3. Unlawful termination

If the court determines that the employee's employment was terminated without legal ground, at the employee's request, it will adjudge for the employee to be reinstated to work, as well as compensated for the damage and paid the corresponding contributions for mandatory social insurance (for the period in which the employee did not work). However, if the employee did not request to be reinstated, at their request the court will

oblige the employer to pay the employee monetary compensation in the amount of a maximum of 18 salaries of the employee, depending on the duration of their employment relationship with the employer, employee's age, and the number of dependent family members.

In the case the employer proves that there are circumstances that justifiably indicate that the continuation of the employment is not possible, considering all the circumstances and interests of both parties in dispute, the court will reject the employee's request to be reinstated to work and will assign them compensation in a double amount of damages determined as described above.

Should the court determine that there was a reason for the termination of the employment relationship, but the employer failed to conduct the procedure for employment termination prescribed by the Labor Law, it will reject the employee's request to be reinstated and will designate them the compensation in the amount of up to six salaries.

Compensation for damages is determined in the amount of lost salary, which includes the corresponding tax and contributions for mandatory social insurance in accordance with the law, but does not include food allowance, annual leave allowance, bonuses, awards, and other income based on the employee's contribution to the business success of the employer.

Compensation for material damage due to an unlawful employment termination is paid to the employee in the amount of lost salary reduced by the amount of tax and contributions for mandatory social insurance, whereby tax and contributions for the period in which the employee did not work are calculated and paid according to the determined monthly amount of the lost salary.

Tax in terms of the abovesaid means the personal income tax on salary (at the rate of 10%), while the contributions for mandatory social insurance imply contributions for pension and disability insurance (at the rate of 25%), health insurance (at the rate of 10,3%) and unemployment insurance (at the rate of 0,75%).

As regards the compensation for non-material damage, it is not subject to taxation.

Revoking dismissals is not explicitly governed by the Labor Law; therefore, there is no prohibition according to which the employer could not do so.

During pregnancy, maternity leaves, and leaves from work for child care and special child care, the employer may not terminate the employee's employment contract. In the case the employment contract is concluded for a definite term, it shall be extended until the expiration of the right to leave.

Also, the employer may not terminate the employment contract, nor put the employee in a disadvantageous position in any other way because of their status or activity as the employees' representative, their membership in a trade union, or participation in activities of a trade union.

Employers cannot discipline an employee with a warning and a termination for the same conduct, as the respective measures are mutually exclusive. Namely, the Labor Law stipulates that should the employer consider that there are extenuating circumstances or that violation of work duty, i.e., non-compliance with work discipline is not of such nature that the employee's employment relationship should be terminated, it may, rather than terminating their employment contract, impose to the employee one of the following measures: **(i)** temporary suspension from work without compensation of salary (for a period of one to 15 working days), **(ii)** fine of up to 20% of the base salary of the employee for the month in which the fine was imposed (for a period of up to three months), and **(iii)** warning with a threat of dismissal (stating that the employer shall terminate the employee's employment contract without further warning if they commit the same violation of work duty, i.e., non-compliance with work discipline within the next six months). Therefore, the respective measures are prescribed alternatively, and cannot be imposed cumulatively.

4. Wage And Hour

4.1. Wage

According to the Labor Law, the employee is entitled to a minimum salary for standard work performance and time spent at work, which is determined pursuant to the minimum price of labor established in accordance with this law, time spent at work, and tax and contributions paid from salary.

The minimum price of labor is determined by a decision of the Social and Economic Council of the Republic of Serbia, per working hour, without tax and contributions and for a calendar year, not later than September 15 of the current year, to be applied from January 1 of the next year. In accordance thereto, for 2023, i.e., a month with a maximum number of working hours (184) it is established in the amount of RSD 42,320.00 net, i.e., RSD 57,273.60 gross (gross 1, which amount includes salary and tax and contributions paid from salary).

There are no industry-specific rules in this regard.

Salary needs to be paid in RSD, except for two cases set out by the Law on Foreign Exchange Operations (*Off. Gazette of the RS no. 62/2006, 31/2011, 119/2012, 139/2014, and 30/2018*), i.e.: **(i)** payment of the salary to residents – natural

persons who are sent to temporary work abroad on the basis of the contract on the execution of investment works and **(ii)** payment of the salary to employees in diplomatic and consular missions, organizations within the UN and international financial organizations in the Republic of Serbia.

According to the Labor Law, there are four grounds for payment on an increased salary to the employee: **(i)** working on a holiday day which is a non-working day (a minimum of 110% of the base), **(ii)** night work (at least 26% of the base), **(iii)** overtime work (a minimum of 26% of the base), and **(iv)** for each full year spent as the employee of the employer (at least 0.4% of the base).

As per the wording of this piece of regulation, as well as an official opinion of the Serbian Ministry of Labor (*011-00-368/2013-02* of May 27, 2013), both night work and shift work can be included in the base monthly salary, i.e., valued though this earning of the employee. More precisely, this opinion states that, if employees who work in shifts are valued for this kind of work through their base salary, it is also necessary to value their night work in the same way, given that shift work is performed continuously for 24 hours a day, which means that all employees who have the same base salary, as they perform the same jobs, should work in all shifts, including the night shift, and for the same base salary.

On the subject of other allowances, the Labor Law stipulates that the employee is entitled to compensation of expenses in accordance with the employer's general enactment and employment contract, i.e.: **(i)** for commuting to and from work, in the amount of the price of public transportation ticket (if the employer did not provide its own transportation), **(ii)** for the time spent on a business trip, both in the country and abroad, **(iii)** for accommodation and food during fieldwork (if the employer did not provide to the employee accommodation and food without compensation), **(iv)** food allowance (i.e., remuneration for food during work, unless the employer provided this right to the employee in another way), and **(v)** annual leave allowance (i.e., for using the annual leave). These remunerations are not considered a salary, so they need to be individually expressed on the payment slip.

In addition, an employee is entitled to other earnings as set out by the Labor Law and general enactment, i.e.: **(i)** severance pay for retirement (in the minimum amount of two average salaries), **(ii)** compensation of funeral expenses in the event of death of a member of the immediate family of the employee, as well as to the members of immediate family in case of death of the employee, and **(iii)** compensation for damage sustained due to an injury at work or professional illness.

Moreover, a general enactment of the employer may stipulate a right to **(i)** a jubilee award, **(ii)** solidary aid, and **(iii)** other earnings of the employee.

4.2. Working time

Pursuant to the provisions of the Labor Law, full-time working hours mean 40 hours per week, whereby the working week usually lasts for five working days (from Monday to Friday), therefore full-time working hours usually imply eight hours per day. However, working hours within the working week are scheduled by the employer, who is entitled to, by its general enactment, stipulate full-time working hours shorter than 40 hours per week, but not shorter than 36 hours per week.

Working hours of the employee who works on jobs which imply an increased risk, i.e., which are specified by the law and the general enactment as particularly difficult, exhausting, and harmful to health, and where in spite of applying appropriate safety measures and protection of life and health at work, and means and equipment for individual protection, there is an increasingly harmful impact on the employee's health, shall be reduced in proportion to this harmful impact of work conditions on the employee's health and ability to work, for a maximum of 10 hours a week.

At the employer's request, the employee is obliged to work beyond the full-time working hours, i.e., overtime, in the event of a *force majeure*, sudden increase of volume of work, and in other cases when it becomes indispensable to complete an unplanned work within a specific deadline. However, overtime work cannot last longer than eight hours a week, and an employee cannot work for more than 12 hours a day, including overtime. An employee who works on jobs with reduced working hours (as explained above) may not be assigned to work overtime unless otherwise specified by the law.

As per the Labor Law, the employee who works at least six hours per day is entitled to rest in the course of daily work for a duration of at least 30 minutes. However, the final duration of this rest depends on the working hours of the specific employee, i.e., the employee working longer than four and shorter than six hours a day is entitled to a minimum of 15 minutes of rest in the course of daily work, while the employee working more than 10 hours a day is entitled to this rest for a duration of at least 45 minutes. The rest in the course of daily work may not be used at the beginning or at the end of working hours, but it is included in the working hours. Additionally, employees are entitled to daily, weekly and annual leave, as set out by the Labor Law and employer's general enactment.

