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The Southeast Europe Employment & Immigration Handbook 2021

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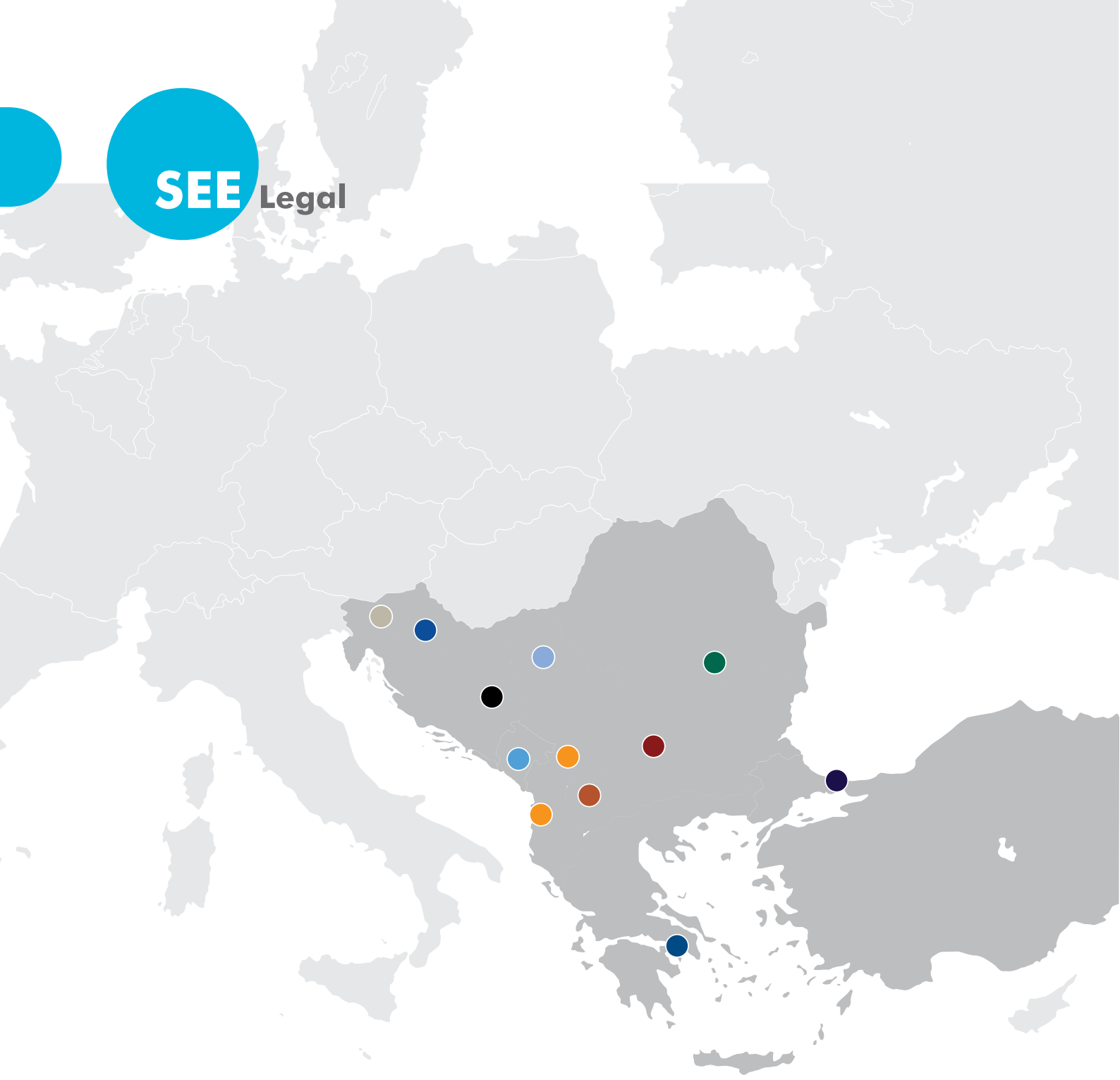

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PREFACE

Dear Partners and Friends of SEE Legal,

South East Europe Legal Group ("SEE Legal"), a unique regional organisation consisting of 10 leading independent national law firms covering twelve jurisdictions of Southeast Europe, is delighted to be publishing its third edition of the Southeast Europe Employment and Immigration Handbook.

Established in 2003 and being a legal market leader for over 18 years, the SEE Legal member law firms employ over 500 attorneys and have an impressive client base of multinational corporations, financial institutions and governmental bodies. The member firms have a proven ability to handle high-profile cases on a national and international level, providing legal assistance in relation to individual and collective labour contracts, internal regulations and policies, confidentiality, restrictive covenants and non-compete agreements, management contracts, stock option plans and other benefit programs, health and safety rules and regulations, as well as data protection issues that arise in an employment context. SEE Legal also represents clients in connection with individual and collective labour conflicts.

This Employment and Immigration Handbook aims to provide in-house attorneys, human resources professionals and legal practitioners a helpful tool in understanding the legal framework regulating employment and immigration in Southeast Europe. It highlights all the important aspects in the employment relations, such as hiring, amendment and termination of employment, and benefits' payment and their taxation, working hours, teleworking arrangements, salary vacation and other leaves, health and safety at work, non-compete obligations, etc. The Handbook's purpose is to raise the readers' attention as to the complexity of employment legislation and to assist in identifying the issues that might possibly land companies or clients in hot water.

The Handbook is part of the various initiatives undertaken by our Employment and Immigration Practice Group to promote the member firms' capacity and profile in the region, and maintain SEE Legal's strong presence in the legal market. The Handbook also serves as our statement of the continuing commitment to further assist you in your legal and business matters in the Southeast Europe region.

Should you have any specific questions regarding employment and immigration matters in Southeast Europe, we would be pleased to hear from you.

Sincerely,

Maral Minasyan
Head of the SEE Legal Employment and Immigration Practice Group

Borislav Boyanov
Co-Chair of SEE Legal Group

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ALBANIA

1. General overview

The right to employment is provided for in Article 49(1) of the Constitution which defines that *"Everyone has the right to earn a means of living by lawful work that he/she has chosen or accepted himself. Each person is free to choose his profession and place of work as well as the manner of achieving professional or other qualifications or training"*. Employment in Albania is largely governed and regulated by the 1995 Labour Code[1], which is based on the Albanian Constitution and is in accordance with all international conventions ratified by Albania.

The Labour Code provides for the contractual regulation of the employment relationships between the employer and the employee by means of an individual or a collective labour agreement.

The Labour Code sets out the main legislation regulating and applicable to employment matters, as well as the hierarchy of such legislation which is as follows:

(a) the Constitution of the Republic of Albania;
(b) international conventions ratified by the Republic of Albania;
(c) the Labour Code and its sub-legal acts;
(d) the collective contract of employment;
(e) the individual contract of employment;
(f) internal regulations of the employer;
(g) local and occupational customs.

The Labour Code covers hiring, termination, work condition, non-discrimination nature, right of employees to participate in trade unions, employment benefits, dispute resolution, secondment, etc. Other important aspects that are strictly connected with employment such as migration, safety, etc. are dealt with in other laws[1, 2].

2. Hiring

2.1 General

The employer may employ people directly or use the services of state recruitment offices or private employment agencies to recruit employees. An employer may only hire an employee(s) who meets the minimum employment age as required by the Albanian legislation, which is 16 years of age[3]. Exceptionally, children from 15 to 16 years old may be hired in easy jobs during the school vacations. The employer should notify the relevant tax authorities about the newly-hired employee at least 24 hours before commencement of the employment relationship. Beneficiaries of public funds must hire a specific number of unemployed job seekers who are registered in the labour state structures.

2.2 Disabled persons

According to Law No.15/2019, dated 13.03.2019 on Promotion of Employment, each employer is obliged to hire one person with a disability for the first 25 employees and another additional person with a disability for every other 50 employees.

An employer who does not employ the recommended number of disabled people is obliged to pay into a separate account of the Fund of the National Employment Service (**"Fund"**) an amount equal to the monthly minimum salary that he/she would have paid to each disabled employee. The revenue of this Fund is used to create jobs and development programmes for disabled people. The Fund and the relevant bank account for payments for disabled persons are not yet functional.

According to the abovementioned law, the State Labour Inspectorate controls the fulfilment of the obligation for hiring the required number of disabled persons.

2.3 Foreign employees

Hiring of foreign employees is governed by Law No. 108/2013 on Foreigners, as amended, (**"Law on Foreigners"**) and by several decisions of Council of Ministers in implementation of this law.

Foreign citizens who intend to work and live in Albania need to be provided either with work permit, or work certificate, or certificate of exemption from the obligation to obtain a work permit, depending on their citizenship, the type of work and the duration of stay in Albania.

Law on Foreigners does establish a general requirement that work permits shall be issued to foreign employees, within the defined quota taking into account the labour market developments and needs in the Republic of Albania. Since the enactment of the Law on Foreigners, there has been no Council of Ministers' decision approving any annual quota.

[1] *Law No. 7961 of 12 July 1995, as amended by Law No. 8085 of 13 March 1996, Law No. 9125 of 29 July 2003, Law No. 10053of 29 December 2008 and Law No. 136 of 5 December 2015.*
[2] *Law No. 8492 on Foreigners of 28 March 2013, Law No. 10237on Health and Safety at the Workplace of 18 February 2010, Law No. 15/2019 on Promotion of Employment of 13 March 2019, Law No. 9901 on Entrepreneurs and Companies of 2008, as amended, Law No. 9634 on Labour Inspection and State Labour Inspectorate of 30 October 2006, Law No. 7703 on Social Insurance in Republic of Albania of 11 May 1993, etc.*
[3] *Articles 98 to 102 of the Albanian Labour Code.*

The work permit is issued within 10 days by:

(a) the relevant Labour Office corresponding to the business location of the employer and where the employee will perform his work, if the foreigner is residing in the Republic of Albania;

(b) General Directorate of the National Agency on Employment and Skills, if the employer which intends to employ the employee, carries out its business in more than one region, and if the foreigner is residing in the Republic of Albania;

(c) the corresponding Albanian Diplomatic mission of the Republic of Albania, in the Country of Origin, if the foreigner is residing in the Country of Origin.

Foreign citizens who need to obtain a visa to enter Albania must apply for it after obtaining the relevant permit to work in Albania. The type of visa will depend on the intended length of stay in Albania and the type of work the foreigner will perform.

(i) Exemption from the obligation to obtain work permit/ work certificate

EU citizens, Schengen countries citizens, Kosovo, Bosnia and Herzegovina, Montenegro, Serbia and North Macedonia citizens and USA citizens are exempted from the obligation to be provided with a work permit or work certificate. Also, foreigners hired in different sectors for the remediation of consequences and recovery from natural disasters, and family members of EU or Schengen country citizens, regardless of their nationality, are exempted from the obligation to be equipped with a work permit or work certificate. However, they must be declared to the relevant labour authority and be equipped with a certificate from the relevant authority stating that they are exempted from the obligation to obtain a work permit (i.e. Certificate of Exemption). The Certificate of Exemption is issued by the relevant Albanian authority within five working days from filing the application.

(ii) Exemption from visa

As a rule, EU citizens, Schengen countries citizens, and other foreign citizens from countries that have entered into bilateral agreements or are part of multilateral agreements that include Albania, as defined by the secondary legislation (e.g. Australia, New Zealand, Canada, Israel, Chile, Japan, etc.), are entitled to enter Albania without visa and stay without a residence permit for an overall period of up to 90 days within 180 days period. USA citizens are entitled to enter Albania without visa and stay without a residence permit for an overall period of up to one year.

A residence permit is required when a foreigner is going to stay in Albania for more than 90 days within 180 days (either at one time or through various visits). Such a residence permit is issued by the Regional Directorate of Border and Migration if the applicant fulfils the conditions provided for in the legislation. The residence permit is issued within 30 days from filing the application.

The procedure is administrative and, provided that the documentary requirements are fulfilled, there is in general no problem in acquiring the necessary residence and work permit.

2.4 Secondments

The employer may not second an employee to another employer without the consent of the employee[4]. In this event, the first contract between the employer and the employee remains in force. When an employer seconds his employee to another employer, then the first employer is obliged to grant the employee at least the same working conditions as those which the second employer has granted to the employee(s) of his enterprise carrying out the same work. The employer to whom the employee is seconded has the same obligations to the employee with regard to health protection, insurance and hygiene as to his other employees. In the event that the employer fails to fulfil his obligations to the seconded employee, then the second employer, through solidarity with the first employer, will be held liable for the fulfilment of the obligations to the employee.

3. Types of contracts

3.1 Employment

Employment contracts are agreed in writing bearing the signature of the employer and that of the employee and containing all mandatory legal elements[5]. Only in specific events and upon justification, the employer may be allowed to produce a written contract within seven days from the date of the oral agreement[6].

The following mandatory elements must be included in all written employment contracts[7]:

(a) the identity of the parties;
(b) the workplace;
(c) a general job description;
(d) the starting date of the job;
(e) the duration of a fixed-term contract;
(f) the duration of paid leaves;
(g) the notice period for termination of the contract;
(h) the main aspects of the salary and the day of receipt of such salary;
(i) the normal weekly working hours;
(j) the related effective collective contract (if any);
(k) the probation period;
(l) types and procedures of disciplinary measures, if there is no collective contract.

An employment contract may last for an indefinite or a fixed period of time, although the employer must provide justification if the term is fixed (i.e. the job is only of a temporary nature). Unless otherwise agreed in writing, the first three months of the employment will be deemed to represent a probationary period,

[4] *Article 137 of the Labour Code.*
[5] *Failure to issue this document in written form will not affect the validity of the contract but the employer will be penalized with a fine.*
[6] *Article 21(3) of the Labour Code.*
[7] *Article 21(3) of the Labour Code.*

regardless of whether the contract is for a fixed or indefinite term. During the probationary period either party may terminate relations with five-days' notice and without cause.

3.2 Other types of engagement

The Labour Code provides for the following types of engagement; the parties entering into such engagements are also subject to the conditions of the Albanian Labour Code:

(a) part-time employment agreement (the employee agrees to work on an hourly basis, either half or complete working day for the normal duration of a week or month, which is shorter than that of full-time employees working under the same conditions);

(b) home-based work agreement (the employee is obliged to carry out his job at his home or any other location chosen by him on the basis of the alternatives offered by the employer);

(c) telework agreement (the employee works at the location chosen by him by using the information technology);

(d) commercial agent agreement;

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

(f) voluntary work (only with respect to non-for-profit activities);

(g) internship agreement for students;

(h) temporary employment through temporary employment agencies.

Furthermore, a service agreement is another type of engagement frequently used in practice in Albania. However, this type of agreement can only be entered into with physical person(s) registered for commercial purposes. The service agreement is a sui generis agreement, and such agreement is regulated by the Albanian Civil Code and not by the Labour Code.

3.3 Engagement of managing directors

Managing directors may be employed, or in the event that they are 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 Labour Law. In all other cases the compensation of the managing director shall be considered as a salary, and the rules defined in Section 5 below shall apply upon this compensation.

3.4 Teleworking arrangement

Work-from-home and telework are recognised by the Albanian legislation as employment arrangements. The Albanian Labour Code has introduced some basic rules and obligations for employers implementing telework and work from home such as the obligations to ensure equal treatment, to provide, install and maintain the working tools, to avoid isolation, etc. Also, given that the employer must take care of the health and safety of all of its employees, if the job position and/or equipment that may be used by the employee in order to perform the work from home may cause any harm, it is an implied obligation for employers to ensure that the work environment is safe for the employee and for anyone else living in the house/area where the employee will perform the work. So far, the introduction of telework and work from home can only be agreed upon with the employee's consent. Thus, the companies opting for telework or work from home have to introduce the amendment to the employment contract, unless the parties have already agreed upon the possibility of teleworking in the basic employment contract.

4. Salary and other payments and benefits

4.1 Salary

The national minimum monthly salary payable to all employees, by any physical or legal person, local or foreign, is ALL 30,000 (approximately USD 195). The national minimum hourly rate that should be applied to all employees is ALL 172.4 (approximately USD 1.7)[8]. The employer shall deduct from the employee's salary the corresponding income tax and the social and health insurance contributions, as per the specifications of the primary and secondary legislation and of the collective or individual employment contracts. Salaries must be paid in ALL, unless otherwise defined by the agreement between the parties.

4.2 Other mandatory payments not considered as salary

According to the provisions of the Albanian legislation, the following mandatory payments are not considered salary:

(a) compensation the employee receives for expenses incurred as a result of his professional activity;

(b) payment of expenses when the employee works outside his workplace;

(c) contribution in kind (e.g. accommodation, food and travel expenses);

(d) difference between the damage and the benefit the employee receives from social insurance, in the event that a work-related accident or occupational illness has occurred as a result of serious fault of the employer.

[8] *Decision of Council of Ministers No.1025, dated 16 December 2020 on Defining the national minimum salary.*

Insofar as these payments are not considered salary, neither the employer nor the employee is obliged to pay mandatory social and health insurance contributions on the above payments. In addition, please note that the abovementioned payments are not considered taxable personal income for the employee. Notwithstanding the above, please be informed that according to the law, contributions in kind which have a permanent nature and are paid directly to the employee are considered as part of the salary and, thus, personal income tax and social security and health /insurance contributions should be paid on the value of such permanent contributions in kind.

4.3 Other benefits

lbanian legislation does not provide for restriction and employers are free to provide their employees with other benefits, such as employees' Stock Option Plans, participation in the profit, etc. As for the employees' Stock Option Plans, it should be noted that this area is not sufficiently regulated in Albania.

5. Salary tax and mandatory social contributions

5.1 Social contribution and health insurance

The payment of social and health insurance contributions and of personal income tax are governed by the following legislation: Law No. 7703, on Social Insurance; Law No. 10383 on the Mandatory Health Care Insurance [9, 10] Law No. 8438 on Income Tax[11]; Decision of Council of Ministers No. 77 on Mandatory Contributions and Benefits from the Social and Health Care Security System[11]; and Law No. 9136 on the Collection of the Mandatory Contributions of Social Security and Health Insurance in the Republic of Albania[12]; and other relevant pieces of legislation.

The relevant legislation provides for the payment of social contribution and health insurance as a mandatory obligation, and which is an obligation to be executed by both the employer and the employee.

The obligations for contributions of social security and health insurance in Albania are as follows:

(a) Employer: 16.7 per cent of the monthly salary (1.7 per cent for health insurance and 15 per cent for social security).

(b) Employee: 11.2 per cent of the monthly salary (1.7 per cent for health insurance and 9.5 per cent for social security).

Contributions should be calculated as defined by the Decision of Council of Ministers No. 77 on Mandatory Contributions and Benefits from the Social and Health Care Security System.

In addition, please note that the minimum monthly salary for the purposes of calculating social security and health insurance contributions is ALL 30,000, whereas the maximum salary is ALL 132,313. For the purpose of payment of social security and health insurance contributions, the employer should withhold the employee's part of contributions from the employee's salary.

5.2 Tax on personal incomes generated from employment

Personal incomes generated from employment are taxable as follows:

Taxable income (monthly income)		Percentage
In ALL	Up to (in ALL)	
0	30,000	0%
30,001	150,000	13% of the amount over ALL 30,000
150,001+	More than	15,600 + 23% of the amount over ALL 150,000

6. Working hours

Working hours are regulated by the Labour Code and by Law No. 9634 on Labour Inspection and State Labour Inspectorate. Reasonable working hours shall not exceed 40 hours per week and these weekly working hours must be set out either in a collective agreement or in individual employment contracts[13]. The normal daily working hours are eight hours.

The employer may require the performance of extra hours, but without exceeding a total of 200 hours per year, and the employee is prohibited to perform weekly additional hours when he has completed 48 working hours within a week[14]. In special cases, for a maximum period of four months the 48 hours per week can be exceeded, but the average weekly working time for this period shall not surpass 48 hours.

The employer shall compensate the employee for any overtime with 25 per cent of normal payment if time-off in lieu is not given; or, if agreed, to compensate with time-off in lieu plus 25 per cent 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 per cent of the normal payment, unless otherwise defined by the collective contract[15].

[9] *Dated 24 February 2011, as amended.*
[10] *Dated 28 December 1998, as amended.*
[11] *Dated 28 January 2015, as amended.*
[12] *Dated 11 September 2003, as amended.*
[13] *Article 83 of the Labour Code.*
[14] *Article 90 of the Labour Code.*
[15] *Article 91 of the Labour Code.*

The Labour 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 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 per cent 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 per cent of normal salary.

7. Annual vacation, paid, leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

Annual vacations are governed by the Albanian Labour Code. The Labour 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 employer is obliged to give the employee at least 30 days' prior notice of the dates for his/ annual leave. Moreover, in cases where the employee receives a salary which includes 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 Labour 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 by the employer or taken by the employee 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 end of 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, 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, annual leave cannot be cashed in, unless the employment contract is terminated, and the employee has unused days of annual leave.

7.2 Paid leave

The employee is entitled to other periods of paid leave in specified circumstances:

(a) for marriage and in the event of death of a spouse/de facto partner, direct predecessors or descendants: five days;

(b) indispensable need to care for the dependent child/children: up to 12 days per year;

(c) sickness of the minor child/children of up to three years, as evidenced by medical report: up to 15 days;

(d) paternity leave after childbirth: three days;

(e) breastfeeding leave until the child reaches one year old: two hours per day;

(f) medical examination leave to pregnant employee;

(g) fulfilment of legal obligations: up to 14 days.

The law on social security provides for childbirth leave and pursuant to that law a pregnant woman is entitled to paid maternity leave of 365 calendar days, including a minimum of 35 days prior to childbirth and 63 days after childbirth.

In the event of the birth of more than one child, the duration of this period is extended to 390 days. During this period, employees shall receive payment from the Social Insurance Institute amounting to: 80 per cent of the net daily average of their salary over the last calendar year, applicable for the first 150 days of the maternity leave; and 50 per cent of the net daily average of their salary for the last calendar year, applicable for the remaining days of maternity leave.

The applicable legislation provides that upon 63 days after childbirth, the right of childcare leave can be awarded also to the biological father or adoptive father, if the mother does not exercise such right or if the mother does not fulfil the conditions to exercise such right (e.g. she has not paid mandatory social securities and health insurance contributions for the last 12 months). The childbirth leave for fathers is 365 calendar days minus the period of 35 days before childbirth and 63 days after childbirth, which are awarded to the mother.

Childbirth leave is paid by the Social Insurance Institute and not by the employer.

7.3 Sick leave

The employee provides evidence of his disability to work by a medical report duly issued by a doctor[19].

[19] *Article 130 of the Labour Code.*

Furthermore, at the request of the employer, the employee is obliged to go under 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 per cent salary for a period of 14 days, a period which is not covered by Social Insurance. Law No. 7703 on Social Insurance in the Republic of Albania defines that after 14 days the employee shall benefit from the social insurance scheme.

7.4 Unpaid leave

Mandatory unpaid leave includes the following:

(a) Parental leave. Employees working with the employer for more than one year are entitled to not less than four months of unpaid parental leave during the child's first six years. The parental leave is individual, not transferable (excluding the case when a parent dies) and can be divided in units no smaller than one week per year. In case of adoption, the leave can be taken within six years from the adoption date and in any case no later than when the child reaches the age of 12 years. The employer may postpone the requested leave up to six months for any of the reasons provided in the relevant provision of the Labour Code.

(b) Serious illness of the employee's direct predecessors or descendants, family members or de facto partner, as evidenced by a medical report: up to 30 days of unpaid leave;

(c) Indispensable need to care for the dependent child/children or sickness of the minor child/children of up to three years, as evidenced by medical report: up to 30 days of unpaid leave.

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.

7.5 Employment standstill

The employer cannot terminate the employment contract in the event that, according to the legislation in force, the employee is receiving benefits payment(s) (from the employer or Social Insurance Institute) related to 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[20].

7.6 Daily Breaks

As a rule, if the employee works more than six hours per day without interruption, a minimum of 20 minutes of unpaid break should be provided. If the employee works more than nine hours per day, an additional short break of not less than 20 minutes shall apply. However, if the performing of the work requires standing up and stooping for a long time, the employee shall be entitled to short paid breaks of not less than 20 minutes for every four consecutive hours of work.

Pregnant employees are entitled to a rest break of not less than 30 minutes every three consecutive hours of work.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Albania is not expressly prohibited by law and form the employment law and corporate law perspective may state that the related framework is silent. Therefore, employees hired by an Albanian or a foreign company (established or not in Albania) by means of an employment contract governed by Albanian legislation can benefit from the employee stock options plans. Also, note that there is no prohibition for Albanian employees to be part of an employee Stock Option Plan offered for the shares of a foreign company.

Albanian tax legislation also does not contain specific provisions relating to the taxation related to granting, vesting or delivery of shares to employees. Albanian legislation provides for the taxation in Albania of the dividends to be received by any shareholder (including employees who own shares) and the relevant tax rate is 15 per cent; in the case that the employees would own shares of a foreign company and the relevant foreign law provides for the applicability of Withholding Tax in that jurisdiction, the Albanian tax on dividend is not applicable in the case of an effective Double Taxation Treaty between Albania and the relevant foreign country.

9. Health and safety at work

Health and safety at work is mainly governed by the Labour Code and Law No. 10237 on Health and Safety at Work. According to the Albanian Labour Code, the employer must apply for a permit from the Labour Inspectorate prior to commencing operation of the enterprise or a part of it, before creating new workplaces, and prior to any important change in the manner of work, usage of materials, machinery and equipment. If, within 30 days from the date of the submission of the documents, the Labour inspector has not rejected them in writing or in a motivated way, the employer may commence project(s).

Under the applicable legislation, employers are responsible for health and safety at work (**"H&S"**) management. It is an employer's duty to protect the health, safety and welfare of their employees and other people who might be affected by their business. Employers must ensure that employees and others are protected from anything that may cause harm, effectively controlling any risks to injury or health that could arise in the workplace. Employers have duties under H&S legislation to assess risks in the workplace. Risk assessments should be carried out in order to address all risks that might cause harm to employees at the workplace.

[20] *Article 147 of the Labour Code.*

Employers must consult employees on H&S issues. Consultation must be either direct or through a safety representative that is either elected by the workforce or appointed by a trade union. Based on the risk assessment, employers must adopt preventative and protective measures and update such measures accordingly. Specifically, the employer must clearly set the rules of technical safety in order to prevent the accidents and occupational diseases[21], and to draft the Occupational Hazard Assessment document which contains all the organisational, technical, sanitary and hygienic measures to be applied for the specific job positions, according to the type of activity of the company.

During the process of employment, the employer trains periodically the employees to respect all requirements related to health, safety and hygiene. If the nature of work requires the usage of mechanical and electrical machines and equipment, the employer should only hire qualified persons, or the employer should provide training to the person hired.

Moreover, in order to prevent accidents and occupational illness, the employer is obliged to provide clear technical safety rules and monitor hygiene in the workplaces.

Furthermore, in accordance with Decision No. 207 dated 09 May 2002 on the Definition of Difficult and Dangerous Work, some work in areas such as construction and the electrical industry are considered as difficult and endangering the life and health of the employees. Thus, the employer is obliged to apply high standards of safety-at-work measures and health protection measures.

According to Decision of Council of Ministers No. 461 dated 22 July 1998 on the Register of Accidents at Work and Occupational Illness, the employer is obliged to keep a register of the Accidents at Work and Occupational Illness in the relevant workplaces.

According to the Law No. 10237 on Security and Health at Work[22], employers are obliged to establish a Council of Safety and Health at Work (the **"Council"**). The mission of the Council is to contribute as a consulting body to the protection of the health and security of employees as well as a decision-making body with competencies to draft and implement H&S programs in order to improve the work conditions for the employees.

The number of persons representing the employees in such Council depends on the number of employees working with the employer and on the level of risk of the specific work.

Based on the Article 23 of Law No. 10237 on Health and Safety at Work, every employer of a private or public entity, local or foreign, is required to offer medical service through the doctor of the undertaking, suitable for the dangers at work.

Other specifications regarding the functioning of the medical service in the undertaking are determined in the Decision of the Council of Ministers No. 108 on Skills to be Possessed by Employees, Specialized Persons and Services, dealing with Occupational Safety and Health Matters[23]. According to this decision, all employers that exercise production activity, as specified in this decision, are required to employ a doctor of the undertaking for every 700 employees. For entities with less than 200 employees not exercising production activity and entities having less than 20 employees, regardless of their activity, employer shall provide the health care services to their employee through external medical doctors.

Hiring a doctor at work is obligatory for all the entities, whose activities are classified according to the Decision of the Council of Ministers No. 100 on the Definition of Hazardous Substances[24]; Decision of the Council of Ministers No. 419 on Dangerous Objects[25] and Decision of the Council of Ministers No. 207 on the Definition of Difficult and Dangerous Jobs[24], regardless of the number of employees. The applicable legislation provides also for first and periodical medical examinations to be carried out for the employees.

10. Amendment of the employment agreement

The employment agreement may be amended by mutual agreement between the parties, wherein such mutual agreement is concluded in written form[25]. In special cases when the amendment of the employment agreement is agreed orally, the employer is obliged to produce a written amendment to the employment agreement within seven days from the date of the oral agreement and this written agreement must be signed by both parties.

11. Termination of employment

11.1 Termination of fixed/open-term employment contracts

A fixed-term employment contract is terminated upon the expiry of its term. An open-term employment contract is terminated when one party decides to do so, and the prior notice period has been observed. The Labour Code provides that an employment contract can be terminated with or without cause and although in normal circumstances a notice period must be provided, there are circumstances where the law justifies immediate termination for reasonable cause.

[21] *This refers to all the internal regulations/policy drafted by the employer regarding the safety in the workplace.*
[22] *Dated 18 February 2010.*
[23] *Dated 9 February 2011, as amended.*
[24] *Dated 9 May 2002.*
[25] *Article 21 of the Albanian Labour Code.*

11.2 Procedure for termination

There are procedures which must be followed when the employer decides to terminate an employment contract, both in the case of immediate termination with cause or with prior notice period. If such termination takes place after the probationary period, the employer must convene a meeting with the employee, to discuss the reasons giving at least 72 hours' prior written notice. The notice of termination of employment may be given to the employee from 48 hours to one week following the date of meeting. The notice of termination must display the termination cause related either to the performance or behaviour of the employee or to the operational needs of the employer. Should the employer fail to follow this procedure, he shall be obliged to pay the employee compensation equal to two months' salary, and other possible compensation. This procedural requirement does not apply to collective dismissals for which there is a separate special procedure.

11.3 Notice period

The notice period for the termination of the employment contract is defined in the individual employment contract. According to the Labour Code, the notice period for termination within the three-month probationary period is at least five days, which may be changed by the written agreement of both parties.

The Labour Code provides for mandatory minimum notice periods to be applied in the case of termination of an indefinite open-term contract by either the employer or the employee, as follows:

(a) during the first six months: two weeks;

(b) between six months and two years: one month;

(c) between two and five years of employment: two months; and

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

11.4 Termination without cause

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.

The employment contract by the employer is considered to be without cause 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 on discrimination of the employee as defined by the applicable legislation (such as race, colour, sex, age, civil status, family obligations, pregnancy, religious or political beliefs, nationality, social status);

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

(e) based on the fact that the employee participates in lawful labour organisations and their activities;

(f) based on the fact that the notice for termination does not state the cause for termination which should be related either to employee's capabilities or behaviour, or to the operational requirements of the employer[26].

If an employee is dismissed without any reasonable cause, he has 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.

11.5 Collective dismissals[27]

Collective dismissal is defined as the termination of labour relations by the employer for reasons unrelated to the employee, where the number of dismissals in a 90-day period is at least:

(a) 10 for enterprises employing up to 100 employees;

(b) 15 for enterprises employing 101-200 employees; and

(c) 20 for enterprises employing more than 200 employees.

The employer shall inform in writing the employees' trade union which is recognised 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 the 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 of Social Welfare and Youth. In order to attempt to reach an agreement, the employer shall then undertake the consultation procedure with the employees' trade union within a period of not less than 30 days of the date on which the notice was displayed.

[26] *Article 23 of the Labour Code.*

In the absence of a trade union all interested employees are entitled to participate in the consultations. If the parties fail to reach agreement, the Ministry of Social Welfare and Youth shall assist them in reaching an agreement within 30 days of the date on which the employer informed the Ministry in writing, in the aims of completing the consultation procedure. Afterwards, the employer can inform the employees of their dismissal and begin the termination of employment contracts providing the following notice periods:

(a) for up to six months of employment: two weeks;

(b) for six months to two years of employment: one month;

(c) for two to five years of employment: two months; and

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

Non-compliance with this procedure shall result in the employees 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.

12. Non-compete

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 amendments of the Labour 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 per cent of the salary he would have received if he 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.

13. Global policies and procedures of employer

The Albanian legislation does not provide any special regulation with regard to the global policies and procedures of employer. However, the employee must respect the employer's general and specific orders and instructions. The employee is not obliged to execute those employer's general and specific orders and instructions which change the terms and conditions of the employment agreement. Thus, the employer's policies and procedures developed on a global level could be applicable in Albania, provided that such policies and procedures are fully in compliance with Albanian legislation, and they do not alter the terms and conditions of the employment agreement.

14. Employment and mergers and acquisitions

This issue is regulated by Article 138 of the Labour Code which is in compliance with Council Directive 77/187/EEC known as The Acquired Rights Directive[27] 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 enterprise 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 right. Any employee refusing to change employer in this event remains bound by the employment contract until the expiration of the termination notice. Termination of the employment contract by the employee due to the reason that the transfer essentially affects the terms and conditions of employment in the disadvantage of the employee, shall be considered as unjustified termination of the employment contract by the employer. 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 termination or until such date specified in the contract[28].

[27] *Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.*

[28] *Article 138(2) of the Labour Code.*

The transfer of an enterprise 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 organisational reasons that impose changes to the employment structure. In such cases, termination procedure as defined in the Labour Code is required to be followed. 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. 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 he would have received during the prior notice period[29].

15. Industrial relations

A strike shall be deemed lawful if it fulfils conditions defined in the Labour 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 fire protection, air traffic control, necessary medical and hospital services, and prison services. In addition, the right to strike cannot be exercised if it interferes with the provision of the minimum essential services to the population, such as water supply, electricity supply, etc. A strike shall cease when the parties reach an agreement, or the trade union decides to end it.

In Albania, all citizens have the right to join labour organisations[30] 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 organisations . A trade union must have a minimum of 20 people and is formed as an organisation/body with legal status through registration as such with the Court of Tirana. Employee trade unions are organised on a national level (according to the respective industry sector) and also on a company level.

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

Furthermore, the employees have the right to strike, which is provided for by the Constitution of the Republic of Albania and by the Labour 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 of 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.

16. Employment and intellectual property

16.1 Employment and industrial property rights

Industrial property rights arising in the ambit of an employment relationship are regulated by the Labour Code and Law No. 9947 on Industrial Property[31]. Under the Labour Code, inventions made by employee or in which the employee has been involved during employment with the employer and in compliance with his contractual obligations, belong to the employer.

The Law on Industrial Property further details this matter, by distinguishing two cases of inventions by an employee:

(a) inventions made by the employee in the scope of the employment contract (which automatically become property of the employer, unless the contract provides otherwise);

(b) inventions made by the employee (who is not hired for making inventions) by using the data and means that are made available to him during his employment; in this case the invention is in the property of the employee, unless the employer provides a written declaration of interest on the invention within six months from the time when the employer received the full report of the invention. In absence of any declaration of interest within the six-month period, the employee remains the owner of his invention, even if such invention was made based on the information and means that the were made available to the employee by the employer.

Under the Industrial Property Law, in the case of an invention made by the employee in the ambit of an employment contract, when the invention represents an economic value, which is much higher than what the parties contemplated at the time of signing the employment contract, the employee is entitled to a special compensation. In the absence of agreement between the parties, the amount of compensation shall be determined by the court.

In case of inventions which are made by the employee out of the scope of the employment contract, based on the salary of the employee, the value of the invention and the profits that the employer makes from such invention, the employer is entitled to a compensation. In the absence of agreement between the parties, the amount of compensation shall be determined by the court. Any contractual provision which is less favourable to the employee (inventor), is invalid.

[29] *Article 139 of the Labour Code.*
[30] *Article 176 of the Labour Code.*
[31] *Dated 7 July 2008, as amended.*

The same rules are applicable also to industrial drawings and models, and computer programmes that the employee creates during employment with the employer and in compliance with his contractual obligations.

16.2 Employment and copyright

Under Law No. 35/2016 on Copyright and Related Rights[36], the economic rights, pertaining to works created under individual employment contacts, during the execution of the duties under the instructions of the employer, shall be considered as the exclusive property of the employer for a period of time of three years from the date the work was delivered to the employer, except when the contract otherwise provides. With the expiry of the abovementioned period, the ownership rights to such works are returned to the employee, however the employer may require the conclusion a new contract for the exclusive assignment of the economic rights on the work, upon a fair compensation. An employer enjoying the economic rights on the work of the employee, may use such work without authorization only if such use is made within its field of activity, which field has been foreseen in the employment contract, otherwise the employee shall provide its written consent and is also entitled to a fair compensation.

The employer may transfer the economic rights on the work of an employee to a third party only if such transfer is foreseen in the employment agreement. In this case, if the transfer occurs, the employee is entitled to a consideration in proportion with the benefits made by the employer from the transfer.

17. Discrimination and mobbing

17.1 Discrimination

The Albanian legislation provides express guarantees pertaining to the core labour rights of all citizens, regardless of race, colour, sex, age, religion, political beliefs, nationality or social origin.

According to the applicable legislation[32], it is prohibited any type of employment or occupational discrimination (i.e. distinctions, exclusions, restrictions, or preferences) which is based on gender, race, colour, ethnicity, language, gender identity, sexual orientation, philosophical, religious or political opinion, national, economic or social status, pregnancy, parental affiliation, parental responsibility, age, family or marriage status, civil status, residence, health status, genetic predisposition, disability, HIV/AIDS status, joining or membership in trade unions, affiliation in a particular group, or any other cause that aims to avoid or make impossible the right for equal treatment in employment and occupation.

Furthermore, the equal work or the work of equal value shall be qualified based on some criteria such as the nature, quality and quantity of the work, work conditions, professional background, seniority, intellectual and physical efforts, skill, responsibility. Differences in pay which are based on the above criteria will prevent employment discrimination claims.

The employer must pay the same salary to both women and men who carry out jobs of equal value, however, the differences in wages, which are based on objective criteria regardless of sex, such as quality and amount of work, vocational training and seniority, will not be considered discriminatory.

17.2 Mobbing

Labour Code[33] provides the right of the employee to claim against any type of harassment and the obligation of employer to guarantee the dignity, the moral safety and health of its employees and to not harass employees with actions that may lead to infringement of their rights, dignity, physical and mental health or compromise their professional future. Sexual harassment against the employee is prohibited. The prohibition of sexual harassment is also provided for in Law No. 9970 of 24 July 2008 on Gender Equality.

Furthermore, the employer respects and protects the employee's person during the employment relationship. The employer must prevent any relations which might threaten the employee's dignity.

18. Employment and personal data protection

According to the Labour Code during the employment relationship, the employer shall not collect information concerning the employee, except in cases where this information is related to the skills of trade of the employee, or if necessary for purposes the employment agreement to be entered into.

The Labour Code provides for the retention of employees' personal data up to the termination of the respective employment relationship. Such data may be retained for longer upon consent of the employer. Under the Labour Code, if the employment relationship is terminated by the employer without reasonable cause, the employee has the right to file a lawsuit at the Court against the employer within 180 days starting from the day on which the notice term has expired, and for this reason the same code provides that in this case personal data of the respective employee shall be retained for six months from the notification of the lawsuit from the employee.

[32] *Discrimination in the workplace is governed mainly by the Albanian Labour Code and Law No. 10221 of 4 February 2010 on Protection from Discrimination. Further provisions are found in the Constitution, Law No. 9970 of 24 July 2008 on Gender Equality in Society and the ILO Conventions in which Albania adhered to, etc.*

[33] *Article 32 of the Albanian Labour Code.*

The area of data protection in Albania is regulated specifically by Law No. 9887 on Personal Data Protection[34], the provisions of which are in compliance with the EU Directive 95/46[35]. Pursuant to this law, the Albanian Data Protection Commissioner must be notified of the processing of personal data by the data controllers. Notification is not necessary when specific processing has been exempted from the law itself or by other sub-legal acts. Furthermore, the law provides for certain other obligations on the part of the controllers such as the obligation to maintain the confidentiality of personal data accessed during employment, even after the employment relationship has ceased, the obligation to inform and give access to the employers on their personal data being processed or transferred and the duty to correct or delete such data, the obligation to undertake organisational and technical measures for the security of processing of personal data.

With regard to the processing of sensitive personal data (e.g. religion, ethnicity, union membership, health, sexual life and criminal records), written consent must be obtained from the employee prior to the processing of those data. However, such consent shall not be required if processing is subject to certain other requirements such as if the processing is necessary for the purposes of performing the obligations and specific rights of the controller in the field of employment law as in accordance with the Albanian Labour Code, the processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent, or the processing relates to data which has manifestly been made public by the data subject or is necessary for the establishment, exercise or defense of legal claims, or the processing is necessary for the administration of justice, etc.

The legislation on data protection enables the employer to verify how his data is being handled, in order for him to exercise his rights if necessary (i.e. the right on information on the use, processing and transfer of his personal data, the right to access his information, the right to correction of his information and most importantly the right to object to certain forms of use made of his data by the organisation).

With respect to the transfer of personal data to foreign countries, such transfer is generally subject to notification.

19. Employment in practice

The Albanian authorities and institutions, especially the Courts, tend to show favour towards the employees. Therefore, in the event of the termination of the employment relationship, the employer should strictly comply with Albanian legislation in order to minimize the risk for this termination to be considered "without cause", thus resulting in a potential increase in compensation for the employee (e.g. potential 12 months' salary).

In recent years, it is noticed that the inspections from the Labour Inspectorate and Tax authority have intensified. Fines are applied only in those cases where the employer has not fulfilled his legal obligations even after the relevant institution (i.e. Tax Authority, Labour Office) has given him a determined period of time to comply with the legislation in force.

[34] *Dated 10 March 2008, as amended.*
[35] *Directive No. 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.*

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BOSNIA AND HERZEGOVINA

1. General overview

In accordance with the Constitution of Bosnia and Herzegovina, labour and social rights in Bosnia and Herzegovina are within the exclusive jurisdiction of the separate entities (Bosnia and Herzegovina consist of two entities: Federation of Bosnia and Herzegovina and Republic of Srpska). Therefore, there is no common Labour Law at state level. According to the legislation of Federation of Bosnia and Herzegovina, there is a hierarchy of labour regulations at the top of which is the Labour Law of Federation of Bosnia and Herzegovina[1]. In addition to the Labour Law, employment-related matters within companies were regulated by the General Collective Agreement within the specific entity (**"GCA"**) and was applicable to all employers and employees in Federation of Bosnia and Herzegovina. Now the GCA expired and there are activities directed in order to conclude a new GCA.

According to the legislation of the Republic of Srpska[2], the other entity of Bosnia and Herzegovina, there is a hierarchy of labour regulations at the top of which is the Labour Law of Republic of Srpska. In addition to the Labour Law, employment-related matters in companies were regulated by the GCA[3] applicable to all employers and employees in Republic of Srpska. However, the stated GCA of Republic of Srpska was declared as unconstitutional and the Government of the Republic of Srpska adopted the Decision on Determining the Salary Increase, Income Based on Employment and the Amount of Aid for Employees, applicable to all employers and employees in Republic of Srpska, by which certain allowances and salary increases, earlier determined by the GCA, are regulated until the issuance of the new GCA. There may also be an industrial collective agreement applicable to all employers and employees in a specific industry.

A company may have an individual collective agreement between the employer and the representative trade union. The companies, which do not have an individual collective agreement, usually regulate employment-related matters by a general provision entitled "Work Rules". Adoption of Work Rules is obligatory for all employers in Federation of Bosnia and Herzegovina who employ more than 30 employees and all employers in Republic of Srpska who employ more than 15 employees.

Written agreements of employment must be concluded with each employee. The Labour Law provides for certain mandatory elements of employment agreement. The individual collective agreement or, in the other event, the Work Rules and individual employment agreements must all be consistent with the Labour Law and must not provide for less protection for employees than which is guaranteed by the Labour Law. In addition, individual employment agreements may not provide for less favourable terms than are provided in the individual collective agreement or, as in the other event, the Work Rules.

Employment legislation in Bosnia and Herzegovina is embedded into the socialist heritage of former Yugoslavia. Its main feature is that heavily tilts towards employees' protection, especially with respect to termination of employment.

2. Hiring

2.1 General

The Labour Law does not stipulate any particular requirements pertaining to the recruitment of employees, except a general requirement according to which the employment relationship may be established with a person of at least 15 years of age who fulfils conditions for work on the respective work post (if any).

2.2 Disabled persons

According to the Law on Professional Rehabilitation and Employment of Disabled Persons[4], all employers with 30 or more employees are obliged to employ a certain number of disabled persons. According to the Law on Professional Rehabilitation and Employment of Disabled Persons[5] all employers with 16 or more employees are obliged to employ a certain number of disabled persons. Furthermore, employers who either finance or have suitable commercial cooperation with companies engaged in professional rehabilitation and employment of disabled persons are exempt. It should be noted that the requirement for the mandatory hiring of disabled employees is not enforced in practice. The law itself does not provide a mechanism for efficient enforcement at the moment.

[1] *Zakon o radu, Official Gazette of the Federation of Bosnia and Herzegovina, No. 26/16 and 89/18.*
[2] *Zakon o radu, Official Gazette of Republika Srpska, No. 1/2016,66/2018 and 91/2021.*
[3] *Opsti kolektivni ugovor, Official Gazette of Republika Srpska, No. 40/10 of 11 May 2010.*
[4] *Zakon o profesionalnoj rehabilitaciji i zaposljavanju osoba sa invaliditetom, Official Gazette of Bosnia and Herzegovina, No. 12/10 of 2010.*
[5] *Zakon o profesionalnoj rehabilitaciji i zaposljavanju osoba sa invaliditetom, Official Gazette of Republic of Srpska, No. 36/09, amended 17 September 2015.*

2.3 Foreign employees

The employment of foreign citizens in the Federation of Bosnia and Herzegovina and in the Republic of Srpska is regulated respectively by the Law on Foreigners of Bosnia and Herzegovina[6], Law on employment of Foreigners[7] and Law on employment of Foreigners and Stateless Persons[8]. In order to be employed in Bosnia and Herzegovina, a foreign citizen must obtain a so-called "white card" (i.e. a registration of arrival), temporary or permanent residence issued by the Service for Foreigners' Affairs and a work permit issued by the Employment Service.

According to the abovementioned Laws, a foreigner is obliged to register with a local police station within 24 hours after entering the country, unless staying in a hotel, in which case the hotel deals with the registration procedure. On the basis of the registration, the local police department issues the white card.

Foreigner intending to reside in Bosnia and Herzegovina for the purpose of paid employment shall obtain, before the entry to Bosnia and Herzegovina, a work permit issued by an authority in charge of employment, unless the Law or an international agreement to which Bosnia and Herzegovina is a is signatory provide that no work permit is required for specific types of work. The Law prescribes some exceptions where temporary residence on the grounds of employment without a work permit may be issued, for example: highly qualified employment, redeployment within a legal entity, scientific research or employment without a work permit with obtained certificate on registered work.

A request for a work permit is submitted by the potential employer of the foreign person or a foreigner. The employer/employee has, *inter alia*, to submit a written explanation on the need for engaging the particular foreigner.

Upon issuance of the work permit, a foreigner wishing to work in Federation of Bosnia and Herzegovina or Republic of Srpska must obtain a temporary residence permit (or, if special conditions are met, permanent residence permit). Documents, which need to be submitted together with the request, include evidence of possession of sufficient funds (e.g. credit card) and health insurance documents.

Temporary residence on grounds of work permit shall be approved for the period covering validity of the work permit plus 30 additional days, but not longer than a year, and may be extended under the same conditions applied when granting the residence. A foreigner shall not start working in Bosnia and Herzegovina on the grounds of work permit prior to obtaining a temporary residence permit. The procedure of obtaining the work permit takes approximately one month and the procedure of obtaining the residence permit - at least 45 days.

2.4 Secondments

Secondment of Bosnian employees abroad is regulated by the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families[9]. According to this Convention, the state of Bosnia and Herzegovina is required to take care about the number of citizens working abroad.

3. Types of contracts

3.1 Employment

Traditional employment relationship is the most usual manner for engaging personnel in Bosnia and Herzegovina. There are two types of employment relationship depending on the duration. As a rule, an employment relationship is created for an unlimited period of time. Exceptionally, employment agreements can be entered into for a limited period of time of up to 24 months in Republic of Srpska or three years in Federation of Bosnia and Herzegovina, in a limited number of cases such as seasonal work, work on a specific project or to cater for a temporary increase of volume of work. The temporary employment of managers can be equal to their mandate. In case of compulsory apprenticeship, temporary employment can match the duration of compulsory apprenticeship.

3.2 Engagement outside employment

Personnel may also be engaged outside employment relationships, in those events subject to the conditions proscribed by the Labour Law. Flexible kinds of engagement include:

(a) temporary and occasional work (up to 60 days a year);

(b) service agreement (only for work outside the employer's main business activities);

(c) outsourcing of employees through special outsourcing agencies;

(d) agreement for professional improvement (concluded mainly with trainees).

3.3 Engagement of managing directors

According to the Laws of both entities, persons serving as managing directors may perform the managerial function with or without establishing employment relationship. In the event that persons serving as managing directors establish the employment relationship, then the employment relationship is created for unlimited or limited period of time which is usually connected to the managing director's mandate. Persons serving as managing directors may be employed under the same conditions as any

[6] *Zakon o strancima, Official Gazette of Bosnia and Herzegovina, No. 88/15 of 10 November 2015.*
[7] *Zakon o zaposljavanju stranaca, Official Gazette of Bosnia and Herzegovina, No. 08/99 of 1999.*
[8] *Zakon o zaposljavanju stranaca i lica bez drzavljanstva, Official Gazette of Republic of Srpska, No. 24/09 and 117/11 of 3 November 2011.*
[9] *Adopted by General Assembly resolution 45/158 of 18 December 1990.*

other employee of the company. The Labour Laws do not provide any separate rules for management agreement. Employed managers of the company enjoy the same treatment/protection as any other employee of the company.

3.4 Teleworking arrangement

According to the Labour Law of FBiH, there is a possibility to conclude an employment contract for work outside the premises of the employer (at the employee's home or in some other space provided by the employee), in accordance with the collective agreement and Rulebook of the Employer. The employment contract for work outside the premises of the employer shall also contain data on working hours, type of tasks and the method for organising work, working conditions and the method for supervising the work, salary for the work performed and payment terms, use of the employee's own means for work and reimbursement of costs for their use, refund of other costs associated with the performance of tasks and the methods for their determination, other rights and obligations. Employment contracts for work outside the premises of the employer may be concluded only for the jobs which are not hazardous or detrimental to the health of an employee or other persons and do not threaten the working environment.

The Labour Law of RS recognizes the work outside the premises of the employer as well as telework.

4. Salary and other payments and benefits

4.1 Salary

The Labour Law proscribes that the total salary is calculated as the sum of the following elements and sub-elements, some of which are mandatory and some of which are not:

(a) salary for the work performed and the time spent at work, which consists of the following elements:

- basic salary (mandatory);
- performance-based part of salary, which serves as a corrective of the basic salary (mandatory); and
- increased salary (mandatory).

(b) salary based on the employee's contribution to the employer's business success, e.g. awards, bonuses, (not mandatory); and

(c) other payments such as:

- meal allowance (mandatory);
- compensation for the costs of commuting to and from work, equal to the amount of public transportation ticket;
- annual vacation allowance (mandatory);
- other payments made to the employee, if any (not mandatory).

4.2 Other mandatory payments not considered as salary

According to the Labour Law, the employer is also obliged to make the following payments to the employees which are treated as compensation for expenses and do not form part of the salary and thus are not subject to tax and mandatory social contributions (unless they exceed statutory non-taxable amounts):

(a) per diem expenditure for time spent on business travel within the country and abroad;

(b) compensation for accommodation and food during field work, unless the employer provides for accommodation and food;

(c) retirement severance payment equivalent to the amount of three average salaries in the Republic of Srpska or Federation of Bosnia and Herzegovina;

(d) severance payment for termination of employment due to redundancy in the amount of one third of the average employee's salary he received in the last three months prior to termination, for each year of service with the employer;

(e) compensation for funeral expenses in the event of the death of the employee or a member of his immediate family;

(f) compensation for damages in the event of a work-related injury or professional illness.

4.3 Other benefits

Employers are free to provide their employees with other benefits, such as employees' stock option plans, profits participation, etc.

5. Salary tax and mandatory social contributions

Salary is subject to salary tax and mandatory pension, health and unemployment insurance (together, "mandatory social contributions"), payable by the employer at source on a withholding basis. Although total mandatory social contributions are payable by the employer on a withholding basis, the law in the Federation of Bosnia and Herzegovina distinguishes between contributions relating to the employer and contributions relating to the employee.

In the Federation of Bosnia and Herzegovina these amounts are as follows:

Contributions on salaries paid by the employer	Contributions on salaries paid by the employees
6% pension insurance	17% pension insurance
4% health insurance	12.5% health insurance
0.5% unemployment	1.5% unemployment

In the Republic of Srpska these amounts are as follows:

Contributions on salaries paid by the employer
18.5% pension insurance 12% health insurance 1% unemployment insurance
1.5% for child health care

Salaries of foreign personnel (with the exception of those employed with foreign diplomatic or consular missions and IGOs not deemed to be Bosnia and Herzegovina residents for tax purposes) are also subject to local taxes and mandatory social contributions. The rate of the mandatory income tax to the salary is the same in both entities and amounts to 10 per cent.