Regarding the lunch allowance, as previously mentioned, the employee is entitled to the food allowance (i.e., remuneration for food during work), unless the employer provided this right in another way. This earning must be expressed in money.

As previously mentioned, overtime work is allowed solely in cases set out by the Labor Law, whereby it cannot last longer

than eight hours a week and an employee cannot work for more than 12 hours per day, including overtime. However, the Labor Law does not include any restrictions with respect to the maximum yearly overtime work, which is confirmed by the official opinion of the Ministry of Labor *no. 011-00-157/2012-02* of March 1, 2012.

The employer is entitled to reschedule the working hours when required by the nature of the activity, work organization, better use of work resources, more rational use of working hours, and execution of certain work within the established deadline.

Rescheduling of the working hours is done in the manner of ensuring that the total working hours of an employee in a period of six months during the calendar year do not exceed on average their contracted working hours. A collective agreement may determine that rescheduling the working hours is not associated with the calendar year, i.e., that it may last longer than six months, but not longer than nine months.

As a rule, rescheduled working hours are not considered overtime work. However, for the employee who agreed to work rescheduled working hours which on average, within the established period, are longer than their contracted working hours, working hours longer than the average shall be calculated and paid as overtime work.

In the event of a rescheduling of working hours, the working hours cannot be longer than 60 hours per week.

An employee is entitled to the annual leave in duration determined by the employer's general enactment or employment contract, but no less than 20 working days per one calendar year. Duration of annual leave is determined by increasing the aforesaid legally prescribed minimum on the basis of the employee's work performance, work conditions, work experience, professional qualification, and other criteria established by the general enactment or employment contract.

Annual leave is used in one or two or more parts, in accordance with the Labor Law, which in that regard prescribes that the employee is entitled to use the annual leave in two parts unless they agreed with the employer to use it in several parts. Furthermore, if the employee uses their annual leave in parts, the first part shall be used for a duration of at least two consecutive working weeks during the calendar year, while the remaining annual leave shall be used until June 30 of the following year at the latest.

In the event of termination of the employment relationship, the employer is obliged to pay to the employee who did not use their annual leave in whole or in part a pecuniary compensation in the amount of the employee's average salary in the previous 12 months, in proportion to the number of days of unused annual leave. This compensation is considered damage compensation.

Pursuant to the Labor Law, the employee is entitled to the compensation of salary for the time of absence from work due to temporary incapacity to work lasting up to 30 days, as follows: **(i)** in the minimum amount of 65% of the average salary in 12 months preceding the month in which the temporary incapacity to work occurred, on condition that it cannot be lower than the minimum salary determined in conformity with the Labor Law, provided that this incapacity was caused by illness or injury sustained outside of work (unless otherwise established by the law), and **(ii)** in the amount of 100% of the average salary in 12 months preceding the month in which temporary incapacity to work occurred, on condition that it may not be lower than the minimum salary determined as set out by the Labor Law, in case the incapacity was caused by an injury sustained at work or by professional illness (unless otherwise stipulated by the law).

Compensation of salary during the temporary incapacity to work is paid by the employer for the first 30 days of incapacity. If the temporary incapacity lasts for more than 30 days, the salary compensation from the 31st day is paid at the expense of the health insurance fund.

5. Collective Labor Law

5.1. Trade unions

As per provisions of the Labor Law, a trade union is established in conformity with its general enactment, and it is subject to registration in accordance with the law and other regulations governing this matter.

A trade union is considered representative if: **(i)** it is established and operates according to the principles of freedom of trade union organizing and acting, **(ii)** it is independent of state agencies and employers, **(iii)** it is predominantly financed from membership fee and other own sources, **(iv)** it has a necessary number of members on the ground of membership application forms, as prescribed by the law, and **(v)** it is registered in conformity with the law and other applicable regulations.

In relation to the above, a representative trade union at the employer is considered the trade union which meets the above-listed requirements, and which has at least 15% of the total number of the employer's employees for its members, as well as the trade union in a branch, group, subgroup, or business activity which holds as members at least 15% of that employer's employees. As for the territory of the Republic of Serbia, i.e., territorial autonomy or local government unit, i.e., a branch, group, subgroup, or business activity, the representative trade union is considered the trade union which meets the subject requirements, and which holds as members at least 10% of the total number of employees in the respective branch, group, subgroup, or business activity, i.e., in the territory of a specific territorial unit.

A trade union whose representativeness has been determined in accordance with the Labor Law is entitled to **(i)** collective bargaining and entering into the collective agreement, **(ii)** take part in solving the collective labor dispute, **(iii)** take part in the work of tripartite and multipartite bodies, and **(iv)** other rights in conformity with the law.

As previously mentioned, a collective agreement may not grant employees fewer rights or provide for less favorable work conditions than those (rights and/or conditions) established by the Labor Law. Otherwise, the provisions of the Labor Law shall be applied.

Collective agreements are implemented directly, and all employment contracts (at the employer to whom the collective agreement is applied) need to be consistent therewith.

5.2. Works councils

As per the Labor Law, employees who work with an employer having over 50 employees may establish a work council, as prescribed by the law. Therefore, it is not mandatory, but a possibility.

Work councils provide opinions and participate in decision-making with respect to the economic and social rights of employees, as set out by the law and general enactment of the employer.

6. Transfer Of Undertakings

The Labor Law prescribes that, in the event of the status change, i.e., change of the employer pursuant to the law, the transferee employer takes over from the transferor employer its general enactment and all employment contracts which are valid on the day of this change.

The transferor employer is obliged to notify in writing all employees whose employment contracts are subject to transfer due to a status change, i.e., change of employer, of the respective circumstances.

A fine of RSD 600,000 to RSD 1,500,000 will be imposed on the employer that is a legal entity for a misdemeanor in case it declines employees' rights with respect to the change of employer prescribed by the Labor Law. In case the employer is an entrepreneur, this fine shall amount to RSD 200,000 to RSD 400,000.

In addition, a fine in the amount of RSD 30,000 to RSD 150,000 shall be imposed on a legal representative of the employer.

Should an employee refuse the transfer of their employment contract or not declare it within five working days from the day of receipt of the notification of change of the employer, the transferor employer shall be entitled to cancel their employment contract.

7. Labor Investigation

Pursuant to the penalty provisions of the Labor Law, the highest misdemeanor fines (from RSD 800,000 to RSD 2,000,000 for the legal entity, i.e., from RSD 300,000 to RSD 500,000 for the entrepreneur, as well as from RSD 50,000 to RSD 150,000 for the legal representative of employer) are stipulated with respect to the following infringements: **(i)** if the employer did not conclude the employment contract or another contract in terms of this law with the person whom they engage, **(ii)** if the employer did not pay the salary, i.e., the minimum salary, **(iii)** if the employer did not pay the salary in money, except in the case set out by the law, **(iv)** if the employer did not provide the employee with salary calculation in accordance with the law, **(v)** if the employer did not enact a program for solving redundant employees, **(vi)** if the employer terminated the employment contract contrary to the law, **(vii)** if the employer prevented the labor inspector from performing control, i.e., otherwise hindered the activities of inspection, and **(viii)** if the employer did not act upon the decision of the labor inspector in accordance with the law.

However, there are other infringements of the Labor Law as set out therein, for which this piece of regulation also prescribes misdemeanor liability and fines.

As regards the Criminal Code (*Off. Gazette of the RS no. br. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019*), it prescribes several criminal offenses with regards to the labor rights, i.e.: **(i)** Violation of labor rights and social security rights, **(ii)** Violation of rights during employment and unemployment, **(iii)** Violation of management rights, **(iv)** Violation of the right to strike, **(v)** Abuse of the right to strike, **(vi)** Abuse of social security rights, and **(vii)** Failure to take safety measures at work, with respect to which this law prescribes either monetary penalty, i.e., fine or imprisonment.

Moreover, there are other regulations within the field of labor law (e.g., the Law on Safety and Health at Work), which establish additional misdemeanor offenses and fines that may be imposed on employers for non-compliance therewith.