6. Working hours

The Labour Law determines that full-time working hours are 40 hours per week. As a rule, the working week lasts five days but the maximum of 40 hours per week may also be extended over a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the Labour Law, a 30-minute break is a statutory obligation and is included in the full-time working hours in Republic of Srpska but it is not included in the full-time working hours in Federation of Bosnia and Herzegovina. In practical terms this means that a working day in Republic of Srpska normally consists of seven and a half working hours. Work in excess of full- time working hours is deemed overtime and is subject to additional compensation. Senior employees and management are not exempt from the overtime regime, i.e. their overtime is also subject to additional compensation.

7. Annual vacation, paid, leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 20 days. This minimum can be increased on the basis of various criteria determined in the individual collective agreement or, in other event, the Work Rules applicable to a particular employer or individual employment agreements. According to the Labour Law, annual vacation may be taken in its entirety at once or in two parts. If it is taken in two parts, the first part (which cannot be less than 15 days) can be taken in the current year, while the second part has to be taken no later than the 30 June of the subsequent year.

7.2 Paid leave

In addition to annual vacation employees are also entitled to a total of seven days in Federation of Bosnia and Herzegovina or five days in Republic of Srpska of paid leave per year in cases proscribed by the Labour Laws.

7.3 Sick leave

In the event of sick leave, employees are entitled to a remuneration of salary. This remuneration amounts either to 80 per cent of the employee's average salary calculated over the period of three months preceding the sick leave, in the event of illness or injury not related to work, or 100 per cent of employee's average salary calculated over the period of three months preceding the leave, if the absence is caused by professional illness or injury. The employer is obliged to pay remuneration of salary for the first 42 days of sick leave, while the state compensates the remuneration for the remaining days. It should be noted that there are no limitations with respect to total duration of sick leave or number of sick leaves.

7.4 Unpaid leave and employment standstill

An employer may, at the request of the employee, allow the employee to take unpaid absence from work. In exceptional circumstances an employer shall be required to allow an employee leave of up to four working days in the Federation of Bosnia and Herzegovina and three working days in Republic of Srpska within one calendar year for religious or traditional purposes, provided that two-day leave is taken with compensation of salary as paid leave. During the absence, the rights and obligations of the employees acquired through employment and deriving from employment shall be suspended.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Bosnia and Herzegovina is a rarity. The regulatory framework is absent at both corporate law and tax law levels. The Law on Personal Income Tax11 only stipulates that revenues based on participation in the distribution of profits of companies (dividends or shares) shall not be considered as taxable income, while on the other side, the same Laws also stipulate that all incomes of employees achieved on the basis of employment with the employer are taxable. There is lack of provisions specifying when this income becomes valid for the purpose of taxation and how its amount is to be calculated.

In practice, a type of ESOP scheme is modestly applicable in local companies, only through capital increase by contribution in services.

In practice, a type of ESOP scheme is modestly applicable only in closed, limited liability companies, through capital increase by contribution in services.

9. Health and safety at work

The area of health and safety at work is regulated in detail by the Law on Health and Safety at Work in Bosnia and Herzegovina[10, 11] and by the Law on Health and Safety at Work in Republic of Srpska[12]. All employers and employees are obliged to adhere to specific obligations introduced by these laws. The Law on Health and Safety at Work, *inter alia*, stipulates that each employer must adopt the Act on Risk Evaluation of Work Posts, containing a description of the work process with evaluated risk attached to each employment post and identification of measures for the removal of such risk. In addition, all employers must have a general provision which regulates the most important matters pertaining to health and safety at work. The Law on Health and Safety at Work also requires employers to insure all employees against work-related injuries and professional illness.

10. Amendment of the employment agreement

The rules provided in this guide pertaining to dismissal/ termination of the employment agreement shall also be applied in the event that the employer cancels the contract, while at the same time offering the employee to enter into an employment contract under amended terms. If the employee accepts the offer of the employer within the provided deadline, he shall reserve the right to contest the acceptability of such change of the contract before a competent court.

11. Termination of employment

11.1 Termination by employee

According to the abovementioned Labour Laws, the employee may freely terminate his employment relationship at any time and for any reason, subject to a 15-day notice period in Republic of Srpska, and a seven-day notice period in Federation of Bosnia and Herzegovina. This notice period may be extended by contract, but with not longer than a one-month period in Federation of Bosnia and Herzegovina.

11.2 Termination by employer

In accordance with the Labour Law of the Federation of Bosnia and Herzegovina, the employer may unilaterally terminate the employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) intentional breach of work duty (any specific breaches which may trigger dismissal must be stipulated in the employment agreement, collective agreement or, as the case may be, Work Rules);

(b) breach of work discipline (specific breaches which may trigger dismissal must be stipulated in the employment agreement, collective agreement or, as the case may be, Work Rules);

(c) technological, economic or organisational changes within the employer (redundancy).

The notice period is proscribed only when termination is for organisational or economic reasons and it is a minimum of 14 days.

In accordance with the Labour Law of the Republic of Srpska, the employer may unilaterally terminate an employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) if the employee does not perform or does not have the necessary knowledge and skills to perform his jobs;

(b) if the employee is convicted of a criminal offence at work or in connection with work;

(c) if due to technological, economic or organisational changes the employee is no longer needed;

(d) if the employee is performing a particular job or there is a reduction in workload and the employer cannot provide the employee with another job (redundancy);

(e) if the employee refuses to conclude the Annex to the agreement in terms of the Labour Law;

(f) if the employee has not returned to work after five days of expiry of paid leave or dormant employment period;

(g) if the employee has committed a serious breach of employment duties or employment discipline.

The notice period is minimum 30 days and is applicable only if the contract is terminated for the reasons determined under (a), (c) and (d) above.

11.3 Procedure for termination by employer

The notice period is proscribed only when termination is for organisational or economic reasons in Federation of Bosnia and Herzegovina, or in Republic of Srpska in cases as stated above. In other cases of termination by the employer, there is no notice period, i.e. termination is with immediate effect subject to a proper termination procedure being conducted.

[10] *Zakon o porezu na dohodak gradana Republike Srpske, Official Gazette of Republic of Srpska, No. 60/15 and 5/16 and Zakon o porezu na dohodak Federacije Bosne i Hercegovine, Official Gazette of Bosnia and Herzegovina, No. 10/08, 9/10, 44/11, 7/13 and 65/13.*

[11] *Zakon o zastiti na radu, Official Gazette of Federation of Bosnia and Herzegovina, No. 79/20.*

[12] *Zakon o zastiti na radu, Official Gazette of Republic of Srpska of 09 October 2007.*

(a) Procedure for termination in the event of breach of work duty or work discipline

Prior to terminating an employee, the employer is obliged to issue to the employee to be terminated a written notice stating the grounds for termination, as well as facts and corroborating evidence and invitation for the employee to provide his defence. If there is a trade union or workers council within the employer, the said notice must usually also be delivered to the relevant trade union or workers council, which has the opportunity to provide its own response. In most of the cases, there is an obligation to consult the trade union/workers council but there are also some cases in which the employer is obliged to receive written approval for individual termination (for persons older than 55 or 60 years, disabled persons, trade union members, etc.). After consultation or written approval from the trade union, the employer may issue a decision on the unilateral termination of employment. This decision must contain a comprehensive description of the legal grounds for termination of the employment relationship and advice on legal remedies available to the terminated employee. The decision has to be adopted within 60 days in the Federation of Bosnia and Herzegovina or within three months in Republic of Srpska from the day when the employer acknowledged the serious breach committed by the employee but not longer than one year in Federation of Bosnia and Herzegovina or six months in Republic of Srpska from the day when the breach is committed. The decision must be delivered to the employee in person in the employer's premises or sent to the employee's address by registered mail. The employment relationship is deemed terminated on the day when the decision on termination of employment is delivered to the employee.

In addition to the abovementioned, the Law specifies that in the event the employer terminates the employment contract for reasons of breach of work duty or work discipline of the employee, the employer is obliged to provide the opportunity for the employee to explain and defend, except in those circumstances when it is not reasonable to expect the employer to do so. However, it is advisable for the employer in all cases to allow the possibility of defence to the employee (in writing or with the employer in form of notes), so that the employer is covered in case of possible lawsuit. In all events, if a lawsuit is initiated against the employer, with regards to termination of the employment contract, the employer is obliged by the Law to prove the existence of the reasons for the termination of the employment contract.

(b) Procedure for termination in the event of redundancy

In accordance with the Labour Laws, the employer can terminate the employment contract of the employee with formal termination notice if such termination of the employment contract is justified for economical, technical and organisational reasons. In the event of termination of the employment contract as mentioned above, the Law determines that the termination of the employment contract is justified if the employer cannot be expected to hire the employee for other activities or educate or train him to perform work in relation to other tasks.

The employer may change the organisational structure of the company and as a result of systematization of working posts may determine that a specific working post is no longer required and, therefore, takes the decision to declare the employee redundant and terminates his employment contract. However, in the event that the employee initiates a lawsuit against the employer, it is necessary to prove that the employer was not able to hire the employee, educate, or train him for the work performed on other tasks. Furthermore, in accordance with the Labour Laws the specific procedure needs to be observed in the event of termination for redundancy. Therefore, if an employer with over 30 employees intends to cancel the employment contracts of at least five employees over a three-month period, due to economic, technical or organizational reasons, he shall be obliged to consult in writing with the workers council regarding the redundancy. The abovementioned consultation has to specify reasons for redundancy, redundancy criteria, number of redundant employees, measures for employment of redundant employees, etc.

In the event of termination for redundancy, the employer is obliged to offer severance payment to the terminating employees. The minimum redundancy payment proscribed by the Labour Law is one-third of the employee's average salary earned in the course of the three-month period preceding the dismissal, for each year of employment. It is possible that employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work, provided that all his rights from the employment are kept during the garden leave (salary, social contributions, etc.).

(c) Remedies in the event of wrongful dismissal

An employee, who believes that the employer's decision on dismissal is wrongful, may submit a request for protection of rights to the employer within 30 days from the day on which the decision was delivered. If the employer fails to meet such request within 30 days from the day on which the request for the protection of the right was filed, the employee may file a legal action with the competent court within further 90 days in Federation of Bosnia and Herzegovina or six months in Republic of Srpska.

The main remedy available to the employee is reinstatement. In the events that the court finds wrongful dismissal, the employee is also entitled to compensation of salary and other lost remuneration. Pending the dispute, the employee may ask the Labour Inspectorate to render provisional measure on reinstatement.

It should be noted that labour disputes may last in practice for a very long period of time (two to three years on average). The courts often show benevolence towards dismissed employees. Bearing that in mind, each case of termination should be conducted very carefully, in order to minimise the risk of negative outcome and dispute. If the employee is successful in the claim, the court can order the payment of all the employee's salaries and relevant contributions, with statutory interest, from the

time of the dismissal until the time of full payment and return to work. The court can also order the employer to reinstate the employee to his previous work position or to another adequate work position if the previous one does not exist. The court can order payment of compensation for other damages and can also issue interim measures to return the employee to work before the court dispute is resolved.

Categories of employees who enjoy special protection against dismissal

Certain categories of employees enjoy special protection and may not be dismissed during a certain period, and special procedures must be followed for their dismissal. Generally, these are women during pregnancy and maternity leave, employees injured at work or suffering from a professional illness and union representatives, as well as persons who have suffered disabilities during the employment. However, certain other categories may also exist.

An employer may not dismiss a woman during pregnancy or during her maternity leave. An employee injured at work or suffering from a professional illness may not be dismissed while he is incapable to work (i.e., receiving treatment or in recovery).

Employees who suffered a change in their work abilities during the employment (i.e., suffered a disability) should be offered a new adequate work position by the employer, in accordance with the employees' abilities and qualifications, or additional requalification for another work position should be attempted if possible. In Federation of Bosnia and Herzegovina, the employer needs approval of the union or work council when dismissing an employee with changed work ability. In Republic of Srpska, if the employer is not able to offer an adequate work position to such employee, it may terminate the agreement with the prior opinion of the union or the work council.

In Federation of Bosnia and Herzegovina the employer may dismiss a union representative, during the performance of his union duties or six months thereafter, only with the prior consent of the Federal Ministry of Labour and Social Policy. If the ministry denies the consent, the employer can, within 30 days, request the consent from the court. In Republic of Srpska, the employer may dismiss a union representative, during the performance of his union duties or six months thereafter, only with the prior consent of the union or works council. If the union or work council does not reply within eight days, it will be considered they have consented. If the union or work council denies the consent, the employer may, within 15 days, request arbitration for the peaceful settlement of the dispute.

12. Non-compete

Without the approval of the employer, the employee may not, at his own or other's account, transact business in the area of activity performed by the employer. The employer and the employee may enter into a contract that the employee, for a certain period after the termination of the employment contract, which may not exceed two years from the day of termination of such a contract, may not be employed with another person in market competition with the employer and that he may not, either at his own or at the account of a third party, transact business in which he competes with the employer. The contract mentioned above may be an integral part of the employment contract.

The contracted ban of competition shall bind the employee only if by the contract the employer has undertaken the obligation during the period of ban to pay compensation to the employee at least equivalent to the amount of half of the average salary paid to the employee over the period of three months before termination of the employment contract. The compensation shall be paid by the employer to the employee at the end of each calendar month. The amount of compensation shall be coordinated in the manner and under the terms determined by a collective agreement, employment policy, or employment contract. The terms and method of termination of competition ban shall be regulated in the contract between the employer and the employee.

13. Global policies and procedures of employer

An employer employing over 30 employees in Federation of Bosnia and Herzegovina, or 15 employees in Republic of Srpska shall pass and publish a Rule Book regulating salaries, organisation of work and other issues of relevance to the employees and the employer, in accordance with the law and the collective agreement. The employer shall conduct mandatory consultations with the workers council or the trade union with regard to passing the Rule Book. The Rule Book shall be posted on the billboard of the employer and shall come into effect on the eighth day after the date of publication. The workers council or the trade union commissioner may request from the competent court to annul an unlawful Rule Book or some of its particular provisions.

14. Employment and mergers and acquisitions

The Labour Law imposes certain obligations in cases of "change of employer", which, by virtue of an explicit provision of law, encompasses mainly restructurings such as mergers. The relevant articles of the Labour Laws require the successor employer to notify the completion of the change, the employees and the transfer of their employment agreements on the successor employer.

15. Industrial relations

The Constitution of Bosnia and Herzegovina and the Labour Law guarantee the freedom of trade union association. There are two major trade unions with nationwide coverage: *Samostalni sindikat*. Many other trade unions exist on industry level and within individual companies. As in most other transitional economies, industrial disputes are quite usual in Bosnia and Herzegovina, especially in companies undergoing financial difficulties. Furthermore, a great deal of them still escalate into strikes, which is a legally recognised right of employees, although strikes are a decreasing trend.

16. Employment and intellectual property

According to the Bosnian Copyright Law[13], the employer is the exclusive owner of the proprietary (economic) component of copyright developed by the employee while performing regular work duties for a period of five years following the creation of copyright, unless otherwise provided in the employment agreement with the respective employee or in the employer's general enactment. On the other hand, the employee is entitled to special remuneration depending on the monetary effects of the use of his copyright by the employer. After the said five-year period, the economic component of copyright reverts to the employee. In both of the abovementioned cases, the employee remains the author and thus the owner or moral component of the copyright.

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal traits is strictly forbidden by the Labour Law, as well as any harassment and sexual harassment. Furthermore, there is also a separate regulation on mobbing. According to the Law on Prevention of Discrimination[14], mobbing is defined as any act against an employee with the purpose or effect of harming personal dignity. An employee whose rights have been violated is entitled to seek protection of his rights from the employer or in front of the competent court.

18. Employment and personal data protection

n concluding employment contracts, an employer may not request the employee to provide information which is not directly related to the nature of the work activity performed by the employee. Personal data of an employee may not be gathered, processed, used or supplied to third persons, unless if this is determined by the law or if this is necessary for the exercising of the rights and obligations deriving from employment.

19. Employment in practice

The collective agreement and each individual employment contract as well as labour rules (Work Rules) can provide favourable terms and rights for employees in comparison with those guaranteed by the Labour Law unless the opposite is expressly regulated in the Labour Law. At the same time, the provisions of the said acts must comply with the minimum rights provided for employees by the Labour Law and other laws, conforming to the lower threshold set by the mandatory provisions contained therein. The employers are obliged to act in compliance with the Labour Law and all applicable collective agreements, the employer's work rules and individual employment contracts, and to pay remunerations and other benefits accordingly. If the remunerations and allowances are not paid accordingly, the employees are entitled to initiate labour dispute against the employer and to require payment of such compensations. All monetary claims arising from labour relations shall fall under the statute of limitations within three years from the day on which the claim was generated.

[13] *Zakon o autorskom i srodnim pravima, Official Gazette of Bosnia and Herzegovina, No. 63/10 of 2010.*
[14] *Zakon o Zabrani Diskriminacije, Official Gazette of Bosnia and Herzegovina, No. 59/09 of 23 July 2009.*


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BULGARIA

1. General overview

Bulgarian legislation is based on the civil law system. Employment relationships between individuals and employers are regulated predominantly by the Constitution of the Republic of Bulgaria, the international treaties to which the Republic of Bulgaria is a signatory and which have been ratified by the Bulgarian Parliament, domestic legislation including the Bulgarian Labour Code (**"LC"**)[1], as well as various special laws and a large number of regulations, collective labour agreements and the internal rules and orders of the employers. The LC is based on the principle of setting the minimum standards for the relationship between the employer and the employee. The majority of its provisions (i.e., regarding working hours, breaks, leave, labour discipline, information and consultation, duration, termination of the employment, etc.) are mandatory in nature and may not be waived even with the consent of the employee. Any mutual understanding to that effect could result in violation of the LC and in the imposition of sanctions for the employer.

Individual employment contracts must be concluded in writing and must specify as a statutory minimum:

(a) identities of the parties;

(b) place where the work will be performed;

(c) position and nature of the work to be performed;

(d) date on which the employment contract is concluded and the date of commencement of employment;

(e) duration of the contract;

(f) paid holiday and any other leave to which the employee is entitled;

(g) notice periods that parties should observe in case of termination of the employment contract[1, 2]; the notice period should be one and the same for both parties;

(h) base salary and the additional salaries of permanent nature, as well as the frequency of their payment; and

(i) duration of the working day or week.

In addition to the legislation and the individual employment contracts, employment relations can also be governed by internal rules and policies of the employer and collective labour agreements (on a company or a branch level).

2. Hiring

2.1 General

The LC does not provide any particular requirements towards the recruitment of employees, except for the minimum age for employment - 16 years. Employment of younger persons is forbidden except for certain positions.

2.2 Disabled persons

Employees, who by reason of illness or labour accident are unable to perform the work assigned to them, but who may perform other suitable work or the same work under relaxed conditions without hazard to their health, should be transferred to other work or to the same work under suitable conditions at the proscription of the medical authorities. The employer shall be obliged to transfer the employee to suitable work according to the proscription of the said authorities within seven days after receipt of the proscription. Employees with permanently reduced working capacity of 50 percent and more than 50 per cent shall be entitled to basic paid annual leave in an amount of not less than 26 working days.

Employers with more than 50 employees are obliged annually to designate job positions suitable for occupational rehabilitation. These positions can vary from 4 to 10 per cent of the total number of employees depending on the economic activity in which the employer is engaged.

2.3 Foreign employees

EU/EEA nationals and the nationals of Switzerland may enter and stay in Bulgaria without any visa or residence permit for up to 90 days. Upon exit of the country, this period is renewed. In the event that they need/wish to stay longer they can apply for long-term (up to five years) residence certificates. As of 1 January 2007, EU/EEA nationals and the nationals of Switzerland are entitled to work in the country without the necessity to obtain work permits.

[1] *State Gazette of Republic of Bulgaria, No. 26 of 1 April 1986 and No. 27 of 4 April 1986, lastly amended in No. 109 of 22 December 2020.*

[2] *Notice period in case of termination of an employment contract of indefinite duration is 30 days, provided that the parties have not agreed upon a longer period but no longer than three months. Notice period in case of termination of a fixed-term employment contract is three months, but no longer than the remaining period of the contract.*

Other expatriates, citizens of third (non-EU) countries, which are listed in Annex II to Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (i.e., countries like Australia, New Zealand, Canada, USA, Israel, Chile, Japan, etc.), are entitled to enter Bulgaria without a visa and stay for an overall period of up to 90 days within a six-month period. Such visa-free stay does not entitle them to work in the Republic of Bulgaria. If they wish/intend to work in the country and depending on the type of position they would occupy, they may need to apply for a work and residence authorisation.

All other expatriates (apart from the above two categories) are entitled to enter and stay in the country only on the grounds of a previously issued visa. If they wish/intend to work in the country and depending on the type of position they intend to occupy, they may need to apply for a work and residence authorisation.

The procedure for the issue of work authorisation must be initiated by the employer prior to the expatriate's entry into the territory of the Republic of Bulgaria. The Bulgarian Labour Migration and Labour Mobility Act[3] provides that work authorisations are issued, *inter alia*, in the event that (a) the status, development and the public interest on the national labour market, in the opinion of the Agency of Employment, allow this and (b) the overall number of expatriates working for the employer seeking permission to employ an expatriate has not exceeded from 20 to 35 per cent of its entire workforce over a period of 12 months prior to the application date.

After the issuance of the work authorisation the foreigner has to obtain a long-term type D visa from the Bulgarian Consular office at his country of domicile. Once the foreigner enters Bulgaria with the long-term visa, he has to obtain a long-term residence authorisation which in the general case represents a combined work and residence permit (Combined work and residence permit, EU Blue card, Intercompany transfer work and residence permit) that will entitle him to start working in Bulgaria.

The entire procedure could be completed within circa six months.

2.4 Secondments

Employers may second their employees for the performance of their labour duties outside the place of their permanent work for up to 30 calendar days without interruption. A secondment for a longer period requires the written consent of the employee. The latest amendments to the LC, supplemented by the Ordinance for their implementation are the last major step in the reform of the migration rules in Bulgaria, introducing the provisions of Directive 2014/67/EU concerning the posting of workers in the framework of the provision of services.

Posting of employees in the framework of the provision of services occurs when:

(a) an agency providing temporary work posts a worker or employee to a user undertaking established in another EU Member State, a State party to the EEA Agreement, or the Swiss Confederation or a Bulgarian employer seconds an employee to another EU Member State, a State party to the EEA Agreement, or the Swiss Confederation on its account and under its direction, under a contract concluded between that employer and the party for whom the services are intended or to an undertaking from the same group of undertakings;

(b) an agency providing temporary work posts a worker or an employee to work in a user undertaking registered in Bulgaria or an employer registered in another EU Member State, a State party to the EEA Agreement, the Swiss Confederation, or a third country seconds a worker or employee to Bulgaria on its account and under its direction, under a contract concluded between that employer and the party for whom the services are intended; or to an undertaking from the same group of undertakings.

Under the new rules it is obligatory to keep the employment relationship between the posting entity and the employee for the whole term of the secondment.

The regime for travel costs and allowance during the posting from Bulgaria is amended and the employer always covers the travel costs for the posting.

For the period of secondment or posting, the worker or employee is entitled to at least the same minimum working conditions as those customary for workers and employees performing the same or similar work in the host state.

The Ordinance provides detailed explanation of the obligations of the entities engaged in the posting. A major amendment to the former regime is that the posting to Bulgaria is no longer declared with the Agency of Employment but with the Labour Inspectorate. Furthermore, the Bulgarian receiving entity has to preserve documents in regards to the posting (in hardcopy or electronic form) among which: proof of the employment relationship between the posted employee and the foreign entity; proof of his work time; documents evidencing payment of his salary.

Finally, communication between the responsible authorities and execution of penalties is ensured on an EU and EEA level in regards to breach of the rules for posting of employees.

3. Types of contracts

3.1 Employment

For reasons of clarity, under this section we need to first outline some principal differences between an employment contract and a civil contract (for the provision of various services, etc.).

[3] *State Gazette of Republic of Bulgaria, No. 33 of 26 April 2016, lastly amended in No. 97 of 5 December 2017.*

The employment contract is a contract by virtue of which an individual provides his labour (i.e., physical/mental exertion, professional expertise, and skills) to perform a certain type of work defined in the job description in return for remuneration. This type of contract is governed by the mandatory provisions of the LC and a large number of regulations. As indicated above, the LC is based on the principle of setting the minimum standards for the relationship between the employer and the employee. The majority of its provisions are mandatory in nature and may not be waived even with the consent of the employee. Any mutual understanding to that effect could result in violation of the LC and in the imposition of sanctions upon the employer.

The civil contract covers the provision of various services (i.e., consultancy, technical, advisory, etc.), fulfilment of certain assignments, accomplishment of certain tasks, etc., and the remuneration received is tied to the delivery of a certain result. However, apart from the delivery of such result, the contractor is free to determine the remaining parameters himself (i.e., how to work, when to work, what materials to use, etc.). These contracts are governed by Bulgarian civil law in particular the Obligations and Contracts Act[4], defining them as agreements between two or more persons aiming to create, settle or terminate a legal relation between them. As a main rule, the parties are free to negotiate the contents of such contracts. Individuals working under civil contracts, i.e., contractors are not subject to employment legislation and the rules of the LC do not apply.

However, the LC expressly stipulates that all relations between parties in connection with the provision of the individual's labour are regulated solely as employment relationships, to which the LC applies. This provision aims to prevent the concealment of employment relationships by the conclusion of civil contracts for the purpose of evasion of the mandatory provisions/ constraints imposed by the labour and tax legislation. It is considered that such concealment leads to the abuse of employees' rights as guaranteed by the LC (i.e., specified working hours, annual paid leave, breaks, remuneration, safe working conditions, protection against termination of the contract, terms of the contract, etc.). The LC explicitly requires an employment contract where the relationship between the parties features the characteristics of an employment relationship (as indicated above, these are the relations requiring the provision of an individual workforce). The Executive Agency of General Labour Inspection is empowered to exercise control over the observance of employment legislation in Bulgaria and it can declare the existence of an employment relationship between the parties, even when they have entered into a civil contract.

In view of the above, parties should carefully consider the nature of the work to be performed in order to enter in the correct type of contract and avoid future complications.

Normally, employment contracts are concluded for indefinite duration. Fixed-term employment contracts can be concluded only as an exception and on certain grounds explicitly and exhaustively listed in the LC. A fixed-term contract concluded in violation of these stipulations is considered an employment contract for indefinite duration.

3.2 Engagement outside employment

As indicated above, personnel may also be engaged outside employment relationship, under civil contracts, which are not regulated by the LC.

Statutory representatives of companies (managers, executive directors or members of Boards) can be engaged under management agreements (please refer to the following Section 3.3).

At the beginning of 2012, the Bulgarian Parliament finally provided some statutory rules regarding the activities of the enterprises providing temporary/leased staff (**"Outsourcing companies"**). For the past six to seven years Outsourcing companies (mainly HR agencies) had presence and successfully offered services in Bulgaria, despite the lack of statutory rules in this aspect of their employment practices. Their existence and operations were recognized and tolerated in practice, but their activities took place in a legal vacuum.

However, the introduced express rules seem to tie the hands of the business rather than effectively regulate the relations between the commissioned employees, the Outsourcing companies and the employers using leased staff (user undertakings). It is not a secret that both Outsourcing companies and user undertakings feel that they had a lot more business flexibility at the times of the legal vacuum. The main challenges before them are as follows:

- The total number of employees commissioned by an Outsourcing company at a user undertaking may not exceed 30 per cent of the employees employed by that user undertaking.
- User undertakings which have performed mass dismissals may not use leased personnel prior to the lapse of six months as of such dismissals.
- Employment contracts between the employees and the Outsourcing company could only be concluded as fixed-term contracts on two grounds: for the completion of a specific assignment; or for the replacement of an employee absent from work.

The outsourcing companies have to undergo a registration procedure with the Bulgarian Agency of Employment. The rights and obligations of the Outsourcing companies and the user undertakings vis-a-vis the commissioned employees are explicitly listed in the LC. They represent a split of the functions of the employer between the two entities. In fact, they do not create additional burden to these entities.

[4] *State Gazette of Republic of Bulgaria, No. 275 of 22 November 1950, lastly amended in No. 96 of 1 December 2017.*

3.3 Engagement of managing directors

Statutory managers of companies (managers, Executive Directors, members of Management Board / Board of Directors) enter into management, not employment contracts.

Employment and management contracts are subjected to completely different regimes: the management contract is governed by the Commerce Act[5] and the Obligations and Contracts Act. The mandatory provisions of the LC are completely inapplicable to this type of contract. The employment contract is governed by the LC and the majority of its provisions regarding working hours, breaks, leaves, labour discipline, information and consultation, duration, termination of the employment, etc. are mandatory in nature and may not be waived even with the consent of the employee. Their reproduction in the text of the contract is not necessary to ensure their validity. To the contrary, almost all provisions (the so-called *essentialia negotii*) of a management contract need to be negotiated between the parties and included in the contract to ensure their validity. Such clauses are: the scope of activities of the manager, the management fee, duration of the agreement, days off (no paid leave entitlement by law), termination, compensation packages, etc.

There is a constant practice of the Bulgarian Supreme Court of Cassation that even if the manager and the company have concluded an employment contract such contract shall be considered valid and binding but should be treated as a management contract subject to the provisions of the Commerce Act and the Obligations and Contracts Act.

Statutory managers working under management contracts are not employees and they do not enjoy the general protection provided by the LC.

The LC and the Commerce Act do not expressly regulate the status of other key/ management employees, apart from statutory managers. All such employees need to work under employment contracts despite their place in the company/ group hierarchy.

A foreigner may be appointed as managing director without any limitations. Registered statutory representatives of companies (managers or executive directors/members of Boards) do not require work authorisations irrespective of their nationality. However, depending on the nationality they would need to obtain either a certificate for long-term residence in the country for up to five years if they are EU nationals or a long-term residence permit of up to one year (renewable) if they are non-EU nationals.

3.4 Teleworking arrangement

While the Bulgarian legislation introduced the remote work regime some 9 years ago, the concept remained rather undeveloped and rarely used until the COVID-19 outbreak. Nowadays this legal concept is very popular, however, there are many grey areas in the implementation.

Remote work could be introduced either (1) unilaterally by the employer through an order - during the emergency epidemic situation, declared in Bulgarian currently until 30 November 2021 (and likely to be further prolonged); or (2) with the explicit written consent of the employee (either in the employment contract at the start of the employment relationship or through an annex thereto) - in all other cases. Remote work is voluntary in nature and has to be negotiated between the employee and the employer in writing.

Employers need to provide opportunities for preventing the isolation of teleworkers (especially if they work only remotely and not in a mixed regime) by periodic working or social meetings in the employer premises/offices; and/or by creating a corporate virtual space - a chat room, forum or other kinds of media, through which teleworkers can freely communicate with the rest of the staff. Teleworkers are entitled to have the same access to training and career development opportunities as are available to the rest of the staff and are subject to the same performance assessment rules.

Teleworkers need to designate a specific area in their home or in other premises chosen by them to serve as a workplace. The employer has to provide the following at its own expense: the equipment needed to perform the telework and the supplies needed for its operation (there is an option to agree to use teleworker's own equipment); the software needed; preventive maintenance and technical support; devices intended for communication with the teleworker, including Internet connectivity; data protection; information on and requirements for operating the equipment and keeping it in good repair, and the legal requirements and rules, including those in the field of data protection for data to be used in the course of the telework. Employers have to notify teleworkers in advance and in writing about the liability and sanctions in case of failure to observe the rules and requirements established, including those on the protection of business data.

Employers need to ensure that as at the date of commencement of such work the remote workplaces satisfy the minimum requirements for health and safety at work. The Employer is responsible for the safe and healthy conditions at the workplaces of the teleworkers and has to inform them of the statutory H&S requirements towards the organisation of work and the work video displays. The compliance with the H&S rules is controlled either by the teleworker requesting a visit at their workplace by submitting an application to the relevant Labour Inspectorate or by Employer and the labour inspection authorities who have the right to access the workplace subject to the advance notification given to the teleworker and subject to his/her consent.

4. Salary and others payments and benefits

The difference between the guaranteed monthly salary and the

[5] *State Gazette of Republic of Bulgaria, No. 48 of 18 June 1991, lastly amended in No. 104 of 8 December 2020.*

salary actually agreed in the employment contract remains due. It should be paid by the employer with the legal interest equal to the Basic Interest Rate as established by the Bulgarian National Bank plus 10 points.

~~Employees are also entitled to the following additional salaries:~~

Grounds	Under the Regulation on the Additional and Other Remunerations
For length of service and professional experience (mandatory)	Minimum is 0.6% over the basic salary agreed in the employment contract for each year of relevant length of service and professional experience. The right to receive this additional salary vests when the employee acquires at least one year.
For night work (if such work is performed)	The minimum is BGN 0.25 (approximately EUR 0.12) for each hour of night work (i.e. work between 10 p.m. and 6 a.m.) or part thereof.
For being at the disposal of the employer outside the enterprise	The minimum is BGN 0.10 (approximately EUR 0.05) for each such hour or part thereof.
For overtime work	Please refer to Section 6.5 below.

4.1 Salary

The minimum wage levels are set by the Council of Ministers by a decree. As of 1 January 2021, the minimum monthly salary in Bulgaria is BGN 650 (approximately EUR 325) during normal working hours. Men and women have the right to equal pay when performing one and the same work or work to which equal value is attributed.

The LC guarantees payment of a monthly salary to the employee up to the amount of 60 per cent of his gross salary under the employment contract but not less than the national minimum monthly salary, in case of *bona fide* performance of his obligations. The minimum pay levels are equal for employees working under fixed-term employment contracts and those working under employment contracts of indefinite duration.

4.2 Other mandatory payments not considered as salary

As such payments are considered, *inter alia*, the daily allowances (in cases of business trips) up to the double amount of the minimum allowances as set in the applicable Regulations. Other payments (severance packages, bonuses, other benefits), even if not considered to be part of the employee's salary, are treated as such part from tax point of view.

4.3 Other benefits

The employer may, independently or jointly with other authorities and enterprises provide to its employees:

(a) organised nourishment conforming to the ration standards and specific conditions of work;

(b) transportation between the place of residence and the workplace;

(c) facilities for short- and long-term recreation, physical culture, sports and tourism;

(d) facilities for cultural pursuits, clubs, libraries, etc.

The employer shall provide to the employees working clothes and uniforms under terms and according to a procedure established by the Council of Ministers or in the collective agreement. The employee shall be obliged to wear the work clothes or uniforms during working time and to keep them as the property of the employer.

Employers are free to provide their employees with other benefits, such as employees' stock option plans, profits participation, etc.

5. Salary tax and mandatory social contributions

According to the Bulgarian Social Security Code[6], both employers and employees have to make mandatory social security contributions over employees' monthly social security income. Amount and type of the mandatory social security contributions depend, *inter alia*, on the category of labour performed by the respective employee. There is a special Regulation on the Categorisation of Labour upon Retirement, which defines three categories of labour. The type of work conditions and professions that fall within the first and second category of labour are exhaustively listed. All the rest fall within the third category of labour. Mandatory social security contributions have to be made to the following funds:

5.1 Pensions funds

(a) State Pension Funds

(i) For those born before 1 January 1960 and working under third category of labour - 19.8 per cent, split as follows: 8.78 per cent at the account of the employee and 11.02 per cent at the account of the employer.

(ii) For those born before 1 January 1960 and working under first and second category of labour - 22.8 per cent, split as follows: 8.78 per cent at the account of the employee and 14.02 per cent at the account of the employer.

[6] *List of countries which have a social security treaty with the Republic of Bulgaria: Albania, the Federative Republic of Yugoslavia (applied with Bosnia and Herzegovina), Libya, Turkey, Ukraine, Republic of Macedonia, Croatia, the Swiss Confederation, Moldova, Israel, the Russian Federation, Korea, Serbia, Canada and Montenegro.*

(iii) For those born after 31 December 1959 and working under third category of labour - 14.8 per cent, split as follows: 6.58 per cent at the account of the employee and 8.22 per cent at the account of the employer.

(iv) For those born after 31 December 1959 and working under first and second category of labour - 17.8 per cent, split as follows: 6.58 per cent at the account of the employee and 11.22 per cent at the account of the employer.

(b) Additional Mandatory Pension Security Funds

This is applicable only to the persons born after 31 December 1959, who make contributions to the State Pension Funds.

For a universal pension fund as of 2007 onwards the contribution is five per cent, distributed between employee and employer in the following ratio: 2.2 per cent for the account of the employee and 2.8 per cent for the account of the employer.

For a professional pension fund the contribution is 12 per cent for employees working under first category of labour and seven per cent for employees working under second category of labour. This contribution is entirely at the expense of the employer.

5.2 General illness and maternity fund

The contribution is 3.5 per cent, distributed between the employee and employer in the following ratio: 40:60.

5.3 Unemployment fund

The contribution is one per cent, distributed between the employee and employer in the following ratio: 40:60.

5.4 Labour accidents and professional disease fund

The contribution is between 0.4 and 1.1 per cent (exact percentage is established in the 2021 State Social Security Budget Act by main types of economic activities) and it is entirely at the expense of the employer.

Medical security contribution is eight per cent, distributed between the employee and employer in the following ratio: 40:60. Social security contributions are calculated over the gross social security income of the employee for the respective month, provided that the minimum of this income should not be less than the minimum monthly amount of the social security income for the calendar year by economic activities and qualification groups of professions established in the 2021 State Social Security Budget Act and no higher than BGN 3,000 (the maximum monthly income for social security purposes).

The income upon which social security contributions are due includes all salaries, including such that are charged but unpaid or insurance contributions that have not been charged in the accounts, and other income from work. The elements of the salary and of the income on which social security contributions are due are determined by an act of the Council of Ministers on the basis of a motion by the National Social Security Institute.

Salary is also subject to income tax, which is 10 per cent (flat) calculated over the gross amount of the salary minus the amount of the social and medical security contributions made at the expense of the employee.

Salaries of foreign personnel (with the exception of those employed with foreign diplomatic or consular missions) not deemed to be Bulgarian tax residents are also subject to local taxes and mandatory social contributions, subject to the existence of a Double Tax Treaty and social security treaty which may provide otherwise. Since Bulgaria joined the EU, social security schemes of EU/EEA and Swiss citizens are generally transferable between countries and benefits can be received on the basis of foreign insurance. Foreign social security is proven by the relevant A1 forms (statement on the applicable legislation). With respect to other (third, non- EU country) citizens, foreign social security could be accepted by Bulgarian institutions if the person's country has signed international treaties in the field of social security with the Republic of Bulgaria[6].

6. Working hours

6.1 Regular working hours

The LC has established a regular working week of five working days, up to 40 working hours per week (eight hours per day), which may be prolonged only in exceptional cases explicitly listed in the LC. Some categories of employees enjoy reduced working hours, without reduction of their salaries or affecting their other employment rights. Such categories are:

(a) employees working under harmful or specific conditions subject to a decision of the Council of Ministers, provided that they spend at least half of the working hours in such conditions;

(b) employees under 18 years of age.

The LC allows the parties to enter into an employment contract for part of the statutory working hours, establishing the duration and the allocation of these working hours. There is no minimum requirement as to the number of hours in such cases, but the monthly working hours of part-time employees must be lower compared to other employees of the enterprise working full-time in identical or similar positions. In the event that there are no such full-time employees, the comparison shall be made between the part-time employees and all remaining employees of the enterprise. The employer could also unilaterally establish part-time work for its entire enterprise or a part thereof (including for the full-time employees) in the case of reduction in the volume of work, for a period of up to three months during any one calendar year, after advance co¬ordination with the trade union and with the employees' representatives. In such cases the duration of the working time may not be less than half of the statutory duration for the period of calculation of the working time.

6.2 Allocation of working hours

The allocation of working hours should be established by the internal rules of the enterprise. The employer may establish flexible working hours in enterprises where the organisation of work allows for this. The time during which the employee must be at work, as well as the manner of its reporting, should be specified by the employer. Outside the time of his compulsory presence, the employee may determine the beginning of his working hours himself.

For some categories of employees due to the special nature of their work, the employer may, after consultations with the employee and the trade union representatives, establish open-ended working hours. Employees on open-ended working hours must, if necessary, perform their duties even after the expiry of the regular working hours. However, the aggregate duration of the working time may not interfere with the minimum uninterrupted daily and weekly rests established by the LC. Work performed after the regular working hours on working days must be compensated by additional annual paid leave and on public holidays and weekends by increased payment for extra work. For some categories of employees due to the special nature of their work, the employer may establish an obligation to be on duty or to be on stand-by at the disposal of the employer during specified hours in a 24-hour period.

6.3 Shift Work

When necessitated by the nature of the production process, work in an enterprise may be organised in two or more shifts, which may be combined (including day and night work). The succession of the shifts must be established in the Internal Labour Rules of the enterprise, as the assignment of duties to one employee for two consecutive shifts is not allowed.

6.4 Breaks

The working day must be interrupted by one or several breaks. The employer must provide the employee with a lunch break, which may not be shorter than 30 minutes. Rest periods are not included in the working hours. In continuous production processes or in enterprises where the work is uninterrupted, the employer must provide the employee with time for a meal, which is included in the working hours.

The employee is entitled to an uninterrupted rest between working days of not less than 12 hours. In a five-day working week, the employee is entitled to a weekly rest of two consecutive days, one of which is principally Sunday. In such cases, the employee must be ensured at least 48 hours of weekly rest in one stretch.

6.5 Overtime

Work performed at the order of, or with the knowledge of and with no objection on the part of the employer or the respective superior by an employee beyond his agreed working hours is considered overtime work. As a general rule overtime work is prohibited, except in some explicitly and exhaustively cases listed in the LC.

The duration of overtime work performed by an employee in one calendar year may not exceed 150 hours.

The duration of overtime work may not exceed: (a) 30 hours' day work or 20 hours' night work in one calendar month; (b) six hours' day work, or four hours' night work in one calendar week; (c) three hours' day work, or two hours' night work on two consecutive working days.

Through a collective agreement, employers and the trade unions may negotiate a longer annual duration of overtime work, but no more than 300 hours in a calendar year. This legislative change, which entered into force as of 1 January 20201 in fact doubles the permitted overtime work, however only in the cases when there is a collective labour agreement. Despite this exception, the existing monthly limits for daily overtime work (up to 30 hours) and nighttime overtime work (up to 20 hours) remain unchanged.

Overtime work may not be assigned to special categories of employees (young workers, pregnant women, etc.).

The increased payments for overtime work performed must be agreed on between the employee and the employer but not less than: 50 per cent for work on working days; 75 per cent for work on weekends; 100 per cent for work on official holidays; 50 per cent for work with an accumulated calculation of the working time. If the employer and the employee have not expressly agreed upon the increase of the rate for overtime work, it will be calculated on the basis of the labour remuneration set out in the employment contract. No additional labour remuneration will be paid for overtime work during regular workdays to employees working under open-ended working hours. Overtime work performed by these employees on weekends and official holidays will be paid with the respective percentages above for overtime work on such days.

6.6 Night work

The normal duration of working hours at night for a five-day working week is up to 35 hours (up to seven hours per night). Night work is work which takes place between 10 p.m. and 6 a.m. (for employees who have not reached eighteen years of age - between 8 p.m. and 6 a.m.).

The employer must provide hot food, refreshments and other facilities to the employees for the effectiveness of the night work. Night work is prohibited for some categories of employees.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

The LC differentiates between the following two main types of leave:

(a) leave for general purposes (paid annual leave and unpaid leave); and

(b) leave for special purposes - leave for performance of civil and public duties (marriage, blood donation, death of a relative, summons by a court or other body as a party to proceedings, witness duty, expert duty in proceedings, jury duty), leave for union activity, official or creative leave, temporary disability (sick) leave, maternity leave (paid or unpaid), leave for breast-feeding and feeding a young child, leave in case of death or severe illness of a parent, military leave, study leaves (could be paid or unpaid).

7.1 Annual paid leave

Any employee with at least four months' length of service (irrespective of whether the length of service is with the current or a former employer) is entitled to basic annual paid leave of not less than 20 working days. Certain categories of employees, determined by the government, are entitled to longer paid annual leave due to the specific nature of their work. Two categories of employees are entitled to additional paid annual leave of at least five working days: for work in specific conditions and life and health hazards which cannot be eliminated, restricted or reduced regardless of the measures and for work under open-ended working hours.

Where, by reason of a declared state of emergency or a declared emergency epidemic situation, the work of the enterprise, of part of the enterprise or of individual employees is suspended by an order of the employer or by an order of a State body, the employer shall have the right to grant the paid annual leave to the employees even without the consent thereof. The employer is obliged to allow the following types of employees to use (at their request) a paid annual leave or an unpaid leave in the case of a declared state of emergency or a declared emergency epidemic situation:

- any pregnant employee, as well as any female employee in an advanced stage of in vitro treatment;
- any mother or female adopter of a child up to 12 years of age or of a disabled child irrespective of the age thereof;
- any male employee who is a single father or male adopter of a child up to 12 years of age or of a disabled child irrespective of the age thereof;
- any employee who has not attained the age of 18 years;
- any employee who has lost 50 per cent and more than 50 per cent of the working capacity thereof;
- any employee entitled to protection against dismissal for medical reasons.

The parties may agree on longer periods of annual paid leave in the employment contract or in the collective labour agreement.

The employee generally must take his or her paid annual leave during the calendar year for which it is due. However, paid annual leave may be postponed and carried forward to the next calendar year in certain circumstances:

- a maximum of ten working days may be postponed and carried over on the initiative of the employer due to important production reasons;
- an unlimited number of working days may be carried over at the employee's written request specifying important reasons and with the employer's consent;
- an unlimited number of working days may be carried over in cases where the employee was not able to use his or her entire paid annual leave due to the use of pregnancy, maternity, adoption, childcare, temporary disability or other statutory leave during the same year.

If the leave was postponed or was not used by the end of the calendar year, to which it relates, the employer is 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 fails to do so, the employee is entitled to determine himself the time of its use, by notifying the employer thereof in writing at least 14 days in advance.

Employers are allowed to grant the paid annual leave to employees (even without their written request or consent) in the following cases:

- during an idling of more than five working days;
- if all employees use the leaves simultaneously; or
- if an employee, following a written invitation by the employer, has not requested to use his leave by the end of the calendar year for which it is due.

The paid annual leave which has not been used within two years of the end of the year, for which it was due (irrespective of the reason), expire. If the paid annual leave has been postponed, the right of the employee to use it shall expire upon expiry of two years as of the end of the year, in which the reason not to use it would have ceased to exist.

Monetary compensation for paid leave is permissible only in case of termination of employment. In such case, only (a) the unused paid leave for the respective year, and the (b) paid leave, which use have been postponed according to the requirements of the law, the right for which has not expired, is subject to such compensation.

7.2 Unpaid leave

Upon the request of the employee, the employer may grant him unpaid leave, regardless of the fact whether the said employee has used his paid annual leave or not, and irrespective of the duration of his length of service. The employer is obliged to grant one-time unpaid leave of up to one year to an employee who has a current employment relationship with a European Union institution, the United Nations Organisation, the Organisation for Security and Co-operation in Europe, the North Atlantic Treaty Organisation, as well as with any other international governmental organisation.

Unpaid leave of up to 30 working days within one calendar year is recognised as length of service. For the year 2020 only, the duration of the unpaid leave recognised as length of service was increased to 60 working days. Unpaid leave in excess of 30 working days is recognised as length of service only if this is provided for in the LC, in another law, or an act of the Council of Ministers.

7.3 Sick leave

The LC defines "sick leave" as leave in the event of a temporary working disability. Employees are entitled to sick leave in the event of a temporary disability resulting from a general or occupational illness, occupational injury, for convalescence purposes, for urgent medical examinations and tests, quarantine, suspension from work prescribed by the medical authorities, for taking care of a sick or quarantined member of the family, for the urgent need to accompany a sick member of the family to a medical examination, test or treatment, and for taking care of a healthy child suspended from a childcare facility because of a quarantine imposed on that facility or on the child. Sick leave is permitted (must be approved) by the medical authorities.

Employees are entitled to cash compensation instead of their salary for the time they are on sick leave (if they have been secured for this social risk) at an amount established in the Social Security Code. Persons insured against labour accidents and professional disease are entitled to cash compensation for a labour accident or professional disease, and to compensation for occupational rehabilitation resulting from a labour accident or professional disease, regardless of the duration of their length of service for social security purposes. The amount of the compensation for temporary disability is calculated on the basis of the average daily gross salary or social security income over which the employee has made social security contributions for this social risk for the six-month period preceding the month when the disability occurred at the rate of 80 per cent / 90 per cent. The cash compensation for temporary disability resulting from a general or occupational illness or occupational injury will be paid for the entire period until the recovery of working ability or establishment of permanent disability.

Compensation for the first three days of temporary disability leave is paid at the expense of the employer at the rate of 70 per cent of the average daily gross salary for the month during which the disability occurred, but no less than 70 per cent of the average daily agreed salary and for the remaining period - directly by the Bulgarian National Social Security Institute.

7.4 Maternity leave

(a) Leave for pregnancy and childbirth

Female employees are entitled to paid leave for pregnancy and childbirth of 410 calendar days for each child, of which 45 days will be granted before the expected date of birth. In the event of an error on the part of the medical authorities in predicting the date of birth and if it occurs before the expiry of the 45 days, the remainder will be used afterwards.

For the entire period of the leave, the employee will receive compensation at the expense of any paid directly by the National Social Security Institute. The amount of the compensation is calculated on the basis of the average daily gross remuneration or social security income, upon which the employee has made social security contributions for this particular social security risk (general disease and maternity) for the 12-month period preceding the month when the leave started. The daily compensation is to the amount of 90 per cent of the average daily gross salary (or the average daily social security income over which social security contributions have been paid or are due) for the last 24 calendar months preceding the date of initiation of the leave, but not higher than the average of the maximum social security income for the last 24 months.

After the child reaches six months of age, with the consent of the mother, the remainder of the leave for pregnancy and childbirth may be granted to the father. The father shall be entitled to compensation from the National Social Security Institute in the event that he has made social security contributions for this particular social security risk (general disease and maternity) for the 12-month period preceding the month when the leave started.

(b) Leave for raising a child until the age of two

After the pregnancy and childbirth leave has been used, if the child is not placed in a childcare facility, the mother is entitled to additional leave for raising a first, second, and third child until they reach two years of age, and six months for each subsequent child. With the consent of the mother, the leave for raising a child may be granted to the father or to one of their parents if they work under an employment contract.

For the entire period of the leave, the employee will receive compensation at the expense of and paid directly by the National Social Security Institute at an amount fixed in the 2021 State Social Security Budget Act at BGN 380 (approximately EUR 190). If this additional paid leave is not used, or the person using the leave terminates its use, the mother (adoptive mother), if working under an employment contract, will be paid additional monetary compensation to the amount of 50 per cent of the statutory minimum monthly salary at the expense of the National Social Security Institute. The above are the main features of some of the types of maternity leaves to which employees working under employment contracts are entitled.

7.5 Employment standstill

The cases when the employment relationship is standstill are not listed separately in the LC. The principle is that in each case when the employee uses a certain permitted leave (either long- or short-term), paid or unpaid, the employment relationship is standstill. Upon expiry of such leave, the employee is entitled to be reinstated to work at the same position.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Bulgaria is becoming more and more popular in Bulgaria over the last couple of years. They are exclusively offered to local employees of Bulgarian subsidiaries of international companies, usually in the context of a global ESOP. There is no specific regulation of such plans from employment and corporate tax law perspective.

9. Health and safety at work

Employers are required to ensure healthy and safe conditions of work. Whenever the employees or expatriates of an employer are working on sites administered by another company, the employer has an obligation by means of a written agreement with such other company to ensure that the conditions of health and safety at work are also ensured on these sites.

The principle regulatory acts concerning health and safety at work are the LC and the Healthy and Safe Conditions at Work Act[7]. Moreover, there are more than twenty regulations which provide for rules relevant to complying with the safety obligations of employers and employees. In addition to the regulatory acts, the Ministry of Labour and Social Policy has approved Rule Books which contain detailed norms concerning health and safety in various economic sectors. Rule Books are supposed to be binding on all enterprises, however, from a legal point of view their binding power is questionable in view of the fact that the text has not been published in the Bulgarian State Gazette, and this is a prerequisite under the Constitution for the binding nature of any normative act.

The principle areas and obligations of the employer in ensuring health and safety at work are: constituting internal bodies dealing with healthy and safe conditions at work and their continuous training; performance of risk assessment and determining measures and restrictions for health and safety at work; emergency planning; preparing Internal Rules for Health and Safety at Work and their notification to employees; compliance with regulatory provisions for certain specific risks; ensuring a physiological regime of work and rest; ensuring labour medicine service departments for employees and periodical medical examinations; ensuring the use of personal protection devices, clothing and equipment; initial and periodic instructions to employees on health and safety, etc.

Every employer is obliged to ensure healthy and safe working conditions so that the hazards for the life and health of employees are eliminated, limited or reduced with a view to protecting the working capacity of employees.

Employees may refuse to discharge their duties or cease discharging their duties if there is a serious and immediate danger to their lives and health. The immediate superior must be notified without delay and must investigate the danger and give instructions concerning the continuation of work.

According to the Healthy and Safe Conditions at Work Act, some of the measures that must be taken in order to provide occupational health and safety are: prevention of risk to life and health; assessment of unpreventable risk; adaptation of the working conditions to the individual with a view to reducing and eliminating their harmful effect; introduction of technical improvements to technological processes, machinery and equipment; substitution of dangerous products, work equipment, tools, substances and materials with safe or less dangerous products, work equipment, tools, substances and materials; use of collective means of protection with priority to personal protective equipment, etc.