As previously mentioned, the regulations that govern labor matters provide for different types and ranges of penalties, depending on the specific infringement.

As for the courts that have jurisdiction over labor disputes, including misdemeanors and criminal offenses with respect to labor, they are allowed to decide on a measure of prescribed penalty upon their own discretion, depending on the circumstances of the particular case, but within the legally established framework, i.e., boundaries.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: EMPLOYMENT 2023

TURKEY

Nurefşan Kandemir
Senior Associate
nurefsan.torlak@nazali.av.tr
+90 539 307 39 78

Engin Enes Can
Associate
enginenes.can@nazali.av.tr
+90 539 852 90 59

Daniel Can Ebden
Associate
danielcan.ebden@nazali.av.tr
+90 539 307 39 88

CEE LEGAL MATTERS

www.ceelegalmatters.com

1. Hiring

1.1. Contracting

1.1.1. Background Checks

Background checks are not explicitly stipulated under Turkish legislation. However, legislation such as the *Turkish Criminal Code numbered 5237*, the *Law on Protection of Personal Data numbered 6698*, the *Labor Law numbered 4857* (Labor Law) and the *Law on Occupational Health and Safety numbered 6331* (OHS Law) must be considered while conducting background checks.

Under the OHS Law, medical checks are mandatory before employment, during a change of position, in cases where the employee returns to work after an absence from work due to an occupational accident, occupational disease, or health problems, and at regular intervals recommended by the Ministry of Family, Labor, and Social Services in accordance with the employee's status, nature of work, and the hazard class of the workplace. Those who will work in workplaces classified as dangerous or very dangerous cannot start work without a health report stating that they are suitable for the work.

It is important to note that expenses incurred by the employee from medical checks must be covered by the employer, in accordance with the OHS Law.

Finally, background checks should be conducted in proportion to the employee's position and work, in order to avoid any infringement of the employee's right to privacy and/or personal data protection laws.

1.1.2. Hiring of Employees within Turkey by Foreign Companies

The establishment of a legal entity within Turkey is required in order to hire employees in Turkey. This is due to the fact that if a legal entity is not established within Turkey, it would not be possible to ensure the employee within the Social Security Institution.

In practice, it is commonly seen that foreign employers who are not established in Turkey register the employee on a Turkish company's payroll and pay the employment expenses monthly via service procurement. However, please note that such relations must be designed meticulously, in order to avoid any negative legal consequences.

1.1.3. Types of Employment Contracts

Employment contracts can be divided into the following main categories: contracts made for an indefinite period, fixed-term employment contracts, full-time employment contracts, part-time employment contracts, on-call employment contracts, remote-work employment contracts, and employment contracts with a probation clause.

As can be seen from the types of employment contracts given above, employment contracts are generally categorized according to their duration, or hours of work decided under the contract. Furthermore, it should be noted that it is possible and common for an employment contract to have the features of more than one type. For example, an employee may work remotely under a part-time contract made for an indefinite period.

The typical employment contract found in practice in Turkey is an employment contract for an indefinite period, as the Labor Law sets out strict conditions for the validity of fixed-term employment contracts. This is due to the fact that employees employed under fixed-term employment contracts cannot benefit from certain rights the legislation offers, such as the right to file a reinstatement lawsuit, severance pay, and notice pay. Therefore, the existence of objective conditions such as the completion of a certain work or the materialization of a certain event is required in order for the fixed-term employment contract to be valid.

1.1.4. Elements of an Employment Contract

An employment contract is a type of contract where the employee agrees and undertakes to perform work in subordination to the employer in exchange for the payment of a wage. Therefore, the mandatory elements for employment contracts can be listed as the performance of work, wage, and dependency.

The distinguishing element that separates employment contracts from similar types of contracts (service agreements, consultancy agreements, etc.) is the dependency element. For a contract to be characterized as an employment contract under Turkish labor legislation, the employee must strictly adhere to the employer's instructions during the performance of the work and is constantly supervised by the employer, therefore is "dependent" on the employer.

1.1.5. Form Requirements of Employment-Related Statements and Actions

It should be noted that it is not required by law for an employment contract to be in written form. It is also possible for the employee and employer to agree on the performance of work and wage verbally. However, a written form is required for employment contracts with a fixed duration of one year or more. In cases where no written contract has been made between the parties, the employer must provide the employee with a written document, within two months at the latest, showing the general and special conditions of work, the daily or weekly

working time, the basic wage and any wage supplements, the time intervals for remuneration, the duration if it is a fixed term contract, and conditions concerning the termination of the contract.

Furthermore, any fundamental changes made by the employer in working conditions based on the employment contract, on the rules of work which are annexed to the contract, and on similar sources or workplace practices, must be made only after a written notice is served to the employee. Changes that are not in conformity with this procedure and not accepted by the employee in written form within six working days shall not bind the employee. Changes made by the employer to working conditions include but are not limited to: changing working hours, changing the location of work, the addition of extra duties to the employee's assigned position, and changing certain benefits such as food/travel allowance. Each situation should be assessed based on the details of the concrete case in order to determine whether or not the changes made by the employer constitute a fundamental change in the working conditions of the employee.

Considering the fact that Turkish labor courts have a tendency to rule in favor of the employee, it should be noted that in practice employers prefer to keep documents such as payrolls and company policies in written form with the employee's wet signature even though the legislation does not oblige so.

1.1.6. Written Form Requirements

All kinds of contracts that have a written form requirement, must be in paper form and include the wet signatures of the parties.

According to the *Turkish Code of Obligations numbered 6098* (TCO) and the *Electronic Signature Law numbered 5070*, a secure electronic signature has the same legal effect as a handwritten wet signature. A secure electronic signature is a type of electronic signature that is exclusively dependent on the signatory, created with the secure electronic signature creation tool at the disposal of only the signature holder, that enables the identification of the signature holder based on the qualified electronic certificate, and determines whether any changes have been made to the signed electronic data afterward. Although it is technically possible to meet the written form requirement if the parties sign the digital document with a secure e-signature, in practice the usage of secure e-signatures is not common within employee-employer relationships in Turkey, except for executive-level employees. This is due to the fact that the secure e-signature can be obtained from a limited number of electronic certificate service providers, and is not as accessible to be implemented in daily human resources processes and employer/employee relations.

1.1.7. Language of Employment Contracts and Employment Documents

In accordance with the *Law on the Mandatory Use of Turkish in Commercial Establishments*, all kinds of companies and institutions of Turkish nationality are obliged to keep all kinds of transactions, contracts, communications, accounts, and books in Turkish. For foreign companies and institutions, this obligation is limited to their correspondence, transactions, and contacts with Turkish establishments and persons who are citizens of Turkey, and to the documents and books that they are obliged to present to the state. Although foreign companies and institutions may use a language other than Turkish in their transactions, the company officials must sign under the Turkish text.

In addition to the information above, it is highly recommended to keep all employment contracts and employment documents in Turkish or in dual-column format. Otherwise, in situations where the document signed by a Turkish employee is in a foreign language, courts may rule in favor of the employee stating that the documents have not been understood clearly by the employee. Furthermore, extra translation costs may arise during the submission of the documents to the court in case of a dispute.

1.1.8. Probation Periods

It is possible for the parties to agree upon including a probation period in the employment contract, for a maximum duration of two months. However, the probation period may be extended up to four months with collective labor agreements.

Within the duration of the probation period, the parties may terminate the employment contract without having to observe the notice term and without having to pay compensation. It should be noted that the employee is entitled to wages and other rights earned in exchange for the days worked.

1.1.9. Executive Employees

The required qualifications of an executive employee are not set out explicitly under the labor legislation. Therefore, the employer may decide freely with the employment contract the person it would like to appoint as an executive.

There are two main differences between executive employees and employees under Turkish Labor Law. Firstly, a non-executive employee whose employment contract has been unlawfully terminated has the right to file a reinstatement lawsuit, where the employer must reinstate the employee or pay a certain amount of compensation stipulated under the Labor Law. However, the provisions of job security do not apply to the employer's representatives and assistants who manage the

whole of the enterprise and the representatives of the employer who manage the whole workplace and have the authority to hire and dismiss the employee. Therefore, executive employees who manage the entirety of the enterprise and the representatives of the employer who manage the entire workplace and have the authority to hire and dismiss the employee cannot file a reinstatement lawsuit.