The LC provides for increased protection of female, pregnant employees, and employees in an advanced stage of in-vitro treatment in some areas, including, *inter alia*:

(a) If the employer has 20 or more female employees, the employer is obliged to provide personal hygiene facilities for women and rooms where pregnant employees and employees in an advanced stage of in-vitro treatment may rest.

(b) In cases when a pregnant employee, an employee in an advanced stage of in-vitro treatment or a nursing mother is performing work that is unsuitable for her condition, at the mandatory instruction of the health authorities the employer must implement measures required for temporarily adapting workplace conditions or the working hours or both in order to eliminate the health and safety risk for the employee or (if not possible) to reassign the employee to another appropriate position.

(c) Together with the health authorities the employer is obliged, on an annual basis, to designate positions and jobs suitable for pregnant employees, employees in an advanced stage of in-vitro treatment and nursing mothers.

(d) The employer may not send pregnant employees, employees in an advanced stage of in-vitro treatment and mothers of children under three years of age on business trips without their written consent.

It should be taken into account, however, that all of the above rights protecting pregnant employees and nursing mothers may be enjoyed only when the employer has been notified of their status, submitting documents duly issued by the competent state health authorities. In the event of termination of the pregnancy, the female employee is obliged to notify the employer within seven days. The employer and his officers are under a duty to keep in confidence the above circumstances.

[7] *State Gazette of Republic of Bulgaria, No. 124 of 23 December 1997, lastly amended in No. 97 of 5 December 2017.*

10. Amendment of the employment agreement

The LC contains a general prohibition for the parties to an employment contract to unilaterally amend its conditions, except on the following grounds:

(a) the employer may unilaterally increase the salary of the employee;

(b) change of the place and nature of work on specific grounds;

In the event of production necessity and/or stoppage of work, the employer may temporarily and unilaterally assign the employee to other duties in the same or another enterprise within the same city/ region for a period no longer than 45 calendar days within one year in the case of production necessity or in case of stoppage of work - for the period of its duration. Such change of assigned duties may be carried out in accordance with the qualifications and the health status of the employee.

The employer may even assign the employee to duties of a different nature not corresponding to his qualifications when this is necessitated by insurmountable reasons[8, 9].

Cases when the employee is transferred to a different working place within the same enterprise and city in the same position and at the same basic monthly salary are not considered an amendment of the employment relationship.

(c) business trips

When the needs of the company so dictate, the employer may second the employee to perform his duties outside the place of his permanent work, however, for a period not longer than 30 consecutive calendar days. Business trips for longer periods require the employee's written consent.

For posting and secondment of workers and employees in the framework of the provision of services, please refer to Section 2.4 above.

Apart from the above cases, the employment relationship may be amended only on the basis of a written agreement between the parties for a fixed or indefinite term.

11. Termination of employment

Procedure and grounds for the termination of an employment contract are not freely negotiable between the parties. Termination grounds are listed exhaustively in the LC, namely:

11.1 Termination of the employment contract on the initiative of either party without notice

Such termination is carried out on the following grounds:

(a) by mutual written consent of the parties;

(b) when the dismissal of an employee is found unlawful or he is reinstated to his previous job by a ruling of the court, but he does not report to work within the stipulated term;

(c) upon expiry of the contractual term, until the completion of some specified work or upon return of the substituted employee to work (these grounds apply to fixed-term employment contracts);

(d) when a position is listed to be occupied by a pregnant employee or an employee reassigned for rehabilitation, and a candidate entitled to that position appears;

(e) upon the appointment of an employee who has been elected or has passed a competitive examination for the position;

(f) in the event of inability of the employee to perform the assigned job because of illness resulting in permanent disability (invalidity) or because of health contra-indications established by an expert medical commission; in such cases the employment contract will not be terminated if the employer can provide another job suited to the employee's health status and the employee agrees to perform the job;

(g) upon the death of the person with whom the employee has concluded an *intuito* personae employment contract;

(h) upon the death of the employee;

(i) when a position is listed to be occupied by a state employee;

(j) with the termination of the long-term mission under the Diplomatic Service Act[10].

11.2 Termination of the employment contract on the initiative of the employer against offering compensation to the employee

This is a form of termination of the employment relationship by mutual consent between the parties. However, the initiative for the termination is provided solely on the employer. The amount offered by the employer must not be less than four times the amount of the employee's latest monthly gross salary, unless the parties have agreed upon a larger amount. If the compensation has not been paid within a period of one month as of the termination of the employment contract, the grounds for such termination are considered revoked.

[8] *The LC does not contain a legal definition of these terms.*
[9] *The LC does not contain a legal definition of this term. However, the interpretation based on existing court practice is that such reasons should qualify as force majeure.*
[10] *State Gazette of Republic of Bulgaria, No. 78 of 28 September 2007, lastly amended in No. 7 of 19 January 2018.*

11.3 Termination with notice

The employer may unilaterally terminate an employment contract by written notice only on the following grounds:

(a) closing down of the entire enterprise;

(b) partial closure of the enterprise or staff cuts;

(c) reduction of the volume of work;

(d) work stoppage for more than 15 days;

(e) when the employee lacks the qualities for efficient work performance;

(f) when the employee does not have the necessary education or vocational training for the assigned work;

(g) when the employee refuses to follow the enterprise or a division thereof when it is relocated to another community or locality;

(h) when the position occupied by the employee is to be vacated for the reinstatement of an unlawfully dismissed employee who had previously occupied the same position;

(i) when an employee has become eligible for full retirement pension in terms of length of service and age (except for teachers);

(j) when the employee has been granted a reduced retirement pension in terms of length of service and age under the Social Security Code;

(k) where the employment relationship was established after the employee had acquired and exercised his entitlement to pension;

(l) where the employment relationship was established after the employee had been granted a reduced retirement pension in terms of length of service and age under the Social Security Code;

(m) when the job requirements for the position have been changed and the employee does not meet them;

(n) when it is objectively impossible to implement the employment contract.

Employees occupying managerial positions may also be dismissed with notice by reason of conclusion of a (new) contract for the management of the enterprise (the appointment of a new Executive Director, Board of Directors, Management Board, etc.). The dismissal can be affected after the performance of the (new) management contract has started but within a period not exceeding nine months thereafter.

In the event of (b) the partial closure of the enterprise or staff cuts; and (c) the reduction of the volume of work, the employer is entitled to select, and in the interest of production or business, dismiss employees whose positions have not been made redundant in order to retain employees of higher qualifications and better performance. The selection must be performed by a commission appointed by the employer. The selection commission must hold at least one meeting during which to examine the qualifications and the performance of the employees to be dismissed and incorporate any findings in duly signed minutes. Any proposal made by the selection commission for the termination of employees must be in writing and well-founded.

The employee may terminate the employment contract with notice without stating any reasons.

11.4 Termination without notice

The employer may terminate an employment contract without notice if:

(a) the employee has been detained in custody for the execution of a sentence;

(b) the employee has been deprived, by a court sentence or by an administrative order, of the right to practice a profession or to occupy the position to which he has been appointed;

(c) the employee has been deprived of an academic degree if the employment contract has been concluded in view of his holding the respective degree;

(d) the employee has been struck off from the registers of the professional organisations under the Doctors and Dentists Professional Organisations Act, from the register of the professional organisation of Master of Pharmacy under the Professional Organisation of Masters of Pharmacy Act, or from the register of the Bulgarian Association of Bulgarian Health Care Specialists under the Professional Organisations of Medical Nurses, Midwives and Associated Specialists Guild Act;

(e) the employee refuses to take a suitable job offered in case of medically proscribed reassignment;

(f) the employee is disciplinary dismissed, in which case the employer must follow a certain procedure to ensure that the disciplinary dismissal is lawful;

(g) the employee has failed to perform his obligation to notify the employer if there is an incompatibility with the work performed in the course of such performance or at a later stage such incompatibility has taken place. This ground refers only to the termination of employment contracts in enterprises of the state administration where the law has provided for certain restrictions for the occupation of an office therein;

(h) a conflict of interest has been ascertained by an effective act under the Anti-Corruption and the Forfeiture of Unlawfully Acquired Property Act;

(i) an educationalist within the meaning of the Pre-school and School Education Act has been convicted for a wilful felony, regardless of any reinstatement;

(j) the employee fails the integrity check provided under the Anti-Corruption and the Forfeiture of Unlawfully Acquired Property Act.

The employee may terminate an employment contract without notice if:

(a) he is unable to execute the work assigned by reason of illness and the employer fails to provide him with another suitable work conforming to the prescription of the health authorities;

(b) the employer delays the payment of the salary/ compensation under the LC or under the state social security;

(c) the employer changes the place or nature of work or the agreed salary, except in the cases where the employer has the right to make such changes, as well as where the employer fails to fulfil other obligations agreed by the employment contract or by the collective agreement, or established by a statutory instrument;

(d) as a result of a change of the employer due to a transfer of undertaking, the working conditions under the new employer deteriorate substantially;

(e) he commences appointment to a paid election office or begins research work on the basis of a competitive examination;

(f) he continues his education as a full-time student at an educational establishment, or enrols in a full-time doctoral degree course;

(g) he works under a fixed-term employment contract and is transferred to another work for an indefinite duration;

(h) he works under an employment contract with an enterprise providing temporary work and concludes another employment contract with another employer which is not an enterprise providing temporary work;

(i) he is reinstated to work according to the established procedure by reason of pronouncement of the dismissal as wrongful, in order to take the work whereto the said worker has been reinstated;

(j) he begins work in the state administration;

(k) the employer discontinues its operation;

(l) the employer gives unpaid leave to the employee without his consent.

The above lists of termination grounds are exhaustive.

11.5 Collective redundancies

If the employer wishes to terminate a group of employees, then he must carefully consider if terminated contracts qualify as collective redundancies. A "collective redundancy" is the dismissal on one or more grounds made at the discretion of the employer and due to reasons not related to the specific employee, provided that the number of such dismissals over a period of 30 days is:

(a) at least 10 employees in enterprises where the number of employees in the month preceding the mass dismissal is more than 20 and less than 100 employees;

(b) at least 10 per cent of the employees in enterprises where the number of employees in the month preceding the mass dismissal is more than 100 and less than 300 employees;

(c) at least 30 employees in enterprises where the number of employees in the month preceding the mass dismissal is 300 employees or more.

When within the above periods, the employer has dismissed at least five employees, each subsequent termination of employment, if made at the discretion of the employer on other grounds and due to reasons not related to the specific employee, will also be taken into account when calculating the overall number of dismissed employees.

When the employer intends to make a collective redundancy, he must begin consultations with the trade union representatives and employee representatives, however, not later than 45 days prior to the collective redundancy, in an effort to reach an understanding with them to avoid or limit the collective redundancy and reduce the consequences thereof. Consultations are held in a manner and according to a procedure jointly established by the employer, the trade union representatives and the employee representatives.

Irrespective of whether the decision to carry out a collective redundancy may have been taken by another entity (employer's shareholder, parent company, etc.), the employer must provide, prior to the commencement of the collective redundancy, specific written notice covering a number of mandatory items to the trade union representatives, the employee representatives and the Agency of Employment. Planned collective redundancy may not be undertaken prior to the expiry of 30 days after the notification to the Agency of Employment.

If the employer does not meet the above obligations, the trade union representatives and employee representatives are entitled to inform the labour inspection authorities of the non-observance of the mandatory provisions of the LC. If a violation is established, the authorities may impose sanctions upon the employer varying between BGN 1,500 (approximately EUR 750) and BGN 5,000 (approximately EUR 2,500) for each separate violation. However, violation of the above rules, even if established, would not automatically lead to the declaration of the dismissals as unlawful. They are considered by the court on individual basis if challenged.

11.6 Remedies in the event of wrongful dismissal

The non-observance of the applicable termination grounds and procedure may result in a court dispute whereby the termination is found unlawful, involving the reinstatement of the employee to his previous position and the obligation of the employer to pay

compensation to the employee for the period of unemployment but for not more than six months.

Termination is carried out by a written order served to the employee, indicating the grounds for the termination as well as its legal basis. Some termination grounds require a motivated termination order.

The employment contract is considered to be terminated as of the moment of delivery of the notice.

12. Non-compete

12.1 Non-compete clauses during employment

The employer may impose non-compete clauses in the employment contract while the employee is employed. The LC provides that the employee may enter into other employment contracts with other employers to perform work outside the established working hours with the main employer unless the employment contract with the main employer provides otherwise.

In addition to the above, the employer is in a position to require from the employee that for the duration of his employment obligations, he does not with his acts prejudice the good name and the interests of the employer. Further, the employer may require from the employee to refrain from performing an activity under an employment or under an assignment contract, neither independently on his behalf and expense, nor in partnership with other natural or legal persons, if such activity is a conflict of interest or it would prevent the employee from performing his duties under the employment contract. However, these restrictions should be negotiated in the employment contract. The employment contract may also provide that the employee may carry out other activities only after the prior written consent of the employer. The duties of the employee include being loyal to the employer, not abusing the trust of the employer, maintaining the image of the employer and not disclosing any confidential data related to the employer.

12.2 Non-compete clauses after termination of employment

In mid-2010 the Supreme Court of Cassation of the Republic of Bulgaria issued a milestone decision on the validity of post termination non-compete clauses, expressly ruling that such clauses are invalid as violating the law. Under the Constitution of the Republic of Bulgaria each citizen has the right to freely choose his profession and place of work, therefore this constitutional right may not be validly waived or restricted through a private agreement (either through a separate agreement or through a clause in an employment contract). It is inadmissible to waive one's personal right to labour guaranteed by the Constitution of the Republic of Bulgaria.

In 2011 and 2012 the lower ranking courts developed steady and consistent court practice on the issue of post termination non¬compete clauses fully in line with the 2010 decision of the Supreme Court of Cassation of the Republic of Bulgaria.

As a conclusion: any non-compete clause which prohibits the employee to work for a competitive employer after the termination of his employment should be considered null and void, irrespective of the duration of the non-compete period and irrespective whether the employer pays non-compete consideration or not. Invalid will also be any penalty agreed between the employer and the employee for violation of a post termination non-compete clause.

13. Global policies procedures of employer

Employer's policies and procedures developed on a global level could be applicable in Bulgaria, provided that such policies and procedures are fully harmonised with the Bulgarian legislation and incorporated in reference to an enactment of the Bulgarian employer.

14. Employment and mergers and acquisitions

The LC complies with the Transfers of Undertakings Directive 2001/23/EC regarding the transfer of employees in the event of the reorganisation of the employer. The employment relationship is not terminated in the event of a change of the employer due to:

(a) merger of enterprises by way of incorporation;

(b) merger of enterprises by way of acquisition;

(c) distribution of the operations of one enterprise between several enterprises;

(d) transfer of an autonomous part of one enterprise to another;

(e) reorganisation of the legal form of the enterprise;

(f) change of the owner of the enterprise or of an autonomous part thereof;

(g) delivery or transfer of the operations of the enterprise to another, including the transfer of tangible assets;

(h) delivery of the enterprise or an autonomous part thereof for rent, on lease or under concession.

Prior to effecting the change above, the transferring and the acquiring enterprises must inform the trade union representative and employee representatives of each enterprise of the change and the scheduled date of the transfer; the reasons for the change; the possible legal, economic and social consequences of the

change for the employees; and the measures to be undertaken with respect to the employees, including the performance of the obligations arising from employment relationships existing as of the date of the transfer.

The transferring enterprise must submit this information within a period of at least two months prior to effecting the change. The acquiring enterprise must submit this information in due course, however, no later than at least two months before its employees are directly affected by the change in the employment conditions. If one of the employers has planned changes with respect to the employees, timely discussions must be held and efforts made to reach an agreement with the trade union's representatives and employee representatives regarding these measures. If there are no trade unions in the respective enterprise, the information must be submitted to the respective employees.

In the above cases of transfer of a business, the rights and obligations of the transferring enterprise, prior to the change, arising from employment relationships existing as of the date of the transfer, are transferred to the acquiring enterprise. The acquiring enterprise is bound to take on the employee obligations which have originated before the change in the case of a merger or joining of enterprises and a change of the legal form of the enterprise. In other cases, the acquiring enterprise and the transferring enterprise are jointly liable for the obligations to employees.

In the case of delivery of the enterprise or an autonomous part thereof for rent, lease or under concession, the employment relationships existing as of the date of the delivery will not be terminated but transferred to the new employer. Both employers are jointly liable to the employees for the employee obligations, which have arisen prior to the date of the change.

After the expiry of the term under the rent, lease or concession agreement, the employment relationships will also not be terminated but transferred back to the previous employer.

In the event of the non-performance of information and consultation procedures by the employer, the trade union or the employee representatives may inform the Executive Agency General Labour Inspection with regard to violations of labour legislation. The employer may be penalised through sanctions that could vary between BGN 1,500 and BGN 5,000, while culpable officials of the employer may be penalised through fines, which could vary between BGN 250 and BGN 1,000.

15. Industrial relations

The Constitution of the Republic of Bulgaria and the LC guarantee the freedom of trade union association. There are two major trade unions with nationwide coverage: The Confederation of Independent Trade Unions and The Confederation of Labour "Podkrepa". Many other trade unions exist at industry level and within individual companies.

As in the majority of transitional economies, industrial disputes are quite usual in Bulgaria, especially in state-owned companies undergoing financial difficulties. Strikes, however, even though a legally recognised right of employees, are not very common.

16. Employment and intellectual property

According to the Bulgarian Copyright and Neighbouring Rights Act[11], unless agreed otherwise, the copyright to computer programmes and databases, created while under employment, belongs to the employer.

The copyright to works created while under an employment relationship belong to the author unless provided for otherwise in the Copyright and Neighbouring Rights Act. The employer shall have the exclusive right, without permission from the author and without paying compensation, to the extent the employment contract does not provide otherwise, to use such a work for his own purposes. The employer may exercise this right in a manner and to a degree corresponding to his customary activity.

Copyright to works created by special order shall belong to the authors unless otherwise provided for in the contract. Unless agreed upon otherwise, the ordering party may use the work without the permission of the author for the purposes for which it was ordered.

17. Discrimination and mobbing

17.1 Areas of protection

The Bulgarian Protection against Discrimination Act[12] rules that any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, is forbidden.

Direct discrimination is defined as any less favourable treatment of a person for the above reasons than the treatment which another person is receiving, received or would receive in comparable similar circumstances.

Indirect discrimination is defined as placing a person for the above reasons in a less favourable position when compared to other persons through an apparently neutral provision, criterion

[11] *State Gazette of Republic of Bulgaria, No. 56 of 29 June 1993, lastly amended in No. 98 of 13 December 2019.*
[12] *State Gazette of Republic of Bulgaria, No. 86 of 30 September 2003, lastly amended in No. 7 of 19 January 2018.*

or practice, unless the said provision, criterion or practice is objectively justified in view of a legal aim and the means of achieving this aim are appropriate and necessary. Harassment for the above reasons, sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the building and maintenance of an architectural environment hindering the access to public places of people with disabilities, are also considered discrimination.

17.2 Affirmative action

The Protection against Discrimination Act expressly provides that some actions will not constitute discrimination. These include, *inter alia*:

(a) treating persons differently on the basis of their citizenship or of persons without citizenship where this is provided for by a law or an international treaty to which the Republic of Bulgaria is a party;

(b) treating persons differently on the basis of a characteristic relating to any of the above grounds (i.e., race, nationality, ethnicity, etc.) when the said characteristic, by the nature of a particular occupation or activity, or of the conditions in which it is performed, constitutes a genuine and determining occupational requirement, the aim is legal and the requirement does not exceed what is necessary for its achievement;

(c) treating persons differently on the basis of religion, belief or gender in relation to an occupation performed in religious institutions or organisations when, by reason of the nature of the occupation or the conditions in which it is performed, the religion, belief or gender constitutes a genuine and determining occupational requirement in view of the character of the institution or organisation, where the aim is legal and the requirement does not exceed what is necessary for its achievement;

(d) setting requirements for minimum age, work experience or length of service in employment procedures or in granting certain job-related privileges, provided that this is objectively justified for attaining a legal aim and the means for attaining it do not exceed what is necessary;

(e) treating differently persons with disabilities in conducting training and acquiring education for satisfying specific educational needs aimed at equalizing their opportunities;

(f) undertaking special measures benefiting individuals or groups of persons in disadvantaged positions aimed at equalizing their opportunities, in so far as and while these measures are necessary;

(g) providing special protection of children without parents, juveniles, single parents and persons with disabilities established by law; etc.

17.3 Sanctions and remedies

In the event of discrimination or breach of rights and duties in an employment relationship, the employee or the candidate for work has the right to file a claim before a special Commission on the Protection against Discrimination requesting the termination of the breach and the remedy of the consequences thereof and compensation for any moral or cash damages incurred. On the basis of such a filed claim, the officials of the Commission on the Protection against Discrimination initiate the proceedings and collect evidence with the assistance from the Ministry of Interior.

Furthermore, employers violating their obligations under the Protection against Discrimination Act can be penalised with sanctions of an amount varying between BGN 250 and BGN 2,500 (approximately EUR 125 - 1,250), while the managers of the employer who have allowed the commitment of the violation to occur will be penalised with a fine of BGN 200 to 2,000 (approximately EUR 100 - 1,000), unless they are liable to more severe punishment.

18. Employment and personal data protection

The area of personal data protection is regulated in detail at EU-level by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (the General Data Protection Regulation / "GDPR").

The GDPR establishes various rights and obligations pertaining to the collection and processing of personal data. Employees whose data is processed have the right to access their personal data, to request rectification of incorrect personal data, erasure, or restriction of processing, to object to certain types of processing, to withdraw their consent, as well as to request data portability. They also have the right to lodge a complaint with a supervisory authority.

Controllers (including employers) must ensure that all processing of personal data complies with the general principles of the GDPR - lawfulness, fairness and transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality, and accountability. In particular, all processing operations must rely on a legal basis, as provided for in the GDPR. Furthermore, with respect to especially sensitive personal data (personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation), controllers must comply with a stricter legal regime and ensure the existence of additional legal grounds for processing.

On a local level, the Personal Data Protection Act (the "PDPA") implements several derogations from the general regime of the GDPR. The following rules of the PDPA are of relevance to employers:

(a) An employer may copy personal identity documents, driving licenses, or residence documents only when this is expressly required by law (usually, there is no such legal obligation and it would not be permitted to make such copies);

(b) Employers must adopt internal rules and procedures in the event of:

- processing personal data on a large scale or in cases of systematic monitoring of publicly accessible areas on a large scale, including video surveillance;
- use of a system for reporting violations;
- restrictions on the use of internal company resources;
- implementation of access, working-time and labour discipline control systems.

(c) Employers cannot keep job applicant personal data for more than 6 months without the consent of the data subject.

It should additionally be noted that the PDPA does not contain specific rules allowing employers to process personal data of job applicants and employees relating to criminal convictions and offences. In that regard, such processing is generally prohibited subject to the general rule of Art. 10 of the GDPR.

Employers must notify the local Data Protection Authority regarding the appointment and contact details of a data protection officer (if such has been appointed). The notification follows a specific procedure and requires the filing of a template, parts of which are made public. According to the regulator, the data protection officer can only be an individual – whether an employee of the controller or of a third-party organization providing such services.

The local Data Protection Authority in Bulgaria has issued a list of processing operations that require a mandatory data protection impact assessment. The list is available: www.cpdp.bg/en/index.php?p=element&aid=1186

19. Employment in practice

The mandatory provisions of the LC are in some areas very burdensome towards employers and the Bulgarian authorities and institutions (including the courts) tend to show favour towards the employees, especially in cases of termination of employment. Reinstatement to work is the most frequent outcome of labour disputes.

The labour inspection authorities are also very active and regularly audit employers with regard to compliance with the LC provisions and health and safety rules at work. Their main target, however, is upon companies with heavy plant facilities and also present and former state-owned enterprises. Although they are entitled to impose sanctions with regard to established violations, their practice is to issue mandatory proscriptions to employers to remedy the violations within a certain period. The practice is to impose sanctions after the expiry of this deadline if the violations are not remedied.

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CROATIA

1. General Overview

The general source of employment law in Croatia is the Labour Act[1]. It contains provisions governing employment issues, unless otherwise regulated within international agreements and treaties. The Labour Act is aligned with the conventions of the International Labour Organization. Many of the Act's parts provide the minimum standards that can be agreed upon differently by the employer and employee only if in favour of the employees, according to the one of the main principles of the Labour Act. Some standards can be derogated by collective bargaining agreements and some within individual employment agreements, which also represent a legal framework and a source of labour law for the parties to the agreement.

An employer who employs 20 or more employees must render and publish internal labour relations Employment Rules/By-law regulating salaries, organisation of work, measures, and procedures for the protection of the dignity of employees, antidiscrimination measures and any other issues of importance for the employees employed with the employer, unless they are already set out within the collective bargaining agreements.

In respect of individual employment agreement, a written employment agreement must be entered into with each employee. The Labour Act provides for certain mandatory elements of every written employment agreement.

The collective bargaining agreement or, as the case may be, the employment rules, the agreement between the works council and the employer, or individual employment agreements must be consistent with the Labour Act and may not provide for less protection to employees than that which is guaranteed by the Labour Act. In a collective bargaining agreement employers, employers' associations and trade unions may determine less favourable working conditions than those prescribed by the Labour Act, but only if they are expressly authorised to do so by the Labour Act or another law.

If a right arising from employment is differently regulated in the employment agreement, employment rules, the agreement between the works council and the employer, collective bargaining agreement or law, the most favourable right to the employee is applicable, unless otherwise specified by the Labour Act or another law. The most important legal sources with respect to rights and obligations regarding employment in the Republic of Croatia are as follows:

- The Constitution of the Republic of Croatia[2, 3];
- The Labour Act;
- The Foreigners Act[4];
- The Labour Market Act[5];
- The Occupational Safety Act[6];
- The Act on Insuring Employee Claims[7];
- The Minimum Wage Act[8];
- The Act on Professional Rehabilitation and Employment of Disabled Persons[9];
- The Act on Prevention of Discrimination[10];
- The Act on Gender Equality[11];
- The Act on Personal Income Tax[12];
- The Contributions Act[13];
- The Act on Maternity and Paternity Benefits[14];
- The Act on Implementation of the EU General Data Protection Regulation[15];
- The Act on the Representativeness of Employers' Associations and Trade Unions[16];
- The Civil Obligations Act[17];
- The Act on State Inspectorate[18].