Secondly, employees working in the position of an executive as the employer's representative are not entitled to overtime wages, if they are duly compensated in line with their duties and responsibilities since executives have the ability to determine their working hours if certain conditions are met and decided by the employment contract.

1.2. Employees Versus Independent Contractors

1.2.1. Employees and Independent Contractors

There is no statutory checklist regarding the differentiating factors between employees and independent contractors, which leads to courts deciding on the type of contract between the parties on a case-by-case basis.

The aspect of dependency is perhaps the most significant and distinctive feature of the employment contract. Dependency means that the employee must work under the employer's direction, supervision and control, depending on the employer's orders and instructions. With contracts where the subject is the execution of a work, the instructions of the contractor are directed towards the result of the work, whereas with employment contracts, the employer coordinates the entire process of performing the work by giving instructions. This dependency factor disrupts the equality between the parties in the employment contract, leading to a tendency in Turkish labor law to protect the employee. This dependency is determined by the nature of the employee's work, the employee's position, as well as other factors, and creates a hierarchy between the employee and the employer. Considering the existence of flexible working models such as remote working, especially in today's market conditions, the existence of the dependency factor should be determined by evaluating whether the employee works within the scope of an organization drawn by the employer (within the framework drawn by the employer, based on the employer's orders) rather than the fact of physically working within the employer's workplace.

An independent contractor agreement, according to the *Turkish Code of Obligations numbered 6098*, is a contract in which the contractor agrees to perform work and the party ordering work agrees to pay a fee in return. In this context, the contractor is responsible for the work's outcome, establishes its own independent organization to carry out the work, and sets its own working hours and methods. The contractor may also work for other companies and hire its own employees. As a consequence, unlike in an employment relationship, the contractor does not have a personal and legal dependency within the scope of performing the work. While the contractor bears the economic risk in case the work is incomplete under an independent contractor agreement, the employer bears the economic risk of the work under an employment contract.

The Labor Law provides protection and benefits to employees employed with employment contracts. Therefore, when an employment contract is terminated by the employer without a just or valid reason, the employee has the right to file a reinstatement lawsuit if they are benefitting from job security. Again, the employee may file a claim against the employer if their receivables are not paid. The important factor here is that Turkish Labor Law is based on the principle of interpretation in favor of the employee. Due to the mandatory provisions of the Labor Law which protect the employee, in cases where the employer is under the burden of proof and the case must be interpreted and concluded by the court, the courts will interpret in favor of the employee and consequences may arise against the employer.

In cases where the relationship between the parties is in fact an employment relationship, however, the contract between the parties is not designed as an employment contract, and the employer is not directly fined by the authorities. However, as each case is evaluated on a case-by-case basis, the courts may determine that the contract actually is an employment contract. If it is determined that the relationship between the employer and the employee is actually an employment relationship and therefore falls within the scope of the Labor Law and related legislation, even though the contract is named differently, administrative fines may be applied in terms of obligations that have not been fulfilled within the scope of the Labor Law, the *Social Security Law* and the *Law on Occupational Health and Safety*. Such obligations include but are not limited to the payment of social security premiums, payment of overtime wages, and fulfillment of occupational health and safety requirements.

1.3. Foreign Employees

1.3.1. Employment of Foreign Employees

It is mandatory for a foreigner to obtain a work permit to be able to work in Turkey, with a few exceptions (foreigners, specified in the legislation or in bilateral or multilateral agreements or international agreements to which Turkey is a party, that they can work without a work permit).

The types of work permits and the application procedures are mainly regulated under the *Law on International Labor Force numbered 6735* (ILF) and the *Regulation on the Implementation of the Law on International Labor Force*. According to the ILF, there are

five types of work permits: periodic work permits, indefinite work permits, independent work permits, exceptional work permits, and turquoise cards.

As per Article 10 of the ILF, "*In case the application is evaluated positively, the foreigner is granted a work permit valid for a maximum of one year in the first application provided that it does not exceed the duration of the employment or service contract, on the condition that he/she works in a specific workplace belonging to a real or legal person or public institution or organization, or in a specific job in their workplaces in the same business line.*" Therefore, foreign employees who will be applying for a work permit in Turkey for the first time can obtain a work permit valid for a maximum of one year.

On the other hand, it is possible to extend the duration of the work permit by making an extension application sixty days before the expiry of the work permit and in any case before the expiry of the work permit. According to Article 10/2 of the ILF, if the extension application is evaluated positively, the foreign employee is granted a work permit for a maximum of two years with the first extension application and up to three years with subsequent extension applications, to work under the same employer. However, it should be noted that applications made to work for a different employer are evaluated as a first application, therefore can only be for a maximum of one year.

As per Article 7 of the ILF, if the foreigner is residing in Turkey, work permit applications are made directly to the Ministry (through the e-permit automation system). However, work permit applications to be made from abroad are made to the embassies or consulates of the Republic of Turkey in the country where the foreigner is a citizen of or is legally residing at.

As per the Article 21 of the Regulation on the Implementation of the ILF, work permit applications are evaluated according to the General Directorate's evaluation criteria that applicant workplaces and foreigners must meet regarding the work permit requests of foreigners. For example, the employment of at least five Turkish citizens is mandatory in the workplace where a work permit is requested and, the paid-in capital of the workplace must be at least TRY 100,000 or its gross sales must be at least TRY 800,000 or the last year's export amount must be at least USD 250,000.

The evaluation of the applications is completed within 30 days, provided that the uploaded information and documents are complete.

Work permits also stand for residence permits during their validity. However, if the work permit becomes invalid due to any reason, the right of residence connected to this permit also ends. It should be noted that the work permit is only valid at the workplace and address where it is issued.

Finally, regarding applications made within Turkey, it is obligatory for the foreigner to start working within one month from the start date of the work permit. Regarding applications made from abroad, it is obligatory for the foreigner to start working within one month from the date of entry to Turkey, and in any case within six months from the start date of the work permit.

1.4. Home Office

During and following the COVID-19 pandemic, remote work has remained on the agenda of both employees and employers. As a result, new legislation was enacted defining the rules of remote work and the responsibilities of the parties.

Home office or remote work is regulated under Article 14/4 of the Labor Law and the *Regulation on Remote Work*. According to the aforementioned legislation, remote work is a business relationship established in writing, where the employee performs work within the scope of the organization created by the employer, at home, or outside the workplace making use of communication tools.

In accordance with Article 5 of the *Regulation on Remote Work*, employment contracts regarding remote work must be made in writing. In this respect, the employer must make a written employment contract with the employee to be employed within the framework of remote working, or, in the case of the transition to the remote working model at the workplace, the parties must draft and sign an additional protocol which includes the essential points of the remote work system.

Furthermore, the parties must agree on the following issues in the employment contract: the working environment and costs that will incur, mandatory expenses, supply and use of materials and work equipment, duration of work, and means of communication.

If necessary, the arrangements regarding the place where the remote work will be carried out must be completed before the performance of the work begins and the method of covering the costs arising from these arrangements should be determined together by the employee and the employer.

According to the *Turkish Code of Obligations* and the *Regulation on Remote Work*, unless the parties agree otherwise in the employment contract, the employer must provide the necessary tools for the employee. If the employee will use their own tools and equipment, an appropriate price must be paid by the employer. This fee to be paid must be in an appropriate amount (proportionate to the cost of the tools and equipment assigned to the job by the employee) as a matter of equity. Computer, telephone, fax, printer, modem, and similar

technical equipment, such as the subscription and software for the program to be used, as well as a desk, and a work chair can be given as examples of necessary tools. Furthermore, the employer is obliged to deliver the list of work tools indicating their prices on the date of delivery to the employee, in writing.