[1] *Zakon o radu, Official Gazette of Republic of Croatia, No. 93/14,127/17 and 98/19 of 16 October 2019.*
[2, 3] *Ustav Republike Hrvatske, Official Gazette of Republic of Croatia, No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 and 05/14 of 15 January 2014.*
[4] *Zakon o strancima, Official Gazette of Republic of Croatia, No. 133/20 of 2 December 2020.*
[5] *Zakon o tržištu rada, Official Gazette of Republic of Croatia, No. 118/18 and 32/20 of 19 March 2020.*
[6] *Zakon o zastiti na radu, Official Gazette of Republic of Croatia, No. 71/14,118/14, 154/14, 94/18 and 96/18 of 31 October 2018.*
[7] *Zakon o osiguranju radnickih trazbina, Official Gazette of Republic of Croatia, No. 70/17 of 19 July 2017.*
[8] *Zakon o minimalnoj placi, Official Gazette of Republic of Croatia, No. 118/18 of 27 December 2018.*
[9] *Zakon o profesionalnoj rehabilitaciji i zaposljavanju osoba s invaliditetom, Official Gazette of Republic of Croatia, No. 157/13, 152/14, 39/18 and 32/20 of 19 March 2020.*
[10] *Zakon o suzbijanju diskriminacije, Official Gazette of Republic of Croatia, No. 85/08 and 112/12 of 11 October 2012.*
[11] *Zakon o ravnopravnosti spolova, Official Gazette of Republic of Croatia, No. 82/08 and 69/17 of 14 July 2017.*
[12] *Zakon o porezu na dohodak, Official Gazette of Republic of Croatia, No. 115/16, 106/18, 121/19, 32/20 and 138/20 of 11 December 2020.*
[13] *Zakon o doprinosima, Official Gazette of Republic of Croatia, No. 84/08, 152/08, 94/09, 18/11, 22/12, 144/12, 148/13, 41/14, 143/14, 115/16 and 106/18 of 30 October 2018.*
[14] *Zakon o rodiljnim i roditeljskim potporama, Official Gazette of Republic of Croatia, No. 85/08 and 110/08, 34/11, 54/13, 152/14, 59/17 and 37/20 of 27 March 2020.*
[15] *Zakon o provedbi Opće uredbe o zastiti osobnih podataka, Official Gazette of Republic of Croatia, No. 42/18 of 25 May 2018.*
[16] *Zakon o reprezentativnosti udruga poslodavaca i sindikata, Official Gazette of Republic of Croatia, No. 93/2014, 26/2015 of 9 March 2015.*
[17] *Zakon o obveznim odnosima, Official Gazette of Republic of Croatia, No. 35/05, 41/08, 125/11 78/15 and 29/18 of 28 March 2018.*
[18] *Zakon o državnom inspektoratu, Official Gazette of Republic of Croatia, No. 115/18 of 20 December 2018.*

2. Hiring

2.1 General

The Labour Act does not proscribe any particular requirements pertaining to the recruitment of employees, except that the employment relationship may only be established with a person of at least 15 years of age, or a person of 15 years of age or above 15 and under 18 years of age, attending compulsory primary education who fulfils the conditions for work in the respective work post (if any).

However, if the law, special regulation, collective bargaining agreement or internal employment rules of the employer set out special conditions for establishing employment for certain jobs or a position, the employment agreement for such jobs or a position may be entered only with a person who meets/fulfils these conditions.

2.2 Disabled persons

Employers with 20 or more employees are obliged to employ a certain number of disabled persons (quota amounts to 2 per cent of the total number of employees)[19]. Employers who fail to comply with the prescribed quota are obliged to pay compensation in the amount of 30 per cent of the minimum wage for each disabled person that they were obliged to employ in order to fulfil the necessary quota.

The public administration, judicial bodies, bodies of local and regional governments, public services, outside of budget funds, and legal entities owned by the Republic of Croatia and legal persons under majority-ownership by local and regional governments are obliged to give preference to disabled persons.

A disabled person when commencing an employment relationship by an employment agreement or in another way set out in special regulations, is entitled to all the rights and obligations of employment relationship pursuant to Croatian regulations. Provisions for disabled persons are more favourable than under the Labour Act, e.g. a disabled person has the right to an annual leave of no less than five weeks in each calendar year and the shortest notice period stipulated by the Labour Act is extended by at least one month if notice of termination has not been given due to the employee's misconduct.

2.3 Foreign employees

In respect to foreign employees, the conditions to entry, movement, residence and work are regulated within the special law[20]. Before employment commences, in order to work and reside in the Republic of 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 (EU plava karta), or to obtain status of a seconded employee (upuceni radnik). As of 1 January 2021, a novelty introduced in the new 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.

To obtain the above-mentioned permission, the third-country nationals must submit a series of documents to the competent authority.

To engage in any line of work for any form of remuneration, a foreigner who is a third-country (non-EEA) national must obtain a residence and work permit. The respective foreigner is entitled to work (or provide services) in Croatia only on such jobs for which it was issued with a residence and work permit, and (in case of the employment relationship) only for the employer with whom he contracted employment. Performance of preliminary actions for the establishment and registration of a company or a craft/sole proprietorship shall not be regarded as work for which the respective foreigner would need to obtain a residence and work permit.

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

However, the new Foreigners Act (which came into force on 1 January 2021) abolished the model of government quotas for issuance of residence and work permits to third country (non-EEA) nationals and introduced a new model for issuance of such permits based on a so-called "labour market test" performed by the Croatian Employment Fund (HZZ). Namely, according to the new legislation, employers need to perform a "labour 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, EU Blue Card represents a special type of residence and work permit which can be issued to a highly qualified third-country national upon fulfilment of specific requirements prescribed by the law. It shall be issued for a term of validity of up to two years.

[19] *Article 8 of the Act on Professional Rehabilitation and Employment of Disabled Persons.*
[20] *Article 1 of the Foreigners Act.*

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, or nationals of an EEA member state providing restrictions in employing Croatian 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 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.

Every third-country (non-EEA) national who intends to stay in Croatia up to 90 days within any 180 days period is obligated to report its presence on the Croatian territory to the competent Police Administration or Police Station. If a foreigner stays in a hotel or at other natural or legal person providing him accommodation services, the foregoing report obligation lies on such accommodation service provider. In such case, accommodation service provider is obligated to report foreigners' presence within one day of arrival. In other cases, a foreigner is obligated to report its presence on the Croatian territory within two days of arrival, or within two days of change of its prior accommodation.

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

Namely, since Croatia entered into a full membership within the EU on 1 July 2013, 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.

However, an EEA national who intends to work as an employee, or as a self-employed person in Croatia longer than three months from the day of entering Croatia, must obtain a temporary residence registration certificate for the purpose of work (*potvrda o prijavi privremenog boravka u svrhu rada)* from the relevant Police authorities, provided that the foreigner has a valid ID or passport and a proof (i.e. confirmation) on the established employment, or a proof that he is self-employed.

2.4 Secondments

The secondment of Croatian employees abroad is regulated by the Labour Act and Croatian employees may be seconded abroad on the basis of an employment agreement. Where an employee is temporarily posted for an uninterrupted period exceeding 30 days to another country, the written employment contract or a written certificate stating that the employment contract was entered into before travelling to another country must, in addition to the usual mandatory provisions of the Labour Act, contain additional provisions with regard to: the duration of the work abroad, the schedule of working hours, non-working days and holidays upon which such an employee is entitled not to work and to receive a salary compensation, the currency in which the salaries are to be paid, other payments received in money and in kind to which the employee will be entitled during the work abroad and the conditions for repatriation, other benefits in cash or kind attendant on the employment abroad and the conditions governing the employee's repatriation[21].

However, it should be noted that the abovementioned provisions in the employment agreement or the written certificate may be given in the form of a reference to the laws, other regulations or administrative provisions, collective bargaining agreement or employment rules governing those particular points. Furthermore, the employer must provide the employee with a copy of the application for mandatory health insurance for the duration of work abroad, provided that such insurance is the employer's obligation under specific provisions.

The employer posting an employee to work abroad in a business enterprise or other company owned by or connected with the employer in accordance with the general commercial law rules shall, in the event of termination of employment agreement concluded between this employee and the foreign business enterprise or company, except in case of dismissal due to the employee's misconduct, compensate the employee for relocation costs and provide him or her with adequate employment in the

[21] *Article 18 of the Labour Act.*

country. When determining the notice period and severance pay, the period spent by the employee in employment abroad, is considered to be continuous employment with the same employer.

3. Types of contracts

3.1 Employment

The traditional employment relationship is the most usual manner for engaging personnel in Croatia. There are two types of employment relationships based on the duration of employment - employment agreement for a definite and indefinite period of time. As a rule, an employment agreement is considered to be entered into for an indefinite period of time unless the law specifies differently. An employment contract for an indefinite period obliges the parties until one of the parties cancels it or until it terminates in some other way as specified by the law.

The employment relationship is based upon an employment agreement. An employment agreement must be executed in writing. However, the parties' omission to execute an employment agreement in writing does not influence the existence and validity of such agreement. If an employment agreement is not signed in writing before the beginning of work the employer is obliged to serve the employee with a written certification that the agreement has been signed. The employer must provide the employee with a copy of the registration to the Croatian Institute for Health Insurance (HZZO) within eight days after the expiry of the time limit for the application of mandatory insurances under specific laws and regulations.

Employment commences upon an employment agreement and if the employer enters into an agreement with the employee for the performance of work which, in view of the nature and type of work to be carried out and the employer's powers in respect of this work, bears the characteristics of work for which employment should commence (prior to entering into the agreement in writing), the employer shall be deemed to have entered into an employment agreement with the employee for an indefinite time, unless he proves the contrary.

The employer shall keep staff records of employees who are employed by the employer. Staff records must contain information about the employees and working hours, all pursuant to the Ordinance of the Ministry of Labour. Upon request by a labour inspector, the employer shall provide the inspector with the data in the staff records.

The employment agreement can exceptionally be entered into for a definite period of time ("fixed-term contract"). The duration and termination of such an employment agreement must be determined in advance, on the basis of objective reasons justified by a time limit, by the completion of specific work or by the occurrence of a specific event.

The employer must not enter with the employee into one or more consecutive employment agreements for a definite period of time for the same job, which is being performed for an uninterrupted time period of longer than three years, except in the case of substitution of temporary absent employee or if it is allowed by law or by collective agreements. Furthermore, the employer may enter into a successive fixed-term employment agreement with the same employee solely on objective grounds, which must be clarified in the same agreement or in a written certification. However, according to the Labour Act, these limitations shall not apply to the first fixed-term employment agreement.

Work stoppage shorter than two months shall not be deemed an interruption of the time period of three years. An employment agreement for a definite period of time terminates upon the expiration of the time specified in that agreement. It should be noted that a fixed-term employment agreement may be terminated by means of regular notice only if such an option is provided for by the agreement.

If an employment agreement for a definite period of time is concluded contrary to the provisions of the Labour Act or if the employee remains working with the same employer after the expiration of time for which the agreement has been entered into, it is deemed that the employee has entered into an employment agreement for an indefinite period. The employer is obliged to inform the employees employed based on employment agreement for a definite period of time with regard to any jobs for which those employees could apply for with that same employer for employment agreement for an indefinite period, and is obliged to provide facilities for their improvement and education under the same conditions as to employees who have entered into employment agreement for an indefinite period.

3.2 Engagement outside employment

Personnel may also be engaged outside of an employment relationship, in those cases and subject to the conditions proscribed by the Labour Act. In respect to this chapter it is important to repeat that if the employer enters into an agreement with an employee for the performance of work, which in the view of the nature and type of work to be carried out and the employer's powers in respect of this work, has characteristics of work for which employment should be established, the employer shall be deemed to have entered into an employment agreement with the employee, unless he proves the contrary.

These flexible types of engagements include:

(a) service agreement (with the following characteristics in relation to employment: independence in the conduct of business, own organisation of working time, compensation is paid after the work is carried out, etc.);

(b) agreement on professional improvement, entered into mainly with trainees (but an apprentice may be employed by the employer for a definite period);

(c) professional training without an employment agreement (agreement is entered into on a definite period - employment measure of the Croatian Employment Fund (HZZ));

(d) work performed by employees engaged full time by another employer (a temporary employment agency as an employer who, under an employee assignment agreement, assigns employees to another employer (the user, or the beneficiary) for the performance of temporary work);

(e) voluntary work (only with respect to non-for-profit activities);

(f) management agreement (please see Section 3.3 below).

3.3 Engagement of managing directors

Persons serving as managing directors may be employed (permanently or for a limited period of time equal to the duration of the mandate) but may also be engaged outside the employment context pursuant to a management agreement. However, even if a managing director is engaged outside of the traditional employment context, his salary and salary remuneration is taxed similarly as salary (see Section 4.1 below). Therefore, a natural person who as a member of the management board, chief executive officer or a person acting in another capacity pursuant to a special law, is authorised to, on his own and individually or jointly together with another person, manage business activities of an employer, and may (but is not obliged to) as an employee as part of his employment relationship carry out

specific tasks for an employer. In addition, the provisions of the Labour Act upon the fixed-term employment agreement, termination of employment contract, periods of notice and severance pay shall not apply to them.

An employee, who as managing personnel is authorised to manage business operations of the employer as defined in the articles of association, incorporation deed or other employer's rules and who makes decisions regarding the organisation of work and business of the employer independently, shall not be subject to the provisions of the Labour Act with regard to maximum duration of weekly working hours, limits in regards to patterns of working hours, night work and daily and weekly rest periods, and shall have the autonomy in planning these where those are agreed with the employer.

3.4 Teleworking arrangement

Only exceptionally, in extraordinary circumstances (Covid-19 pandemic included) employers can unilaterally impose an obligation of teleworking for their employees, but only for the duration of such extraordinary circumstances.

Outside of such situations, in order to introduce teleworking in accordance with the law, the employer and employee must enter into a written employment agreement/addendum to the existing employment agreement. This agreement or an addendum must, in addition to the usual mandatory content of every written employment agreement according to the Labour Act, contain additional provisions with regard to working hours, machines, tools and equipment for performance of work that needs to be obtained, installed and maintained by the employer, usage of employee's own machinery, tools and equipment and reimbursement of costs associated thereof, reimbursement of other costs to the employee, related to the performance of work, manner of training and professional development of the employee. The abovementioned additional may be given/stipulated by way of a reference to the laws, other regulations or administrative provisions, collective bargaining agreement or employment rules governing those particular points.

The employer is not obligated to perform a risk assessment and its liability in the event of a homeworking injury is 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, the employer 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 employees' home if a teleworking arrangement will last continuously for a longer period of time.

4. Salary and other payments and benefits

4.1 Salary

The employer is obliged to calculate and pay salary to the employee in the amount provided for by means of law, collective agreement, employment rules/by-laws or individual employment agreement. When the basis and measurement for the payment of salary are not specified within the collective agreement, the employer which employs 20 or more employees is obliged to specify them in the labour relations employment rules/by-laws. If the salary is not determined in such a way and an employment agreement does not provide sufficient information for the determination of salary, the employer is obliged to pay the employee a "just salary" - such a salary which is normally paid for the same work (if still in doubt the court determines in accordance with the circumstances of the case). The salary is payable upon completion of the work in money (in gross amounts)[21]. Unless otherwise provided for by the collective agreement or employment agreement, salary and compensation for the previous month shall be paid no later than within the fifteenth day of the current month.

The employer shall within 15 days at the latest after the day of payment of the salary, salary compensation, or severance pay, provide the employee with a payroll account, which shows how the calculations were made of the salary, salary compensation or severance pay. The employer who fails to provide payment of salary, salary compensation or severance pay on their maturity dates as stated above, or who fails to pay them to the full amount, shall provide the employee with a payroll account for

the amount owed by the end of the month in which the salary, salary compensation or severance pay became due. The payroll accounts referred to above are enforceable documents. In the event of aggravated work conditions, overtime work, night work, or work on Sundays, or on holidays or on some other days determined by law as non-working days, the employee has a right to an increased salary. The minimum salary for which the employee must be registered is defined by the Minimum Wage Act.

4.2 Other benefits

Employers are free to provide their employees with other benefits, such as seniority allowance, vacation bonus, family allowance, Christmas bonus, employee stock option plans, profit participation, compensation for the costs of commuting to and from work, equivalent to the amount of public transportation ticket, compensation *per diems* for time spent on business trips within the country and abroad, compensation for accommodation and food during field work, unless the employer provides for accommodation and food, etc. As for the employee stock option plans, it should be noted that this area is not strictly regulated by the Labour Act, but such plans are common in practice in Croatia.

5. Salary tax and mandatory social contributions

In Croatia there are two different salary tax rates depending on the amount of the salary, specifically the rates are 24 per cent and 36 per cent, and amount of salary tax is augmented for an amount of a surtax rate (if any). Furthermore, obligatory contributions which the employer pays on behalf of the employee are 15 per cent solidarity insurance and 5 per cent savings insurance for pension funds contained in the registered amount of the gross (gross 1); and 16,5 per cent for health insurance, all calculated based on the registered amount of the "gross 2" salary (gross 2)[22]. Income tax rates vary depending on the level of remuneration, and the local income tax rates vary based on the residence of the employer.

The employer is obliged to provide the employee with a copy of the registration for mandatory pension and health insurances within eight days after the expiry of the time limit for the application for mandatory insurances under specific laws and regulations.

The salaries of foreign personnel (with the exception of those employed with foreign diplomatic or consular missions and IGOs not deemed to be Croatian residents for tax purposes) are also subject to local taxes and mandatory social contributions, subject to the existence of applicable EU regulation, i.e. Double Taxation Treaties and social security treaties which may provide otherwise.

6. Working hours

6.1 Definition of working hours

Working hours are periods of time during which the employee is obliged to carry out tasks or during which he is in readiness (available) to carry out tasks at the workplace or another place defined by the employer following the employer's instructions. An employment agreement may be entered into for full-time or part¬-time working hours. Part-time working hours are any working hours shorter than full-time working hours. Full-time working hours must be no longer than 40 hours a week (if the working hours are not laid down by law, collective bargaining agreement, agreement between the works council and the employer or by employment agreement, it shall be deemed that full-time work means 40 hours a week).

6.2 Overtime work

Overtime work is allowed, but in respect to each employee, if he works overtime, the total working time of the employee may not exceed 50 hours a week. On an annual basis, the overtime work per employee may not exceed 180 hours, unless otherwise is provided for in a collective bargaining agreement, in which case overtime work may not exceed 250 hours a year. Overtime work of minor employees is prohibited. Pregnant women, parents of children under three years of age, single parents of children under six years of age or part-time employees may work overtime only if they give a written statement indicating voluntary consent to such work, except in the case of force majeure. Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation. Senior employees and management are not exempt from the overtime regime, i.e., their overtime is also subject to additional compensation, if differently is not stipulated/agreed upon with the employer in their employment agreement.

6.3 Schedule of working hours

If daily and weekly schedules of working hours are not regulated by employment rules/by-laws, collective bargaining agreement, agreements between the works council and the employer or employment agreement, the schedule of working hours shall be determined by the employer in a written decision. The employer must notify the employees about the schedule or changes to the schedule of working hours at least one week in advance, except in cases of urgent overtime work. The labour inspector shall prohibit overtime work if such work has detrimental effects upon the employees' health, their working ability and safety.

Furthermore, it should be noted that it is possible to use the institutes of patterns of working hours and redistribution of working hours, so the employees could work more hours during the period of high demand and less hours when there is a less demand. Depending on the specifics of patterns of working hours

[22] *Article 13 of the Contributions Act.*

and redistribution of working hours (e.g. working hours per week during the period of high demand, particular period of high demand, etc.) under certain condition, the employer is permitted to unilaterally use the possibilities of the respective institutes.

6.4 Shortened working hours

Working hours are shortened in proportion to the detrimental effect of working conditions on the employee's health and working ability in jobs where, despite the application of occupational health and safety measures, it is impossible to protect the employee from detrimental effects ("short-time work"). The jobs referred to above as well as the duration of working hours in such jobs are established by a special regulation. In respect to salary and other rights arising from the employment relationship or relating thereto, a short-time work is deemed to be equal to a full-time work.

6.5 Rescheduling of working hours

Where the nature of work so requires, full-time or part-time working hours may be rescheduled so that in the course of one calendar year there may be a period of time wherein working hours are longer and another period of time wherein working hours are shorter than full-time or part-time working hours, provided that average working hours in the course of rescheduling may not exceed full-time or part-time working hours. Where rescheduling of working hours is not provided for in a collective bargaining agreement or an agreement concluded between the works council and the employer, the employer shall establish a plan of rescheduled working hours indicating jobs and number of employees included in such rescheduled working hours and submit such plan with rescheduled working hours to a labour inspector. Rescheduled working hours are not considered to be overtime work. As an exception to the rule, rescheduled working hours may, during the period when they last longer than full-time or part-time working hours, exceed 48 hours a week and may last up to a maximum of 56 hours a week or 60 hours a week if the employer performs seasonal business activities, all under condition that this is provided for by a collective agreement and that a written statement regarding voluntary consent to such work is submitted to the employer by the employee. Rescheduled working hours may, in the period when they last longer than full-time or part--time working hours, last up to a maximum of four months, unless otherwise provided in a collective agreement, in which case they cannot exceed six months.

6.6 Night work

Irrespective of the duration, work between 10:00 o'clock in the evening and 6:00 o'clock in the morning on the next day and, for agriculture, between 10:00 o'clock in the evening and 5:00 o'clock in the morning on the next day, is considered night work, unless the Labour Act or another law, another regulation, collective agreement or agreement between the employer and the works council specify otherwise for specific cases[23]. Night work is very restricted especially in cases when an employee is a pregnant woman or a minor.

6.7 Work in shifts

Working hours can also be organised as shift work. This means that a method of organising work at an employer's workplace whereby employees take turns to perform the same job and at the same site in accordance with a working hours schedule, which may be continuous or discontinuous, in rotating shifts. According to the Labour Act, if the work organised in shifts includes night work, the employer shall ensure so as to limit the uninterrupted work in night shifts to maximum one week. In organising night or shift work, the employer shall invest particular efforts to organise work in a way which is adjusted to employees and take into account health and safety requirements in line with the nature of work performed during the hours of night work or in shifts.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Breaks

An employee who works at least six hours a day is entitled, each working day, to a rest period ("break") lasting at least 30 minutes, unless otherwise specified by a separate law. The time of the rest period shall be included in the working hours. If a minor works at least four and a half hours a day, he or she is entitled to a break lasting at least 30 consecutive minutes. If the specific nature of the job does not allow the interruption of work for the purpose of taking a rest period/break, the time and manner in which this rest period is taken shall be regulated by a collective agreement, agreement between the works council, and the employer or employment agreement.

7.2 Daily and weekly rest

In the course of each twenty-four-hour period, an employee shall be entitled to a daily rest of at least twelve consecutive hours. An employee has the right to a weekly rest period of at least 24 consecutive hours, to which the daily rest period referred to above shall be added. The right to weekly rest shall be exercised on Sundays and on the day immediately preceding or following Sundays.

7.3 Annual leave

An employee is entitled to a paid annual leave of at least four weeks' duration for each calendar year (e.g., when the basis for calculation of annual leave shall be the five-day working week counting as 20 working days, and when the base for calculation shall be a six-day working week, counting as 24 working days)[23]. The duration of annual leave for a period longer than the minimum period prescribed under the Labour Act and the number of working days calculated in the annual leave of an employee shall be established by a collective agreement, employment

[23] *Article 76 of the Labour Act.*

rules/by-laws or employment agreement. Holidays, non-working days and a period of temporary inability to work, confirmed by an authorised physician, established by law, are not included in the duration of annual leave. Minors are entitled to a paid annual leave of at least five weeks' duration for each calendar year.

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 rules 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 calendar year. However, it is prescribed by the Labour 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 Labour 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 30 June of the current year, at the latest.

7.4 Paid and unpaid leave

During the calendar year, an employee has the right to be free from work obligations and receive salary remuneration ("paid leave") for important personal needs and, in particular, those related to marriage, childbirth, serious illness or death of a member of the immediate family. The employee shall have the right to paid leave of a total duration of seven working days per year, unless otherwise stipulated in a collective agreement, employment rules or employment agreement. On the other hand, the employer may grant the employee unpaid leave for various reasons (e.g. education), at his request. During the period of unpaid leave, the rights and obligations arising from employment or related to employment are suspended, unless otherwise specified by the law.

7.5 Maternal and paternal leave

The Labour Act stipulates the provisions which regulate the prohibition of unequal treatment of pregnant women, protection of pregnant employees or employees who are breastfeeding, prohibition of dismissal and the right to return to previous or appropriate job. Furthermore, maternal and paternal rights and benefits are stipulated by the Act on Maternity and Paternity Benefits. Maternity leave commences 28 or (depending on an opinion of the authorised doctor) 45 days prior to the scheduled birth date and continues for six months after childbirth[24]. However, mothers can return to office after a minimum of 70 days after the birth (mandatory maternal leave). The expected date of childbirth is determined by an authorised doctor. The right to mandatory maternity leave shall be exercised without interruption. Upon expiry of the above-mentioned mandatory maternity leave, if the child's father gives his prior consent, the right to maternity leave can be exercised by the child's father until the child is six months old (after the 70th day the father can take the maternal leave in place of the mother).

In respect to parental leave (refers to leave that can be either shared by mother or father), each parent is entitled to four months of parental leave. However, if parental leave is taken by just one of the parents, one is entitled to six months of parental leave. For twins, the third or any subsequent child, the parental leave is 30 months regardless of whether it is used by one or both parents. Parental leave may be used up to eight years of child(s)' age. During maternity leave, an employee is entitled to full compensation in the amount of the full gross salary[25]. With regards to parental leave, an employee is entitled to salary compensation for the first six months or eight months of parental leave in the full amount of the salary compensation base (i.e. 100 per cent of the base for salary compensation), but for the full-time working, the employee cannot exceed 170 per cent of the monthly base for salary compensation (HRK 5,654.20, i.e. approximately EUR 755). In the remaining part of parental leave (i.e. after the expiration of the first six or eight months of parental leave), an employee is entitled to salary compensation in the amount of 70 per cent of the budgetary base (HRK 2,328.20 – approximately EUR 310).

During pregnancy, the exercise of maternal, parental or adoptive parent leave, half-time work, work with shortened working hours for the purpose of intense child care, leave for a pregnant woman or a breastfeeding mother, leave or shortened working hours for the purpose of caring for or nursing a child with severe developmental problems or during a period of 15 days after the cessation of pregnancy or the cessation of the exercise of these rights, the employer may not dismiss from work a pregnant woman or a person exercising one of the rights mentioned. However, a temporary/limited period employment relationship can expire during the maternity leave.

7.6 Sick leave

In the event of sick leave, employees are entitled to remuneration of salary. Salary remuneration paid to the insured person (the employee on a sick leave) resulting from the exercise of rights arising from health and safety shall be borne by the employer for the initial 42 days of sick leave. Salary remuneration for any period on sick leave commencing from the 43rd day of sick leave shall be accounted for and paid by the employer, subject to repayment of

[24] *Article 12 of the Act on Maternity and Paternity Benefits.*
[25] *Article 24 of the Act on Maternity and Paternity Benefits.*

paid remuneration by the Croatian Institute for Health Insurance within 45 days of the receipt of the repayment application. Depending on the cause of sick leave, the remuneration amounts from 70 to 100 per cent of the employee's average salary calculated (if not otherwise stipulated by a collective bargained agreement for a high amount of compensation) over the period of six months preceding the sick leave (with the limit of HRK 4.257,28 (approximately EUR 600), when the remuneration is paid on the account of the Croatian Institute for Health Insurance). It should be pointed out that there are no limitations with respect to total duration of sick leave or number of periods of sick leave.