It should be noted that even in situations where the employee supplies their own tools, it is not possible for the employer to impose occupational health and safety obligations on the employee. The employer has an obligation to ensure that the equipment provided by the employee is also safe. According to the provisions of Article 12 of the *Regulation on Remote Work*: "*The employer is obliged to inform the employee about the occupational health and safety measures, to provide the necessary training, to provide health surveillance and to take the necessary occupational safety measures regarding the equipment provided, taking into account the nature of the work performed.*" It is necessary to make a double distinction regarding the occupational health and safety incident that the employee is exposed to at home. If the incident occurred during the performance of the work (for example, the electrical line caught fire while working on the computer, the employee fell while sitting on the chair while working, etc.), the incident will be classified as a work accident. However, if the employee cuts their hand while preparing food in the kitchen at home, the incident will not be classified as a work accident. In other words, the event must have a causal link with the work.

2. Contract Modification

2.1. Requirements of employment contract modifications

As mentioned in Section 1.1.5., any fundamental changes made by the employer in working conditions based on the employment contract, on the rules of work which are annexed to the contract, and on similar sources or workplace practices, must be made only after a written notice is served to the employee. Changes that are not in conformity with this procedure and not accepted by the employee in written form within six working days shall not bind the employee. Changes made by the employer to working conditions include but are not limited to: changing working hours, changing the location of work, addition of extra duties to the employee's assigned position, and changing certain benefits such as food/travel allowance. Each situation should be assessed based on the details of the concrete case in order to determine whether or not the changes made by the employer constitute a fundamental change in the working conditions of the employee.

If the employee does not accept the written offer of the employer within six working days, they will not be bound by the modification. Furthermore, the employer may terminate the employment contract by respecting the term of notice, provided that they indicate in written form that the proposed change is based on a valid reason or there is another valid reason for termination. However, the employee has the right to file for a reinstatement lawsuit and claim that the termination was unlawful.

As a result of the above-mentioned legislation, fundamental changes in the employment contract must be implemented only after they are notified to the employee in written form and are accepted by the employee within six working days. The written form requirement is met with the wet signatures of the parties and a declaration of acceptance by the employee. Furthermore, in general, the courts in Turkey do not accept implicit acceptance by conduct regarding fundamental changes made to working conditions that are not in favor of the employee.

2.2. Unilateral Contract Modification by Employers

It is possible to draft articles in the employment contract stating that the employer has the right to modify certain working conditions, which will provide some room for a unilateral contract modification. However, this is only true if the modification at hand does not constitute fundamental changes in working conditions, as explained above.

Whether or not the modification can be made unilaterally or not must be determined in accordance with the facts of the concrete case. For example, a modification in the working place may be considered a fundamental change if it increases the amount of time the employee must travel. However, if the employee's travel time is shortened, then the modification may be made unilaterally.

2.3. Minor Changes in the Employees' Tasks

Minor changes in the employees' tasks do not require contract modification by rule. However, it should be noted that these changes must not be classified as fundamental changes in working conditions, as these must be notified to the employee in writing, as specified above. Whether or not a change is considered minor or fundamental, must be decided according to the facts of the concrete case.

2.4. Modification of Employer Policies/Internal Regulations

The same rules apply to modifying employer policies and internal regulations as employment contracts if the modifications fundamentally change the working conditions of the employees. For example, if the modifications to the employer policies/internal regulations change the working hours of the employees, the consent of the employee is required in order to implement such a change. However, it should also be noted

that the employer has managerial authority over the workplace. Therefore, changes made to policies/internal regulations which do not constitute fundamental changes in working conditions shall be considered within the scope of the employer's managerial authority and can be implemented without the consent of the employees.

3. Termination

3.1. Termination Types

3.1.1. Termination of Employment

In terms of reasons for the cessation of employment, different categorizations can be made. However, it is better to have two main categories: cessation apart from termination and termination.

The first category – cessation apart from termination – is related to the situations which end employment with a reason outside of termination, such as the death of one of the parties of the employment contract (employer and/or employee) and the end of the duration of the fixed-term employment contract. In these cases, even though there is no will toward terminating the employment with the occurrence of specific circumstances, the employment relationship ends.

On the other hand, termination, which is a will toward ending the employment relationship, can be categorized into three sub-categories: the first being termination with a notice, the second being termination with a just cause, and lastly, termination by mutual agreement.

Termination with a notice is comprised of circumstances outside of just cause, in just cause a necessity to end employment is required since it is not objectively expectable from the affected party to continue the employment relationship in these circumstances. Both parties can resort to termination with notice, by respecting the notice periods to be followed according to the legislation and/or the employment contract.

Termination with a just cause, due to its nature, does not include a necessity to abide by the legal notice periods and both parties may terminate employment immediately. Lastly, agreement by mutual agreement is an accord of wills of both parties in terms of ending the employment.

By taking the Turkish legal system into consideration in terms of termination of the employment, it can be asserted that an employer may take an action in the direction of termination by undertaking the risk of paying compensations arising from unlawful termination. Even in the case of reinstatement, they may choose to pay compensation as an alternative to reinstatement and not to re-employ the employee.

But one must be aware that, in some cases (such as a termination in order to obstruct unionization), the financial risk to be undertaken by the employer may be considerably higher due to the compensations to be decided by the court in favor of the employee.

3.1.2. Consequences of Termination of Employment

The consequences of termination can be divided into the following categories: termination by the employer, termination by the employee, termination with a notice, and termination with a just cause.

In the scenario, in which the employee terminates with a notice, the employee is under the obligation to respect the notice period. However, it should be noted that in some specific cases, the employee is not subject to a notice period, such as the marriage of the female employee, retirement, etc.

In situations where there is a just cause, the employee can terminate the employment immediately. These situations have been listed in the legislation, and include situations where it is not expectable from the parties to continue the employment relationship, such as failure to pay the employees' wages, harassment, and health issues.

On the employer side, whether or not the employee is protected by job security arising from legislation is important. In case of termination with notice, if the employee is not within the scope of job security, the employer should abide by the notice period, pay severance pay if the employee has one year or more seniority, and pay remuneration for unused annual leaves in addition to other accrued wages. The employer has the opportunity to pay notice pay in advance instead of abiding by the notice period.

If the employee is within the scope of job security, apart from mentioned obligations, the employer should check whether its right to terminate has originated. In other words, there should be a reason for termination which is legally valid. Otherwise, the employer may face reinstatement claims.

In the case of termination with a just cause, there is no necessity to abide by the notice period and it is enough for an employer to pay remuneration for unused annual leaves in addition to other accrued wages. However, in some cases (such as termination because of health problems of the employee, imprisonment of the employee, etc.), a necessity to pay severance pay to the employee with a one year or more seniority may arise. The situations where the employer may terminate the agreement with just cause include but are not limited to discontinuity, use of alcohol and/or drugs in the workplace, and theft.

3.1.3. Termination by Mutual Agreement

The most fundamental requisite of mutual termination is an agreement based on the mutual and free will of both parties. It is especially important for the employee to not be under pressure while signing the mutual termination agreement.

However, the free will of both parties is not enough to have a legally valid mutual termination. According to precedents of the Turkish Supreme Court, some receivables & compensations should be paid to the employee, depending on which party makes the offer to mutually terminate the employment contract. Within this scope, if the offer comes from the employee, it is enough to pay severance pay (in case of one year or more seniority), notice pay, and remuneration for unused annual leaves in addition to other accrued wages. On the other hand, if the offer is made by the employer, together with the aforementioned payments, additional payment should be ensured, not less than four months' wage of the employee. As it is a minimum, in cases where the seniority of the employee is high, a payment exceeding four months' wage may be required.

3.1.4. Lawful Restriction Clauses

One of the liabilities of the employee arising from employment is the duty of loyalty. This duty, stemming from very much the nature of the employment, leads to restricted employee activities in terms of the employee's relations with other employers. Within this scope, the employee should not work for another employer, who is competing with the current employer. Accordingly, even though it is not a necessity (since it arises from the nature of the employment), a clause regarding this obligation may be added to the employment contracts.

A violation of the mentioned obligation may lead to termination by the employer. However, since this type of prohibition inhibits freedom of labor enshrined in the constitution, whether there is a violation or not should be carefully evaluated. Within this sense, if the employee is working for a competing employer or if the performance of the employee diminishes because of the secondary occupation, the employer may resort to termination. Other than these types of concrete reasons, the termination may be deemed unlawful.