The employee shall inform the employer of his temporary inability to work as soon as possible, and shall provide the employer, no later than within three days, with a medical certificate regarding his temporary inability to work and the expected duration and an authorised doctor shall issue a certificate to the employee. If, due to a legitimate reason, the employee was unable to fulfil the obligation referred to above, he shall do this as soon as possible, and no later than within three days after the reason that prevented him from doing so ceased to exist.

The employer must not dismiss an employee who has suffered an injury at work or has acquired an occupational illness and is temporarily unable to work due to medical treatment or recovery for as long as he is temporarily unable to work due to medical treatment or recuperation. However, the prohibition does not affect the termination of a fixed-duration employment agreement. An injury at work or an occupational illness must not have detrimental effect on the promotion of an employee or the exercise of other rights and privileges arising from employment or related to employment.

7.7 Employment standstill

The employee's employment relationship is at a standstill in the event of certain absences from work (e.g., suspension of the employment relationship until a child reaches the age of three pursuant to a special regulation, serving the army, appointment to a public position, etc.). During such absence, the rights and obligations based on employment are at a standstill, unless certain rights or obligations are otherwise explicitly proscribed. Upon the expiry of the reasons for standstill, the employee is entitled to be reinstated to work.

8. E.S.O.P.

In regards to Employment Stock Ownership Plan schemes, the regulatory framework is absent on both corporate law and tax law levels. However, the Act on Personal Income Tax stipulates that the stocks' benefits, under certain conditions, may be taxable (i) as a salary in kind; and/or (ii) as an income from capital. In practice, a type of Employment Stock Ownership Plan scheme is modestly implemented only in closed, limited liability or joint stock companies, by way of capital increase by contribution in services.

9. Health and safety at work

The area of health and safety at work is regulated by the Labour Act and by the Occupational Safety Act. All employers and employees are obliged to adhere to specific obligations introduced by both Acts.

The employer shall, in accordance with a separate law and other applicable regulations, provide the employee with safe working conditions which are not hazardous to the health of the employees. Before the employee commences work, the employer must allow him an opportunity to familiarise himself with the employment regulations and inform him about the organisation of work and occupational safety and health.

Also, an employer shall provide for and maintain the machinery, instruments, equipment, tools, workplace, access to workplace, as well as organise work in a manner which guarantees the protection of life and health of employees in accordance with separate laws and other regulations and in accordance with the nature of the job being performed. Furthermore, the employer shall inform the employee about the dangers of the job performed by the employee and shall train the employee for work in a way which guarantees the protection of life and health of the employee and prevents accidents from occurring. If the employer assumes the obligation to provide food and lodging for the employee, in the fulfilment of this obligation he must take into account the protection of life, health and morals of the employee as well as his religion. An employee who refuses to work because of direct risks for his life and health is entitled to salary compensation equal to the salary he would have received had he worked for the period until the prescribed measures are implemented unless the employee has performed another appropriate job during this period.

The Occupational Safety Act, *inter alia*, stipulates that each employer is obliged to adopt the Act on Risk Evaluation of Work Posts containing descriptions of work processes with evaluation of the risk attached to each employment post and identifying measures for the removal of such risk[26]. On the basis of that Act on Risk Evaluation of Work Posts, the employer is obliged to capacitate employees for safe work. For an exemption related to teleworking, please see under 3.4 above.

10. Amendment of the employment agreement

The employment agreement may be amended by an annex. An annex can be offered either by the employer or by the employee.

[26] *Article 18 of the Occupational Safety Act.*

If an employee refuses to sign an annex to the employment agreement the Labour Act provides the possibility that the employer may terminate an employment agreement and simultaneously offer the employee an employment agreement under different terms ("dismissal accompanied by an offer to alter the terms of the employment contract").

In that case, even when the employee accepts the employer's offer, he retains the right to challenge the permissibility of such termination of agreement before the competent court. The employee must declare his acceptance or refusal of the offer to enter an employment agreement under different terms within the time limit specified by the employer, which may not be shorter than eight days. In the event of the above-mentioned termination accompanied by an offer to alter the terms of the employment agreement, the time limit for judicial protection of the rights arising from employment by the employee is 15 days.

11. Termination of employment

11.1 Methods for terminating an employment contract

An employment contract terminates[27]:

(a) upon the death of the employee;

(b) upon the death of employer - natural person, upon the termination of a small business by virtue of law or the deregistration of sole trader in accordance with special legislation;

(c) upon expiration of the period for which a fixed-duration employment contract has been concluded;

(d) when the employee has reached 65 years of age and 15 years of insurance periods, unless otherwise agreed by the employer and the employee;

(e) under a written agreement between the employee and the employer;

(f) upon the service of a legally effective decision on retirement due to general inability to work;

(g) by means of a notice of dismissal;

(h) by a decision of a competent court.

The employer, as well as the employee, may give notice that they wish to terminate an employment contract.

Both an agreement to terminate an employment contract and a notice of dismissal must be made in writing. In the case of a notice of dismissal, the employer must explain the reasons for the dismissal in writing and a notice of dismissal must be delivered to the person to be dismissed. According to the Labour Act, reasons not constituting just cause for a dismissal are: temporary absence from work caused by an illness or personal injury, filing an appeal or complaint, or taking part in the proceedings against the employer on the ground of a violation of a law, another regulation, collective agreement or employment rules, as well as the employee contacting the competent executive bodies, the employee's contacting the responsible persons or competent state administration authorities or filing a *bona fide* application with these persons or authorities, regarding a reasonable suspicion about corruption, etc.

There are two types of termination of employment contract: termination by regular notice and by extraordinary notice.

11.2 Regular notice

An employer may give notice that it wishes to terminate an employment contract, subject to a prescribed or agreed notice period ("regular notice") if it has a legitimate reason for doing so, in the following cases[28]:

(a) if the need for performing certain work ceases due to economic, technological or organisational reasons ("notice due to business reasons");

(b) if the employee is not capable of fulfilling his employment-related duties because of some permanent characteristic or ability ("notice due to personal reasons");

(c) if the employee violates his employment obligations ("notice due to the employee's misconduct");

(d) if the employee's work performance was not satisfactory during probationary period ("dismissal due to incompetence during probationary period").

In the event the reason for dismissal is the need to reduce costs with respect to the number of employees, the only possible and most efficient way of employment reorganisation would be termination notice due to business reasons. In this respect, please note in case of employers with 21 and more employees, there are few conditions which have to be additionally met when giving notice. In rendering a decision about the notice on dismissal due to business or personal reasons, the employer must also take into account the length of service, age and maintenance obligations of the employee. The employer who has given notice to an employee due to business reasons must not employ another employee in the same job in the following six months period. If during that period a need arises to employ an employee to perform the same job, the employer must offer an employment contract firstly to the employee whom he dismissed for business reasons.

11.3 Extraordinary notice

Employers and employees have just cause to terminate

[27] *Article 112 of the Labour Act.*
[28] *Article 115 of the Labour Act.*

employment contract entered into for indefinite or definite time, without obligation to comply with a prescribed or agreed notice period ("extraordinary notice") if, due to an extremely grave violation of an employment obligation or due to any other highly significant fact and in consideration of all the circumstances or interests of both contracting parties, continuation of the employment is not possible[29]. An employment contract may be terminated by giving extraordinary notice only within 15 days of the day when the party concerned became aware of the fact on which the extraordinary notice is based. A party to the employment contract, who is not responsible for the termination as a result of extraordinary notice, has the right to claim compensation for damages for non-performance of the obligations from the employment contract from the party who is responsible for the termination. A notice of dismissal must be made in writing and the employer must give reasons for dismissal (the type of dismissal and explain the reason and facts of the case) in written form. Written notice of dismissal must be delivered to the person being dismissed.

11.4 Procedure for termination by the employer

Pre-termination procedure, prior to rendering regular notice due to the employee's conduct, is expressly regulated by the law. The employer shall draw the employee's attention, in writing, to his employment obligations and inform him about the possibility of dismissal if further violations occur, unless circumstances exist due to which the employer cannot be reasonably expected to do so. Furthermore, prior to giving regular notice or extraordinary notice due to the employee's conduct, the employer shall give the employee an opportunity to present his defence, unless circumstances exist due to which the employer cannot be reasonably expected to do so.

In cases, wherein the employer determines redundancy of at least 20 employees and where their employment contracts are to end within a period of 90 days, irrespective of the method of termination, and if at least five of these employees are to be dismissed for business reasons, the employer shall consult the works council with regard to the manner and under the conditions provided for in the Labour Act, about the aims and possibilities of removing the need for dismissals. In that case, the employer is obliged to notify the competent public authority responsible for employment about carried out consultations with the works council.

That notification must contain the information on the duration of consultations with the works council, outcomes and conclusions resulting therefrom, with a statement of the works council attached thereto, should he receive it. In that case, employment of the employees included in the process of collective redundancies may not be terminated within 30 days from the date of the notification. That period can be extended by the competent public authority for another 30 days.

11.5 Notice period

The minimum statutory notice period depends on the prior continuous duration of employment relationship of the employee with the employer and the age of the employee. Notice period duration is from one week (termination within a probation period), until four months (employee with 20 years of service and 55 years of age)[30]. Longer duration can be agreed or prescribed as entitlement for the employee by the employment contract or employment rules but cannot be shorter than these statutory minimums. If there is an important reason, the employee may terminate the employment contract with only one month of notice period.

In the event of an employee whose employment contract is terminated due to a violation of an employment obligation ("notice due to the employee's misconduct"), the notice period is half (1/2) the length of notice periods established by the law. In case of extraordinary termination there is no notice period, i.e. termination is with immediate effect subject to proper termination procedure being conducted.

It is important to be aware that the notice period is suspended during pregnancy, maternity, parental or adoption leave, half-time work, part-time work due to intensive childcare, leave of pregnant or breastfeeding employee, and during leave or part-time work due to having to take care of a child with severe developmental disabilities, under special provisions, as well as in the case of temporary incapacity for work during treatment or a recovery from injury at work or an occupational disease, and during service in national defence forces.

Unless otherwise provided for in a collective bargaining agreement, employment regulations or employment contract, the notice period is not suspended during annual and paid leave, and the period of temporary incapacity for work of the employee released by the employer from obligation of work during the notice period (i.e., garden leave). In case of regular notice, after the expiry of the notice period proscribed by the Labour Act, or in case of extraordinary notice at the moment the decision is submitted to the person being dismissed, the employer must return all the documents to the employee within 15 days as of the termination date, including a copy of the employee's deregistration from mandatory pension and health insurance schemes, and to issue a certificate on the type of work performed by the employee and the length of employment.

11.6 Consultation or prior consent with the works council regarding dismissal

Please note that when undertaking dismissals, the employer shall inform the existing works council about his intention to terminate an employment contract and shall consult with the works council about the decision on termination. This consultation does not mean that the employer is bound by the works council opinion, but the formal procedure of notification needs to be

[29] *Article 112 of the Labour Act.*
[30] *Article 122 of the Labour Act.*

complied with. If no works council has been established within an employer, all the rights and obligations pertaining to the works council under the Labour Act shall be exercised by a trade union representative (if appointed at the employer).

In the event of a dismissal, decisions on dismissal which an employer may render only subject to prior consent of the works council are decisions relating to:

(a) dismissing a member of the works council;

(b) dismissing a candidate for the works council who was not elected, within a period of three months following the establishment of the election results;

(c) dismissing an employee with reduced capacity for work due to an injury at work or occupational disease, and dismissing a disabled person;

(d) dismissing an employee who is 60 years of age or over;

(e) dismissing an employees' representative in the supervisory board of the employer;

(f) pregnant woman or a person exercising maternity leave, the right to short-time working hours by parents or adoptive parents, adoption leave and leave for taking care of the child with serious developmental problems, in the redundancy social security plan.

If the works council fails to grant or deny its consent within eight days, it shall be presumed they have consented to the employer's decision, and if the works council refuses to give its consent, the employer may, within 15 days from receipt of the statement of refusal, ask for such a consent be replaced with a judicial or arbitration award.

11.7 Severance pay

When the employer dismisses (i.e., not reaching an agreement with the employee) an employee following a two-year period of continuous employment, unless dismissal is given for the reasons related to the employee's conduct (i.e., when the employee violates employment obligations or was served with the extraordinary notice), the employee is entitled to receive a severance pay, in an amount determined based on the length of prior continuous employment with that employer[31]. Severance pay must not be agreed upon nor determined in an amount lower than one-third of the average gross monthly salary earned by the employee within a period of three months prior to the termination of the employment contract, for each full year of continuous employment of the employee with the employer.

Unless otherwise specified in the employment contract (or by other act, collective agreement, or employment rules), the aggregate amount of severance pay may not exceed six average monthly salaries earned by the employee in the three months preceding the termination of the employment contract.

11.8 Judicial protection of the rights arising from employment

An employee who considers that the employer has violated any of his rights arising from employment may, within 15 days following the receipt of a decision violating this right or following the day when the employee became aware of such violation, request the employer to allow him or her to exercise this right. If the employer does not meet the employee's request within 15 days from the date of serving of the request, the employee may within another 15 days seek judicial protection before the competent court in respect of the right that has been violated by the employer.

An employee who has failed to submit a request for protection of rights to the employer may not seek judicial protection before the competent court over the right that has been violated, except where an employee seeks damages or has other financial claims against the employer arising from employment. Also, where a law, other regulation, collective agreement or employment rules provide for alternative dispute resolution, the time limit of 15 days for filing a request with the court commences from the date when the procedure for alternative dispute resolution was completed.

The main remedy available to the employee for wrongful termination of the employment contract by the employer is reinstatement. If the court finds that the dismissal is wrongful and decides to reinstate the employee, the employee shall also be entitled to compensation of gross salary and other lost remuneration in the period from wrongful dismissal until reinstatement, together with the court costs and the costs of representation. It should be noted that labour disputes may last in practice for a very long period of time (four years on average). In case of a doubt, the courts often show benevolence towards dismissed employees. Bearing that in mind, each case of termination should be conducted very carefully by the employer (also bearing in mind that a burden of proof regarding the existence of a justified reason for dismissal lies at the employer), in order to minimize the risk of negative outcome and dispute with the employee.

11.9 Judicial rescission of an employment contract

If the court establishes that the termination is not allowed, and it is not acceptable to the employee to be reinstated and continue the employment relationship with the employer, at the request of the employee the court shall determine the day of the termination of the employment relationship and award to the employee a compensation of damages, in the amount of at least three and at most eight average monthly salaries of the employee, depending on the duration of the employment relationship, age and obligations of support that burden the employee. Furthermore, the court may also render the same decision at the request of the employer, if there are circumstances that reasonably demonstrate that, in view of all the circumstances and interests of both contracting parties, the

[31] *Article 126 of the Labour Act.*

continuation of employment relationship is not possible. Finally, with regards to this chapter, it should be highlighted that both the employer and the employee may file a request for the judicial rescission of an employment contract until the conclusion of the hearing before the court of first instance.

11.10 Mutual agreement on termination

The Labour Act allows for mutual agreement on termination of the employment relationship, which must always be made in writing. No severance payment is mandatory in the case of such a termination, but compensation packages are almost always agreed upon between the parties in practice. Any such compensation is subject to salary tax and mandatory social contributions, in full amount.

12. Non-compete

12.1 Statutory prohibition of competition

An employee must not, without the approval of his employer, conclude business transactions, for his own account or for the account of another, in the field of activity of his employer ("statutory prohibition of competition")[32]. If the employee fails to comply with the prohibition, the employer may claim compensation of damages from the employee or may require that the business transaction be considered as concluded for the employer's benefit, or that the employee give the employer the profit earned from such transaction or transfer to the employer any claims for profits earned from such a transaction. The employer's above-mentioned right ceases to exist three months after the date on which the employer became aware that the business transaction had been concluded, and in any case five years after the date on which the transaction was concluded. If, at the time of commencement of employment, the employer was aware of the fact that the employee was engaged in certain business activities and did not require the employee to stop engaging in such activities, it shall be considered that the employer gave the employee approval for engaging in such activities. However, the employer may revoke this approval, complying in this respect with the time limit prescribed or agreed upon for terminating an employment contract.

12.2 Contractual prohibition of competition

The employer and the employee may stipulate that, for a certain period after the termination of the employment contract, the employee must not enter into employment with another person who is competing in the same market as the employer, and that the employee must not conclude business transactions that constitute competition with the employer, either for his own account or for the account of another ("contractual prohibition of competition")[33]. The contract referred must not be concluded for a period longer than two years after the date of the termination of employment and may be an integral part of the employment contract but must always be entered into in writing. The contract referred to above is not binding on the employee if the aim of the contract is not to protect the legitimate business interests of the employer or if, taking into account the area, time and aim of the prohibition and in relation to the legitimate business interests of the employer, the contract disproportionately limits the work and promotion of the employee.

Unless the Labour Act specifies otherwise for a specific case, the contractual prohibition of competition is binding on an employee only if the employer has undertaken a contractual obligation to pay monthly compensation to the employee for the duration of the prohibition, amounting to at least half of the average salary paid to the employee in the period of three months prior to the termination of the employment contract. Salary remuneration shall be paid by the employer to the employee at the end of each calendar month. Where only a contractual penalty has been stipulated in the case of violation of a contractual prohibition of competition, the employer may, in accordance with the general provisions of the law of civil obligations, claim only the payment of this penalty and not the fulfilment of the obligation or compensation for greater damages. A contractual penalty may also be agreed upon for the case when the employer does not undertake to pay salary compensation for the duration of the contractual prohibition of competition if, at the moment of the conclusion of such an employment contract, the employee was receiving a salary exceeding the average salary in the Republic of Croatia.

13. Global policies and procedures of employer

In general, the employer's policies and procedures developed on a global level in countries outside of Croatia could be applicable in Croatia, provided that such policies and procedures are fully harmonized with Croatian legislation and incorporated by reference by an enactment of the Croatian employer.

14. Employment and mergers and acquisitions

In event that, as a result of a change in the status or as a result of a legal transaction, an undertaking, business or part of an undertaking or business, retaining its economic integrity, is transferred to another employer, all employment contracts of employees working in such an undertaking or part of an undertaking, or those involved in pursuing such business or part of business that is transferred shall also be transferred to another

[32] *Article 101 of the Labour Act.*
[33] *Article 102 of the Labour Act.*

employer. The employee whose employment contract has been transferred shall retain the rights he acquired as a result of employment by the date of transfer of the employment contract and the employer to whom employment contracts are transferred shall assume, as of the transfer date, all the rights and obligations from the employment contract that has been transferred, in the identical form and scope. The employment contracts shall be transferred to the new employer as of the date on which the legal effect is produced pursuant to the regulations on the legal transaction on the basis of which the transfer of an undertaking, business, or part of an undertaking or business takes place.

In accordance with Section 15.1 below, before rendering a decision of transfer of undertaking, the Labour Act stipulates employer's consultation obligation with the works council about the proposed decision. Furthermore, the employer shall notify the works council and all employees affected by the transfer of an undertaking, business, or part of an undertaking or business in writing and in due time before the date of the transfer. The above-mentioned notification shall include information on: the date of transfer of the employment contract, the reasons for the transfer of the employment contract, the legal, economic and social implications of the transfer for the employees, any measures envisaged in relation to the employees whose employment contracts are being transferred, etc.

If the transfer of an undertaking, business, or part of an undertaking or business is carried out during bankruptcy proceedings or rehabilitation process, the rights transferable to the new employer may be reduced pursuant to a special law, collective agreement that has been concluded or agreement between the works council and the employer.

If a collective bargaining agreement is entered into in an undertaking, business, or part of an undertaking or business which is subject to transfer, such collective agreement applicable to employees before the change of the employer shall continue to be applicable until the conclusion of a new collective agreement, but for no longer than one year. Furthermore, where an undertaking, business, or part of an undertaking or business that is transferred does not retain its autonomy in such a way that a works council may not continue its activities, the employees, whose employment contracts are transferred, shall reserve the right to representation until the conditions are in place to elect a new works council or until the expiry of the term of office of their former representative.

15. Industrial relations

15.1 Works council

Pursuant to the Labour Act, the employees employed by an employer with a minimum of 20 employees, except for the employees in the bodies of the state administration, are entitled to participate in the decision-making process regarding their economic and social rights and interests, in ways and under conditions specified by the Labour Act. The employees are entitled to elect via free and direct elections, by secret voting, one or more of their representatives who shall represent them with the employer in the protection and promotion of their rights and interests. The procedure for establishment of the works council is initiated at the proposal of the labour union or at the proposal of at least 20 per cent of employees employed by the specific employer. The minimum number of the members of the works council is determined by the number of employees. The works council is being elected for the electoral period of four years.

The employer is obliged to inform the works council at least once every three months of the condition and the results of the business, development plans and their effect on the economic and social position of the employees, changes in salaries, extent of and reasons for introducing of the overtime work, the number and type of employees employed, structure of employment (i.e. the number of employees employed for an indefinite and definite period, teleworking employees, etc.), number and type of employees performing additional work in line with Art. 61 para. 3 and Art. 62 para. 3 of the Labour Act, protection of health and safety at work and measures for improvement of working conditions, results about the conducted inspection audits, and other questions relevant for the economic and social status of employees.

of employees employed, employment structure (the number of fixed-term employees, etc.) as well as employment development and policy, outcomes of inspections of work and safety at work conditions, etc. Before making any decision of significance to the employees, the employer must take advice from the works council and must communicate to the works council the information important for rendering a decision and understanding its impact on the position of employees. Important decisions in particular include decisions relating to labour Before rendering a decision important for employees' position, the employer is obligated to perform consultations with the works council. According to the law, decisions important for employees' position are, in particular: rendering of employment rules/by-laws, rendering of the employment plan, rendering of the notice on dismissal, consultations about the expected legal, economic and social consequences for employees in the event of transferring their employment contract to a new employer (please see more under 14), consultations on measures concerning health and safety at work, consultations regarding the introduction of new technologies or changes to the organisation and of manner of work, consultations about annual leave working hours schedule, on working at night, compensation for inventions and technical improvements, on approving a Redundancy Programme and all other decisions for which the law or collective agreement stipulate that the participation of the works council is obligatory.

The employer may only with the preliminary agreement of the works council render decisions regarding the notice on dismissal of the member of the works council, with regard to the notice on dismissal to the candidate for the member of the works council who has not been elected within a period of three

months following the establishment of the election results, on the notice on dismissal to an employee with diminished working ability or direct danger of disability, notice on dismissal to an employee who is 60 years of age or over, notice on dismissal to the representative of employees in the supervisory board, with regards to incorporation of pregnant woman or person exercising maternity leave, the right to short-time working hours by parents or adoptive parents, adoption leave and leave for taking care of the child with serious developmental problems, in the redundancy social security plan, regarding collecting, processing, using and about disclosing the information about an employee to third parties and appointing a person authorised to supervise whether personal information about employers is collected, processed, used or disclosed to third parties.

15.2 Labour unions and employers' associations

The Croatian Constitution and the Labour Act guarantee the freedom of trade union association. There are many labour unions with nation-wide coverage and many other trade unions exist on industry level and within individual companies. As in the most of other transitional economies, industrial disputes are quite usual in Croatia, especially in companies undergoing financial difficulties. Moreover, a great deal of them still escalate into strikes, which is a legally recognized right of employees, but must be organised in compliance with provisions of the Labour Act. Labour unions independently decide upon the ways of their representation before the employer. Labour unions with members who are employed with certain employers may appoint or choose one or more union representatives who represent them before an employer. As above-mentioned, if no works council has been established with an employer, all the rights and obligations pertaining to works councils under this Act shall be exercised by a trade union's representative. Union representatives have the right to protect and promote the rights and interests of the members of labour unions before an employer. It is by law prohibited to terminate an employment contract of a union representative without the consent of the labour union, during his duty and six months after the termination of that duty, nor is it possible to transfer him to another place of work or on some other way to put him in an unfavourable position in respect to other employees.

Employers have the right, indiscriminately, and according to their own free choice, to establish an employers' association and to be members of such an association, subject only to such requirements which may be proscribed by a statute or by-laws of that association. The employers may engage in a lockout only as a response to a strike already in progress. A lockout must not commence prior to expiration of eight days from the date of the commencement of a strike and the number of employees locked out from work must not be greater than one half of the employees on strike. With respect to the employees who are locked out, employers must pay contributions prescribed by specific regulations on the base equivalent to the minimum salary.

The operations of an association may be banned by a decision of a county court, if the operations of an association are contrary to the Constitution of the Republic of Croatia and its laws.

15.3 Collective Bargaining Agreements

A collective bargaining agreement regulates the rights and obligations of parties which are signatories thereto and may contain legal rules which regulate conclusion of the agreement, the substance and termination of contracts of employment, social security issues, and other issues originating from or related to employment. Legal rules contained in the collective agreement shall be directly applicable and binding on all persons who are, subject to the collective bargaining agreement35. The collective bargaining agreement may contain rules related to collective bargaining procedures and to the composition and methods of work of bodies vested with the authority for the peaceful settlement of collective labour disputes.

Parties to a collective bargaining agreement may be one or more employers, an employers' association, or a higher-level employers' association on one side, and a trade union or a higher-level trade union association on the other side, which are, in the course of negotiating a collective bargaining agreement, willing and able to use pressure to protect and promote the interests of their members. Therefore, depending on the level of collective bargaining agreement (in-house collective bargaining agreement or umbrella collective bargaining agreement), the parties must meet the conditions set out in the Act on the Representativeness of Employers' Associations and Trade Unions. A collective bargaining agreement shall be binding on all persons - signatories thereto, and all persons who, at the time of closing such an agreement, were or subsequently became members of the association which is a party to the collective bargaining agreement.

In respect to collective bargaining process, there are no strict rules how it should be conducted. It is stipulated that (i) during the collective bargaining the parties should negotiate in good faith, (ii) that the representatives should have a power of attorney for negotiating and concluding a collective agreement and (iii) that any collective agreement and every change (amendment, supplement or cancellation) to a collective agreement must be submitted to a competent body and publicly declared.

A collective bargaining agreement may be entered into for a definite or an indefinite period. However, if a collective bargaining agreement is entered into for a definite period it shall not be concluded for a period longer than five years. If a collective bargaining agreement is entered into for a definite period of time, it may be cancelled only if it contains a cancellation clause. On the other hand, a collective bargaining agreement entered into for an indefinite period of time may be cancelled without this provision. However, a collective bargaining agreement may not be cancelled without any reasons, the Labour Act stipulates that if the collective agreement does not contain a clause on a cancellation reason, the provisions of the Civil Obligations Act on amendment or termination of a contract due to changed circumstances shall be applied to the cancellation reason, as appropriate. In respect to the notice period, the cancellation period shall be three months, if a collective bargaining agreement does not contain a clause on the cancellation period.