On the other hand, since the duty of loyalty regarding secondary occupations covers the duration of the employment, in order to restrict employees' activities after termination, parties to the employment should agree on a prohibition of competition, also referred to as a non-compete clause. It should be noted that because of its intervenient nature, a prohibition of competition is subject to strict terms. In this respect, firstly, the parties must agree upon a non-compete clause in writing. Moreover, not every employee is subject to this prohibition. In other words, the clauses regarding the prohibition of competition can only be foreseen if the employee has the opportunity to obtain information about the customer environment, production secrets or the work carried out by the employer, and if the use of this information poses a threat of harm.

Additionally, the prohibition of competition needs to be limited in terms of duration, geographical area, and type of work. It is possible to determine the geographical area where the prohibition of competition will be valid as a certain region or province/provinces, as long as it does not exceed the area in which the employer operates, as the determining factor in terms of location is the employer's field of activity. The subject of the prohibition of competition is limited to both the employer's field of activity and the actual job/duty that the employee is obliged to fulfill. Again, the prohibition of competition may be valid for a maximum of two years from the date of termination of the employment contract. Moreover, if the employment contract is terminated with a just cause by the employee or without a legally valid cause by the employer, the employee will not be bound by the prohibition of competition.

It is common for the parties to agree on a certain amount of penalty in case of violation of the non-competition clause. Determining a penal clause is not a requirement for the prohibition of competition, but in the case of a breach, it makes it much easier to recover damages.

It should be noted that when no restrictions are imposed on the prohibition of competition in terms of geographical area, subject or duration, the courts may consider the prohibition invalid. On the other hand, in case the boundaries of the prohibition are drawn in terms of geographical area, subject and time, but the judge considers that these boundaries are unfair or the penal clause is exorbitant, the judge may impose a limitation on the prohibition.

3.2. Collective Dismissal

Not every termination falls within the scope of collective dismissal, and not every dismissal in large quantities is legally deemed as collective dismissal. Collective dismissal in a legal sense occurs when the employer contemplates dismissing a number of employees envisaged in the legislation for reasons of an economic, technological, structural, or similar nature necessitated by the requirements of the enterprise, the workplace, or activity on the same date or at different dates within one month. The numbers of employees, which should be dismissed, are stipulated as:

- in workplaces employing between 20 and 100 employees, a minimum of 10 employees
- in workplaces employing between 101 and 300 employees, a minimum of 10 percent of employees and

- in workplaces employing 301 and more employees, a minimum of 30 employees.

Moreover, as reasons for termination are restricted, termination reasons such as termination by the employee, termination by the employer with a just cause, and termination with a mutual agreement are not included and there is no need to implement the procedure of collective dismissal.

Within the procedure of collective dismissal, some obligations are imposed on the employer. Firstly, the employer should provide the union shop stewards (if any) and the Turkish Employment Agency with written notice at least 30 days prior to the intended dismissal. Terminations will have effect 30 days after the written notice to the Turkish Employment Agency, thus notice period starts after 30 days within the written notice.

Secondly, as another obligation imposed on the employer, consultations/meetings with union shop stewards should take place after the written notice.

Please note that, if the employer wants to employ employees again for the same job within six months from the finalization of the collective dismissal, it should preferably invite those, dismissed within collective dismissal, with suitable qualifications.

In practice, in order to avoid the application of the procedure of collective dismissal, dismissal waves are implemented and there is no legal obstacle in terms of dismissal waves. However, collective dismissals are inspected by Turkish Employment Agency and a substantial amount of administrative fine, multiplied by the number of terminations, is imposed in case of violation of the procedure of collective dismissal. Since the stipulated procedure is multi-layered and has technicalities, which are not apparent to a non-legist person, employers should act meticulously while implementing dismissal waves.

3.3. Unlawful Termination

3.3.1. Consequences of Unlawful Termination

Job security, which is granted to employees who meet conditions set forth in the legislation, gives the employee the right to initiate a reinstatement lawsuit and if its claim is evaluated as justified by the court, the right to reinstatement. Additionally, in the case the employer does not reinstate the employee, additional compensations have been stipulated in favor of employees within the scope of job security. These conditions, which must be fulfilled by the employee in order to benefit from job security, are as follows:

- The employee must be considered an "employee" under the *Turkish Labor Law numbered 4857*. Thus, for example, a domestic worker who undertakes household chores cannot benefit from job security.

- The employee must be employed via an employment contract for an indefinite period.

- The employment contract must be terminated by the employer without a valid or just cause.

- There must be at least 30 employees working within the workplace. Having said that, while determining whether 30 employees are met, all the workplaces within the same line of business belonging to the same employer should be taken into consideration.

- The employee must have at least six months of seniority. Seniority should be calculated by taking into consideration the total time spent in the same or different workplaces of the same employer, even in the case of discontinuous working.

- The employer must not be a representative of the employer (in a legal sense).

As can be seen, the consequences of unlawful termination differ between an employee with job security and without job security.

Within this scope, in a scenario where there is an employee benefitting from job security, they can initiate a reinstatement lawsuit and if the termination is unlawful, the court will decide in favor of reinstatement. After the decision, the employee should apply to the employer with the intent to be re-employed. With the application, the employer will be under the obligation to reinstate and pay a remuneration up to the four months' wage of the employee, which covers a part of idle time. In case the employer does not reinstate, in addition to the remuneration up to the four months' wage, compensation of non-reinstatement from four months to eight months' wage of the employee must be paid. Additionally, severance pay, notice pay, and remuneration for unused annual leaves should be paid, providing that the employee is entitled to these payments.

On the other hand, if the employee is not within the scope of job security, they cannot claim reinstatement. However, they can claim notice pay, if the notice period is not abided by, and severance pay, if the seniority of the employee is one year or more. Additionally, if the right to terminate is utilized abusively by the employer, the employee can claim bad-faith compensation. In addition to the aforementioned payments, the court may decide on compensation up to the six months' wage of the employee, which is labeled as compensation for unjust termination.

Moreover, regardless of job security, additional compensations may arise depending on specific features of the concrete case, such as union compensation in case of a termination with an

intent to obstruct unionization. Furthermore, it is always possible for the employee to claim material and immaterial damages.

Lastly, termination of the fixed-term employment contract before the expiration date should be mentioned. In this case, since it is a fixed-term contract, reinstatement cannot be possible. However, the employee can claim their wages corresponding to the remaining duration of the contract. Additionally, severance pay and compensation for unjust termination may be brought to the agenda.

3.3.2. Calculation of Loss of Income

In reinstatement lawsuits filed as of January 1, 2018, the court will calculate remuneration up to the four months' wage of the employee, which covers a part of idle time, on the income on the date of the lawsuit.

In terms of reinstatement lawsuits filed before January 1, 2018, remuneration up to four months' wage is calculated over the wages and other rights (such as fringe benefits) granted to the employee following the termination. While calculating this payment, the wages and other rights of the employee are determined as if the employment continues for a maximum of four months after the termination date.

Please be aware that even though other rights (bonuses, fuel allowance, etc.), apart from wages, are considered while calculating remuneration up to four months' wage, payments based on actual work (such as performance-based payments) are not considered.

3.3.3. Revocation of Dismissal

Dismissal, as a will, is a unilateral resolutive formative right. As a consequence, with the arrival of the will to terminate to another side, the employment contract is terminated. Thus, even though the will can be withdrawn before arrival, the only possibility to revoke the dismissal after the arrival is through a mutual agreement between employer and employee in terms of revocation of the dismissal. Of course, in a scenario, in which the will to terminate has reached the other party but the parties continue to employ and work, then the existence of a tacit agreement may be asserted.

3.3.4. Additional Protections Against Termination

Under the Labor Law, there is no specific category for protected employees. However, in some cases, additional protection has been granted. For example, if an employer resorts to termination with a discriminatory motive (such as race, sex, political opinion, philosophical belief, etc.), compensation for discrimination may arise. Along the same line, union compensation may be awarded, in case of a termination with an intent to obstruct unionization.

Additionally, Turkish labor law explicitly stipulates some grounds for termination as unlawful, such as union membership or participation in union activities, being a union representative, being absent from work during maternity leave when female workers must not be engaged in work, etc.

3.3.5. Disciplinary Processes

The employer can carry out disciplinary processes and impose disciplinary penalties such as warnings, reprimands, etc. Parallel to this, an employee who continues to violate workplace regulations and who is punished with multiple disciplinary penalties may be subject to termination based on their conduct.

At this point, since there are disciplinary regulations in many workplaces, it is important that these regulations are legally and functionally regulated and that all disciplinary processes are carried out in accordance with the regulation and legislation.

4. Wage And Hour

4.1. Wage

4.1.1. National Minimum Wage in Turkey

In Turkey, a national minimum wage is applied and its amount and other related details are determined by the minimum wage determination commission. The commission determines the minimum wage by including all lines of business/industries. The wage is determined at the latest every two years. However, in practice, while it is generally determined once a year, it has also been determined twice a year in previous years.

Based on the decision of the minimum wage determination commission, the minimum wage for one day of normal work between January 1, 2023, and December 31, 2023, was determined as TRY 333.60 per day.

4.1.2. Payment in Foreign Currency

According to the legislation regarding the protection of the value of the Turkish currency, persons residing in Turkey shall not determine the contract price and other payment obligations arising from employment contracts in foreign currency or index these payments to foreign currency.

However, the following employment contracts, which are within the scope of exceptions in accordance with the legislation, are not subject to the prohibition of payment in foreign currency:

- Employment contracts executed abroad by persons residing in Turkey and employment contracts to which seamen are parties,
- Employment contracts, to which employees who do not

have citizenship ties with Turkey are a party,

- Employment contracts, to which branches, representative offices, and liaison offices located in Turkey and belonging to non-residents are a party,

- Employment contracts concluded by companies located in Turkey, in which non-residents hold 50% or more shares, directly or indirectly,

- Employment contracts, to which companies in free zones are parties as employers within the scope of their activities in the free zone.

Thus, if an employment contract is within the scope of these exceptions, it is possible to pay wages in foreign currency. Other than that, in case an employee is paid in foreign currency although there is no exception, an administrative fine may be accrued to the employer.

4.1.3. Allowances to be Included in the Salary

Parties to the employment contract may decide on different wage systems in accordance with their mutual agreement. They can execute their employment contract with an hourly/daily calculated wage, which corresponds to the actual work of the employee and does not include allowances. On the other hand, they may prefer a fixed wage, which is paid monthly and in full even in cases where the employee is excused from work for reasons such as sickness or being off work. Remunerations for national and public holidays and weekly rest days, which should be paid to the employee even though the employee does not work on these days, are deemed as included within the fixed wage.

Another subject, which should be mentioned, is including overtime in the wage. According to Turkish law, clauses, which include work at extra hours and overtime to the monthly wage, are legally valid. However, since with these clauses the employee is deprived of overtime pay and there are abusive implementations in practice, these clauses are subject to the strict supervision of both inspectors and courts. As a part of this supervision, conditions to be fulfilled in order to include work at extra hours and overtime to the monthly wage are as follows:

- The existence of a clause in the contract, stating that the work at extra hours and overtime wages are included in the monthly wage, is required.

- There must be a reasonable ratio between the performance of the work and wage payment. At this point, it will be important that the wage of the employee is at a reasonable level above the national minimum wage.

- The monthly wage of the employee should be definite and determined.

- Working hours and work at extra hours/overtime hours of the employee should be documented.

- Overtime work should not exceed 270 hours per year.

4.2. Working Time

4.2.1. Working Hours

According to Turkish legislation, the maximum working hours are 11 hours per day, 7.5 hours per night, and 45 hours per week. Employees shall be allowed a rest break approximately in the middle of the working day, by arranging with due regard to the customs of the area and requirements of the work. Rest breaks shall not be considered as a part of the working hours.

In addition to working hours limits, there is an overtime limit of up to 270 hours per year, along with the requirement to obtain employees' consent for overtime work.

The employees shall be allowed to take a rest for a minimum of 24 hours (weekly rest day) without interruption within seven days, provided that they have worked on the days preceding the weekly rest day. As long as this seven-day period is preserved, weekly rest days can be determined inside the weekend or weekdays, in other words, there is no necessity to determine this day as Sunday.

Unless otherwise agreed upon, working hours shall be divided equally by the days of the week worked at the workplace. In practice, generally, a weekly working pattern of six working days and one weekly rest or five working days and two days off (one of them is a weekly rest) are implemented. While six working days are preferred in workplaces employing blue-collars, white-collar-based workplaces opt for five working days.

4.2.2. Holidays Entitlement

Holidays, in general, can be categorized into four sub-topics: weekly rest days, national and public holidays, annual leaves, and other paid leaves.

The employees shall be allowed to take a rest for a minimum of 24 hours (weekly rest day) without interruption within a seven-day time, provided that they have worked on the days preceding the weekly rest day. For the weekly rest day, the employer shall pay the employee's daily wage, without any work obligation in return. It is important to state that it is forbidden to make the employee work on the weekly rest day. However, if the employer does not obey this rule, the employee's work should be paid in addition to the employee's daily wage.

National and public holidays arising from the legislation are

limited to the ones stated explicitly in the legislation and 14,5 days in total per year in Turkey. Written consent from the employee is required in order to make the employee work on these days. Employees shall be entitled to the full day's wage of the holiday day, without any work obligation in return. If they work instead of observing the holiday, regardless of how many hours they worked, they shall be paid an additional full day's wage for each day worked.

Employees who have completed a minimum of one year of seniority in the establishment since their employment, shall be allowed to take annual paid leave and the right to annual paid leave shall not be waived. Annual paid leave should not be divided by the employer. In other words, this leave must be granted without interruption. However, leave periods may be divided by mutual consent provided that one of the parts is not less than 10 days.

Other kinds of leave, with or without pay, granted by the employer during the year or taken by the employee as convalescent or sick leave should not be deducted from annual paid leave. National holidays, weekly rest days, and public holidays which coincide with the duration of annual paid leave should not be counted in the annual leave.

Moreover, the employer must pay the employee the remuneration corresponding to their leave period either in a lump sum or as an advance payment prior to the beginning of the leave. If an employee does not or cannot use his annual leave in the current year, they can use them in the next years. In other words, these leaves will be carried over.

Lastly, there are paid casual leaves arising from the legislation for reasons such as marriage, bereavement, etc. Of course, in addition to the legislation, the employer may grant more days and more reasons in terms of casual leaves.

4.2.3. Sick Leave

The employee is entitled to sick leave if they have a valid medical report. Turkish Social Security Institution pays a benefit for temporary incapacity to employees during sick leave. In this context, the benefit for temporary incapacity is paid to the employee from the day of the accident in case of an occupational accident, from the third day of determination of temporary incapacity for work in case of illness, and from the beginning of the eighth week before birth in case of maternity (the tenth week in case of multiple pregnancies).

Whether the employer is obliged to pay during sick leave (based on illness) depends on the payment system of the employee. In this context, if the employee is paid hourly/daily (hourly/daily rate), the employer is not obliged to pay for the days the employee has a medical report including the first two days. However, if the employee gets a monthly fixed payment, the employer is obliged to pay during sick leave. Thus, the employer should pay not only the first two days but also the whole period of sick leave. On the other hand, after paying the whole sum of the salary, the employer has the opportunity to deduct benefits paid by the institution from the salary of the employee, who works with a fixed wage.

5. Collective Labor Law

5.1. Trade Unions

5.1.1. Forming a Trade Union in Turkey

According to the *Trade Unions and Collective Labor Law no. 6356*, trade unions are organizations with legal personality formed by at least seven employees or employers to come together and operate in a business line in order to protect and develop the common economic and social rights and interests of employees or employers in their labor relations. The law states that trade unions can be established and operate on the basis of a line of business, and there are currently 20 business lines of operation listed.

On the other hand, a confederation can be established by at least five unions in different lines of business, pursuant to Article 2/1-f of the same law. Turk-Is, Hak-Is, and Disk are the most populated employee confederations in Turkey.

5.1.2. Qualifying as a Party to a Collective Labor Agreement (CLA)

In accordance with *Law No. 6356*, collective labor agreements in Turkey can be concluded for a minimum of one year and a maximum of three years, covering the workplace or business. In order to be an employer in a collective bargaining agreement pursuant to *Law No. 6356*, it is sufficient to be the employer of the workplace/enterprise where the collective bargaining agreement is to be concluded or to be a union member of the employer.

On the other hand, in order to be at the table on the employee's side in the collective bargaining agreement, two conditions must be met. The first of these conditions is to ensure that the line of business threshold is met by registering at least 1% of the employees working in the line of business where the union is established. The second condition is that more than half of the number of employees in the workplace in terms of workplace collective bargaining agreements and at least 40% of the total number of employees working in the enterprise in terms of enterprise collective bargaining agreements must be members of the labor union that wants to be at the table. The labor union, which is authorized by providing these conditions together, can be a party to the collective bargaining agreement.

These authorization conditions must be re-established in each new collective bargaining period. Under most of the confederations in Turkey, there are only a few trade unions that have met the line of business threshold in almost every business line. However, it can only be possible for the relevant trade union to be the party to a collective labor agreement, after the numerical majority requirement to be met in the enterprise or workplace is determined by the Ministry of Labor and Social Security individually for each employer in addition to the line of business threshold.

5.1.3. Main Rights of Trade Unions

Unionization is a right protected by a constitutional guarantee, and members of a union established in accordance with the law have union activity and membership guarantees. Sanctions of actions and transactions aimed at preventing the exercise of union rights have been enacted as union compensation, which can amount to up to a 12-month salary of the employee. Also, employees whose employment contracts are terminated due to their union activities being prevented can request reemployment by taking advantage of job security. In addition, in case of violation of trade union freedom, penal sanctions are envisaged in accordance with Article 118 of the *Turkish Penal Code*. Similarly, administrative fines are also counted as sanctions in accordance with *Law no. 6356*. Trade union freedom in Turkey is strictly protected at the legal level and the rights-seeking activities of employees whose union activities are illegally prevented constitute the biggest workload of the judiciary in terms of union law.

5.1.4. The Effect of CLA on an Individual Employment Agreement

Pursuant to Article 36 of *Law No. 6356*, individual employment contracts cannot be contrary to the collective labor agreement, unless otherwise stated in the CLA. The provisions in the collective labor agreement replace and prevail over the provisions of individual employment agreements that are contrary to the collective labor agreement. If there are provisions contrary to individual employment agreements in the collective labor agreement, the provisions of the individual employment agreement for the benefit of the employee are valid and these provisions are applied. The provisions of the terminated CLA about and replacing the individual employment agreement continue as the provisions of the individual employment agreement until the new collective labor agreement enters into force.

5.2. Works Councils

Pursuant to Article 27 of *Law No. 6356*, the trade union, whose authority to conclude a collective bargaining agreement has been finalized, appoints one workplace union representative if the number of employees in the workplace is up to 50, if the number of employees in the workplace is between 51 and 100, at most two, between 1001 and 500 at the most three, between 501 and 1,000 at the most four, if between 1,000 and 2,000 appoints a maximum of six, and more than 2,000, a maximum of eight workplace union representatives from among its members working in the workplace.

Where there is more than one representative, the chief workplace representative is also appointed, and all representatives are notified to the employer. Provided that it is limited to the workplace, the duties of the workplace union representatives and the chief representative are to listen to the wishes of the employees and resolve their complaints, to ensure cooperation, labor peace, and harmony between the employee and the employer, to protect the rights and interests of the employees and to assist in the implementation of the working conditions stipulated in the labor laws and collective labor agreements.

The employment contracts of the representatives cannot be terminated unless there is a just cause and the reason is clearly and precisely stated in the notification. Unlike other workers, the employer cannot terminate the employment contracts of union representatives based on valid reasons. Otherwise, the representative whose employment contract is terminated for valid reasons or the union of which he is a member can file a reemployment lawsuit within one month from the notification of the termination notice.

6. Transfer Of Undertakings

The basic principle in labor law in Turkey is to protect and maintain the employee-employer relationship and thus employment as much as possible. In accordance with Article 6 of the Labor Law, when the workplace or a part of the workplace is transferred to another employer based on a legal transaction, the employment contracts existing in the workplace or in a part of it on the date of transfer, together with all its rights and debts, pass to the transferee. The transferee employer is obliged to take action according to the date when the employee started to work with the transferring employer in the rights based on the employee's service period. In this context, in the case of transfer, the transferring and the transferee employer are jointly responsible for the debts that arose before the transfer and must be paid on the date of the transfer.

The obligations of informing the employee's representatives of both the transferor and the transferee employer, and the employees in absence of representatives, about the transfer day, reasons for the transfer, legal, economic and social consequences, and consulting the representatives on this issue, as stipulated in the *EU directive no 2001/23*, are not regulated in Turkish labor law. However, although the obligation to inform the employees is not expressly stipulated in the law, since the

option of not working with the transferee employer is brought with the right of objection, which is granted only in the transfers realized through merger, division, and type change, pursuant to Article 178 of the *Turkish Commercial Code*, in order employees to use this right of objection, it is considered and advised that it would be appropriate to notify the employees by the transferring employer a reasonable time before the transaction. Since the law stipulates that the employment contract will expire at the end of the notice period if the employee objects to transfer, it would be appropriate for the reasonable period to be as long as the notice period.

As mentioned above, in Article 6 of the Labor Law, it is regulated that together with the transfer of the workplace, the employment contract of the employee, together with all their rights and obligations, will be transferred to the transferee employer. However, the later-dated *Turkish Commercial Code* (TCC) Article 178 set forth a special provision against the Labor Law Article 6 and must be applied. Accordingly, the employee has the right to object to the transfer of the employment contract with all its rights and obligations to the transferee employees due to the transfer, in such transfers realized only through merger, division, or change of type. If the employees object to the transfer, the transfer process of the company does not stop, only the transfer of the employment contract of the said employees is prevented. In case the employee objects to the transfer, the employment contract expires at the end of the legal notification period in accordance with Article 178/2 of the TCC, however, the transferee and the employee are obliged to fulfill the contract until that expiration. The most debated issue regarding this objection period is whether the employee will be entitled to severance pay after the objection. Although there is no legal regulation in this regard, the opinion that the employee cannot be entitled to severance pay because they want to terminate the employment contract by objecting to the transfer without the will of the employer is dominant.

7. Labor Investigation

As mentioned earlier, it would not be wrong to say that the main purpose of the Turkish Labor Law legislation is to protect the employee-employer relationship and employment and to make the employer and employee as equal as possible by principle of interpretation in favor of the employee which is relatively considered as the weaker party. Considering this situation, it can be said that serious legal sanctions have been regulated for employers who employ uninsured employees in the workplace. These sanctions include, in addition to the employee's right to file a lawsuit against the employer, payment of compensation and administrative fines, the cancellation and repayment of state supports given to the employer by the Social Security Institution, due to the fact that the state cannot fulfill its debts to the employee by violation of social security provisions.

On the other hand, legal sanctions are imposed on employers especially as job security is granted to employees, in cases where the employer terminates the employee's employment contract without valid reason or the exercise of the right of unionization is prevented. Also, in the event that the employer does not fully and duly fulfill the wage debt, which is the most fundamental debt of the employment relationship, the interest foreseen above the legal interest is also envisaged as legal sanctions for employers. Similarly, crimes such as violation of freedom of work and labor, prevention of the use of union rights, and discrimination in employment are also regulated and sanctioned in the Turkish Penal Code. In addition to these, administrative fines are regulated in the legislation as a sanction in most cases of violation of the Turkish Labor Law legislation such as the provisions of the *Labor Law* Art.98-108, the *Maritime Labor Law* Art.50-53, the *Press Labor Law* Art.26-30, the *Trade Unions and Collective Labor Agreement Law* Art.78, the *Occupational Health and Safety Law* Art.26.

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