The competent minister may, at the proposal of all parties to a collective bargaining agreement, extend the application of a collective bargaining agreement concluded with an employer's association or a higher-level employers' association, to an employer who is not a member of the employer's association or higher-level employers' association that is a signatory of this collective bargaining agreement.

16. Employment and intelectual property

16.1 An invention made at the workplace or in relation to the work

The employer is the exclusive owner of an invention made at the workplace or in relation to the work[34]. An employee shall inform his employer of his invention made at the workplace or in relation to the work and shall treat all the information about the invention as confidential business information and shall not pass it on to a third person without prior approval of the employer. On the other hand, the employee is entitled to special remuneration for the invention established by the collective bargaining agreement, employment contract or special contract, and if the special remuneration is not determined, appropriate compensation shall be established by the court. However, if an invention is created by an assigned employee, the invention shall be the property of the user undertaking, while the assigned employee shall be entitled to a reward established by special agreement.

16.2 An invention related to the employer's activity

An employee shall inform his employer about an invention that was not made at the workplace or in relation to the work, if such invention is related to the employer's activity, and shall make the employer a written offer to transfer to the employer his rights in relation to such invention and the employer shall respond to the employee's offer within a period of one month.

16.3 Employees' technical innovations

If the employer agrees to apply a technical innovation proposed by an employee, the employer shall pay to the employee the compensation established by the collective agreement, employment contract or special contract. If compensation is not established, an appropriate compensation shall be established by the court. However, if the user undertaking agrees to apply a technical innovation suggested by an assigned employee, he shall be obliged to pay the employee the reward established by means of a special agreement.

16.4 Confidentiality agreement

Additionally, we emphasize that the Labour Act does not regulate particularly confidentiality agreements between the employer and employee but these provisions are stipulated by general rules that regulate damages in general done by the employee (including breach of the confidentiality agreement). General rules are defined by the Labour Act and the Civil Obligations Act. The employer may define terms of confidentiality in detail, *inter alia*, in an employment agreement, employment rules or employer's formal decision.

Regarding employee's liability for damages caused to the employer, an employee who, at the workplace or in relation to the work, either intentionally or due to gross negligence, causes the employer to suffer damage shall compensate the employer for such a damage . If the damage has been caused by several employees, each employee shall be liable for the part of the damage caused by him. If it is impossible to determine what part of the damage was caused by each employee, all the employees are considered to be equally liable and shall compensate for the damage in equal parts. If several employees have caused damage by a premeditated criminal offence, they shall be jointly liable for the damage caused. Pursuant to the Labour Act, the amount of compensation for damages for certain harmful acts may be determined in advance if determining the amount of damages would cause disproportionate costs. The harmful acts and compensation may be provided for in the collective bargaining agreement or employment rules and if the damage caused by a harmful act is much greater than the predetermined amount of compensation, the employer may claim compensation for the amount of the damage actually suffered and established.

Regarding the liability of an employee to refund compensation for damages ("recourse liability"), an employee, who at the workplace or in relation to the work, either intentionally or due to gross negligence causes damage to a third person, and compensation for such damages has been paid by the employer, shall pay to the employer the amount of compensation paid to the third person.

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal traits is strictly forbidden, as well as any harassment and sexual harassment[35]. Direct and indirect discrimination in the field of labour and labour conditions shall be prohibited, which includes selection criteria and employment requirements, promotion requirements, vocational guidance, vocational training, additional training and retraining, in accordance with the Labour Act and a special law.

The employer shall protect the employees' dignity during work from such treatment by superiors, peers and persons with whom employees come into regular contact during their work that is unwanted and contrary to a separate law. The procedures and measures for the protection of dignity of employees against

[34] *Article 107 of the Labour Act.*
[35] *Article 7 of the Labour Act.*

harassment or sexual harassment shall be governed in a special law, collective agreement, agreement between the works councils and the employer or in employment rules. An employer employing more than 20 employees must appoint a person who would, in addition to him, be authorised to receive and deal with complaints related to the protection of employees' dignity. The employer or authorised person shall no later than eight days of the date when the complaint was filed examine the complaint and take all the necessary measures which are appropriate for a particular case to stop the harassment or sexual harassment, if he has established that harassment has occurred.

The employee who is a victim of harassment or sexual harassment has the right to stop working until he is offered protection, provided that he seeks protection in the court having jurisdiction and during the period of interruption of work, the employee has the right to receive salary compensation in the amount he would have received if he had actually worked. However, in the event of a valid judicial decision ruling that the employer's dignity was not violated, the employer may request the refund of the above-mentioned salary compensation.

It should be noted that the employee's conduct occurring with the effect of harassment and sexual harassment constitutes an infringement of the obligations arising from the employment relationship.

Further to the above, there is also a separate regulation, i.e. *lex specialis,* which regulates discrimination and harassment beyond the boundaries of the Labour Act. If the court determines that discrimination or harassment have occurred, it may impose an order prohibiting the discriminatory or harassment action or requiring the employer to take affirmative actions aimed at eliminating discrimination or harassment or their consequences. The employer may also be held liable for damages (both material and non-material). The judgment declaring a violation of the right may be published, at the expense of the defendant.

A financial penalty is also prescribed for violations of the rules against discrimination and harassment. The amount of the penalty may vary from HRK 1,000 (approximately EUR 130) up to HRK 350,000 (approximately EUR 46,100), depending on the specific circumstances and nature of the offence.

18. Employment and personal data protection

The area of personal data protection is regulated in detail by the EU General Data Protection Regulation (GDPR), the Act on Implementation of the EU General Data Protection Regulation (GDPR) and the Labour Act.

Regarding the protection of employees' privacy, personal information about employees may be collected, processed, used and sent to third persons only if provided for by the Labour Act or another law, or if necessary for the exercise of rights and obligations arising from employment or related to employment.

If personal information has to be collected, processed, used or sent to third persons for the exercise of rights and obligations arising from employment or related to employment, the employer must establish in advance, by employment rules, the information which personal data he will collect, process, use or send to third persons for this purpose.

During the entire process of personal data collection, other GDPR provisions would also need to be considered accordingly by the employer. Moreover, the Act on Implementation of the EU General Data Protection Regulation (GDPR) contains special provisions regarding collection and processing of biometric personal data, as well as collection and processing of personal data through video surveillance.

The employer employing more than 20 employees must appoint a person who would, in addition to him, be authorised to supervise whether the personal information about employees is collected, processed, used and sent to third persons in accordance with the law.

19. Employment in practice

Croatian authorities tend to be sympathetic to employees and reinstatement of work is a frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk.

In general, sanctions against employers may be divided on (i) administrative measures; and (ii) financial sanctions. In respect to the surveillance by the Labour Inspectorate, in the scope of their authority, this body is competent regarding supervision of the implementation of employment related laws and regulations. The Labour Inspectorate has the authority to enter without advance notice and to complete inspections at any time.

Usually, the Labour Inspectorate arrives in case of an employee's invitation, neither often nor randomly. According to the Labour Act, the Labour Inspectorate may by means of oral decision order the employer to perform a certain obligation or initiate misdemeanour proceedings before the competent court (financial sanctions range from HRK 1,000 to 110,000 - approximately from EUR 133 to 14,500). Furthermore, the Labour Inspectorate may initiate misdemeanour proceedings before the competent court in line with the provisions of the Act on State Inspectorate. In that case, the employer and the responsible person of the employer may be financially sanctioned in the total amount range from HRK 150,000 to 200,000 (approximately from EUR 20,000 to 27,000).

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1. General overview

The sources of Greek labour law are numerous and of varying priority and importance. The principal sources of Greek labour law regulating employment relationships are the following:

1.1 Greek Constitution

The Greek Constitution contains important provisions related to employment, which have direct effect and may be invoked by individuals within the context of a dispute or litigation. Such provisions include recognition of collective agreements and free collective bargaining, equality before the law, right to equal pay, freedom of association and protection of associations and determination of the general working terms by law, as further supplemented by collective labour agreements contracted through free negotiations and, in case of failure, by the rules imposed by arbitration.

1.2 Greek Civil Code

Articles 648-680 of the Greek Civil Code[1] provide several general principles on the employment agreement, whereas the regulation of detailed terms of employment is entrusted to special legislative and statutory provisions on matters of labour law.

1.3 Laws

There is an extensive structure of laws, legislative decrees, presidential decrees and ministerial decisions (which are enacted on the basis of legislative authorisation) for the regulation of employment relationships. The Greek labour legislation is detailed and deals exhaustively with various aspects of the employment relationship recognising, however, the managerial right of the employer who may not exercise it abusively or in a manner perceived as constituting detrimental change of the employment terms and conditions.

1.4 Case law

The decisions of the courts constitute another source of law, whereby all relevant labour legislation is open to further interpretation and development through the resolution of labour disputes and the formation of new principles by the judges.

1.5 International Treaties

As expressly provided by the Greek constitution, international treaties when ratified by law, form an integral part of the Greek legal order and prevail in case of conflict over any law, decree or decision. Greece is a member of the International Labour Organisation and has ratified several of its treaties, the most important being the Conventions on the Freedom of Association and Protection of the Right to Organise[1, 2], the Right to Organise and Bargain Collectively[3] and Equal Remuneration[4].

Moreover, the relevant provisions of the EU Treaty provide certain protection to EU nationals concerning free movement of goods and services, equal pay for men and women, general prohibition of discrimination, freedom of competition, etc.

Further to these sources of labour law, there are other independent forms of labour law sources which contribute to the regulation of specific labour relationships, the most important of which are the following:

(a) Collective labour agreements

An important part of the labour legislation is the collective labour agreements, concluded between workers' unions and employers' associations. The compliance with the provisions of collective labour agreements is compulsory, irrespectively of whether or not they are a result of statutory legislation. The provisions of a collective agreement constitute "legal norms" and have binding effect upon the labour issues they regulate[5]. An individual employer can also validly conclude a collective labour agreement. The purpose of a collective labour agreement is to regulate, in a compulsory manner, a substantial part of the employment relationship. The collective labour agreements are distinguished in general national, national or local agreements concerning the same profession. Collective agreements can be concluded at the individual company's level as well.

The validity of the collective labour agreement starts from the date it is submitted to the pertinent Labour Inspectorate, except if the contracting parties agree on retroactivity. Their term may not be shorter than one year and not longer than three years.

In the event that the negotiations between employers and employees reach a deadlock, the law prescribes specific provisions of mediation and arbitration. Hence a decision issued by a

[1] *Official Gazette of the Hellenic Republic, No. 164/17 of 24 October 1984.*
[2] *1948, No. 87 of 30 March 1962.*
[3] *1949, No. 98 of 30 March 1962.*
[4] *1951, No. 100 of 6 June 1975.*
[5] *Law 1876/1990, Article 2.*

mediator or an arbitrator, according to the mediation/arbitration procedure, has the binding effect of a collective contract.

(b) Internal codes or regulations

Companies, which employ more than 70 persons, have to draft an internal labour code or regulation, which is drafted either unilaterally by the employer or by the employer together with the employees' representatives. These rules regulate only those relations formed in the course of the execution of work and are intended to ensure fair and uniform treatment of all employees, coherent policy and disciplinary sanctions. Such labour codes or internal regulations can include all ethics, business codes or other policies applied by the company. The said rules once finalised must be submitted and ratified by the Labour Inspectorate[6].

2. Hiring

2.1 General

The employment agreement must be in writing. In the event it is concluded orally, it is still binding upon the employer, who may be subject to sanctions for not observing the relevant legal requirements[7]. The parties are free to determine the content of their agreement, with the exception of cases where specific requirements are stipulated by law (ex. maximum hours of work per week, annual leave of absence, minimum legal severance, etc.).

The employer should submit electronically to the electronic platform of the Ministry of Labor called "ERGANI" the notification of the new hiring and the personnel list (doc. E3, E4) on the day of the hiring and in any case before the employee begins working. Special regulations are provided for the employment of particular categories of people (such as disabled, war victims).

It is recommended that the employment agreement should be sufficiently precise in order for the contracting parties to ensure its applicability and also for the courts to find a solution if a dispute arises between the contracting parties on issues of additional work or overtime work, etc.

By virtue of Presidential Decree 156/1994, implementing Directive 91/533/EEC[8], the employer has an obligation to provide the employees with the following minimum information:

(a) the full particulars of the contracting parties;

(b) the agreed place of work, the headquarters of the firm or the employer's address;

(c) the post or the specialisation of the employee, his rank, the category of his employment and the scope of his work (job description);

(d) the date on which the employment contract or relationship starts (started) and its duration, if it is for a fixed period or for an indefinite one;

(e) the duration of the leave of absence with pay, as well as the manner and time it will be granted;

(f) the obligation to pay severance in case of termination of the employment contract or relationship and any advance notices by the employer and the employee that may have to be observed, according to the law;

(g) any and all amounts due to the employee for basic salary, bonuses, etc. and the time and manner in which these will become due;

(h) the normal daily and weekly working hours of the employee; and

(i) reference to the applicable collective labour agreement, which determines the minimum payment and work conditions of the employee.

Employees can be informed of the above by delivery of a written employment agreement:

(i) within a period of two months from the actual starting date of employment in case of an indefinite duration;

(ii) within eight days for part-time employment.

Moreover, and further to the above explicit terms, the following implicit terms (compulsory terms) are applied in an employment relationship:

- the employer must abide to the maximum legal working hours per day and per week (see below);
- the employee does not work on Sundays or on public holidays and is allowed to annual leave (see below);
- in particular circumstances, the employee is allowed to receive leave of absence (maternity leave, sick leave, marital leave, educational leave, etc.);
- the dismissal of an employee has to be made in writing and the legal severance, calculated on the basis of the years of past service times the number of the total salary received during the employment contract, as per the provision of law, must be paid; and
- all provisions regarding collective agreements must be followed and applied by employers (maximum working hours, minimum remuneration, etc.).

[6] *Law 2874/2000, Article 15.*
[7] *Presidential Decree 156/1994.*
[8] *Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.*

2.2 Disabled persons

Every company employing more than 50 persons must compulsorily employ a certain percentage of the categories of persons with special needs (handicapped, families with many children, war victims, etc.).

2.3 Foreign employees

The right of foreign nationals to work in Greece is in general recognised and protected by virtue of relevant constitutional provisions, although the right of employment is subject to various restrictions.

EU citizens may freely reside in Greece. The only requirement for lawful residence in Greece is the possession of a valid EU citizen passport. Should an EU citizen wish to work in Greece then he will have to submit a series of documents to the competent authority.

In the case of non-EU citizens, Greek immigration Law provides that a non-EU citizen may obtain a work permit to work in Greece as: a salaried employee or an individual rendering services or working on projects, an employee of specific purposes, a highly qualified employee (Blue Card), an investor, a temporary employee, for provisional transfer for the provision of services or a member of an artistic group.

Depending on which work permit will be issued, the procedure to obtain the same is longer or shorter and requires more or less documents.

For non-EU nationals who are not included in any of the categories above and are simple "blue-collar" employees, the employer must "invite" the foreign employee to take up employment in Greece, at a specific position and at a specific place. In Greece this is called the procedure of *metaklisi.* Such an "invitation" has to be pre- approved by the competent authorities.

A work permit, depending on the category under which the interested person falls, may be issued within a period of time from one month to one year and its duration depends on the type of permit.

2.4 Secondments

A secondment takes place when an employee (or a group of employees) is temporarily assigned to work for another organisation from a different part of their employer. The secondee will remain employed by the original employer during the secondment, and will, following the termination of the secondment, "return" to the seconder. A secondment agreement is required, which can have the following forms:

(a) a simple letter of secondment between the employer and the secondee; This is more likely where the secondment is within the employer or its group and may include details of agreed changes to the employee's contract. If so, the employee will need to consent to the changes;

(b) an agreement between the original employer and the host, with a separate letter to the employee, as described above;

(c) a tripartite agreement between all three parties.

The secondment agreement will have to make clear that its terms prevail over those in the employee's contract of employment. However, the employee will have to be reminded that all the terms and conditions of his contract of employment with the original employer remain otherwise unaffected during the secondment.

The employee's salary may be paid: (i) entirely either by the original employer or by the host employer, or (ii) partially by both employers, according to the secondment agreement.

In the event that the original employer continues to pay the employee's salary and benefits package, then the host employer will usually pay a secondment fee to the original employer at regular intervals during the secondment period. This fee may just be an amount which covers the employee's costs or include a profit element. The secondment agreement should provide for changes in the fee during the secondment period, in particular to reflect any increases in the employee's salary.

3. Types of contracts

3.1 Employment

The main statutory provisions in Greece relating to employment and employment contracts are included in the Greek Civil Code, laws, legislative decrees, presidential decrees and ministerial decisions, which deal exhaustively with various aspects of employment, and Collective Labour Agreements, which are distinguished in general national, national or local agreements concerning the same profession. Collective agreements can be concluded at the individual company's level as well.

Under Greek law, employees are distinguished in accordance with the nature of their work: blue-collar and white-collar. The above distinction is made on the basis of the nature of the work performed. The practical role of the aforementioned distinction concerns mainly:

(a) severance payments;

(b) the payment of salary (daily wage or monthly); and

(c) the compensation due to retirement[9, 10].

Another category provided under Greek labour law is that of the part-time employees. According to Law 1892/1990, as supplemented by Law 2874/2000, Law 3846/2010 and Law 3846/2010 part-time work is contractually or informally defined work for an indefinite period of time, daily or weekly, of lesser

[9] *Law 435/1976, Article 5.*
[10] *Greek Civil Code, Article 671.*

hours than the normal legal working hours. Part-time employees are entitled to full insurance coverage (when they work more than four hours per day), vacation and bonuses.

A further distinction also exists between fixed-term contracts and employment agreements of an indefinite period. A fixed-term contract ends when the contractual term expires or when the contractual work agreed upon is completed. An employment contract concluded for a fixed term shall be deemed renewed for an indefinite period if upon the expiration of its term, the employee continues to work without the opposition on the part of the employer. The crucial element of the distinction between indefinite and fixed-term employment contracts arises in cases of dismissals and severance payments. It is prohibited for employers to enter into successive fixed-term contracts with employees, i.e. terminating and subsequently re-employing them, when there is not a justifiable reason. A fixed-term contract can be renewed no more than three times in three years and cannot exceed a maximum duration of three years. A break of more than 45 calendar days is required in order to avoid the characterization of consecutive fixed term contracts, which could result in the contract being deemed to be for an indefinite term as regulated by Presidential Decree 180/2004.

In particular, the unlimited renewal of fixed-term contracts is only allowed if this is particularly justified by the nature of the work to be provided.

3.2 Engagement outside employment

Labour law governs only the employment agreements which have the distinctive feature of the personal, legal and financial dependency of the employee to the employer. Hence, the provisions of the law are not applicable to self-employed individuals providing services.

The main criteria used to distinguish an independent contractor from an employee is the exercise of managerial rights versus the freedom of performance. In the event the employer, through his managerial rights, defines the hours, the place, the performance of the duties, etc., then a contract of employment exists. Whereas, if the other party has the right to determine the method of work, the performance of same, the freedom to undertake other assignments, etc., and the prevailing element for the employer is the result of the assignment then it is considered that status of an independent contractor exists.

3.3 Engagement of managing directors

Greek labour law does not contain special provisions for executive employees, employees holding managerial positions (directors, etc.). Case law has regulated their special status.

Further, executives are not subject to working hours, they are not entitled to payment of any kind of overtime work, work during nights, Sundays or holidays and they are not entitled to annual leave. Greek law considers that executives represent the employer and, consequently, have the flexibility to manage their tasks, schedule their working hours, arrange their vacation when possible and most importantly, negotiate their salary for the increased responsibilities they share with the employer, since their acts reflect on the financial situation of the undertaking. Please note that Greek case law interprets very limitedly the notion of "executive" position, in order to avoid any abusive situation where employers consider simple employee positions as executives in order to avoid payment of overtime, etc.

3.4 Teleworking arrangement

Teleworking has been recognised in Greece since 1998 and regulated since 2006 but has not been a popular practice amongst Greek employees up until 2020[11]. Teleworking may be agreed only with the employee's written consent, i.e. provided in the initial employment agreement or by the signing of an amendment of the employee's employment agreement regarding the employee's place/manner of work.

Employer's obligations continue even while their employees continue to perform their work remotely. The teleworking agreement shall include all information related to the execution of work from home (tele-working) and more specifically regarding the hierarchical connection of the employee with his/her managers in the company, the employee's duties, the method of calculation of remuneration, the method of work time monitoring the payment of the costs related to the provision of work (telecommunications, equipment, device failures, etc.).

If an existing employment agreement is converted into a teleworking agreement, the amendment of the employment agreement should provide for a period of adjustment of three (3) months, during which any of the parties, after a period of fifteen (15) days, may end the work from home arrangement, meaning that the employee can return to working in the office to a similar position similar to the one he/she previously had.

In Greece, a new legal framework is expected the following months which will further determine the extent of the company's obligations towards remote workers.

4. Salary and other payments and benefits

4.1 Salary

Until the expiry of the economic adjustment period provided for in the Memoranda included in Law 4046/2012, the minimum payment is determined by a legislative act issued by the Government. As of February 2019, the minimum payment for unmarried white collar employees without experience is EUR 650,00 per month , while for unmarried blue collar employees 29,03 € per day.

[11] *Law 2639/1998, Law 3846/2010 and the National Collective Labour Agreement 2006 - 2007*

4.2 Other mandatory payments not considered as salary

The voluntary benefits paid by the employer are not part of the salary when they are given as a gift or when a future commitment is explicitly excluded, obliging the company to provide these benefits permanently. As it has been accepted in case law, if the employer has not reserved the right to discontinue the benefit, then this benefit is considered as salary.

4.3 Other benefits

Collective labour agreements provide for various benefits, based on seniority, family status, working conditions, specialty of the employee, etc. The payment of such benefits is compulsory.

5. Salary tax and mandatory social contributors

Recently enacted tax and social security law[12] in Greece provides for a number of fiscal measures intended to meet the challenges facing the Greek economy. A new tax scale and corresponding tax rates have been introduced for all salaried employees, applicable for the provision of services, from 01 January 2021, as follows:

Income (in EUR)	Tax rates
0 – 10.000	9%
10.001 – 20.000	22%
20.001 – 30.000	28%
30.001 – 40.000	36%
40.001 -	44%

According to the relevant tax provisions, the tax liability that arises on employment income up to EUR 12,000 should be reduced in accordance with the following scale; depending on on the number of dependents:

Taxpayer's dependents	Tax credit (EUR)
0	777
1	810
2	900
3	1,120
4	1,340
For each additional dependent child	+220

Moreover, the tax liability that arises on employment income exceeding EUR 12,000 should be reduced by EUR 20 for every additional EUR 1,000. This provision does not apply to taxpayers with five or more dependent children.

Employees should incur expenses by using electronic means of payment within the EU or the EEA equal to 30 per cent of their actual income, with a maximum expense threshold of EUR 20,000. A penalty of 22 per cent is imposed on the difference between the required amount and the amount actually spent by using electronic means of payment.

It should be noted that according to a recent amendment, the special solidarity contribution is abolished for the employment income of the private sector for the fiscal year 2021.

EFKA is the main Social Security Organisation in Greece. EFKA covers almost all individuals providing services in Greece regardless of their activity (e.g. salaried employees, freelancers, public officers, etc.).

In case of salaried employees, EFKA receives contributions from both employers and employees, so that it can pay out benefits. The amount of contribution is a percentage of the gross income of the employee. The employer deducts the employee's contribution when the salary is paid to the employee and the deducted sum is paid to EFKA along with the employer's contribution within the deadline set by law.

In addition to the above, social security contributions apply to monthly gross employment income up to a ceiling amount. No contribution is due on any remuneration in excess of the ceiling. The maximum monthly ceiling for social security contributions is EUR 6,500.00 . Expatriate employees who were insured abroad prior to that date might apply to be subject to this ceiling if they are from an EU country or a country with which Greece has a bilateral social security treaty. Additionally, salaried EU expatriates may be exempted from any contribution in Greece provided they supply the necessary documentation (A1 Form).

The basic rate of social security (former IKA-ETAM) contributions as percentage of monthly gross salary and wages is 36.06 per cent until 3.12.2021 (14,12 per cent payable by the employee and 22,54 per cent payable by the employer).

6. Working hours

The legal working time is 40 hours per week, except for specific categories of employees, such as bank employees, electricians, builders, underage employees, etc., who are employed for fewer hours. The employer and employees can also agree that the employees will be employed for fewer working hours but remunerated for 40 hours. Out of the 40 legal working hours per five-day working week, the first five hours after the legal working

[12] *Law 4387/2016, Article 38.*

time are considered as overwork (41st to 45th hour) and are remunerated by an increase of 20 per cent. More than 1 hour of additional work each day is considered overtime. The excess of the legal daily working time is permitted up to 2 hours per day and up to 120 hours per year, which may be exceptionally extended following a special approval by the Ministry of Labour. The statutory compensation for legal overtime work is equal to the employee's hourly wage increased by 40 per cent. In case of work of urgent nature, the execution of which is considered absolutely necessary and cannot be postponed, the Ministry of Labour may grant special approval for the realisation of overtimes above the 120 hours annual limit. In such case of approved overtime, the employee should be compensated as follows: hourly wage + 60 per cent.

Every hour of overtime which does not comply with the aforementioned reporting procedure is called "exceptional overtime". For every hour of exceptional overtime, employees are entitled to compensation equal to their current hourly wage increased by 80 per cent. Exceptional overtime is illegal.

The employer must notify the labor authorities, through the ERGANI system about any work provided by its employees in excess of the statutory working hours (e.g., overwork, overtime) before the realization of same.

For part-time employees, in case additional work beyond the agreed working hours is required, the part-time employee is obliged to provide the same in case he/she is in the position to do so and the employee should be compensated with a 12 per cent increase in his/her hourly wage and up to the completion of 8 hours of daily work in total. However, the employee may refuse to provide such additional work when it takes place constitutes a usual practice.

The engagement of an employee in any type of work between 10 p.m. and 6 a.m. is considered as night work and the employee is entitled to receive an increase of his salary (25 per cent increase on the hourly wage of the employee).

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

Any employee is entitled to annual vacation comprising of 20 working days (or 24 days for employees working a six-day week) and up to 25 days (or 30 respectively) depending on the length of employment[13]. The vacation allowance is equal to one half of the employee's salary.

7.2 Paid leave

Sunday and several other days, provided by law, are considered as paid public holidays (compulsory holidays). However, non-compulsory holidays exist based on collective agreement or custom. The difference between such distinctions is that if the employee is working on a compulsory holiday, he receives higher compensation than an employee who is working on a non-compulsory holiday.

7.3 Sick leave

In the case of sick pay, the employee is entitled to remuneration for at least a month if the working relationship has lasted more than one year, or half a month if it has lasted less than a year. The employer may, however, deduct any amounts paid to the employee by the Social Security Fund. No salary is due if the employment relationship has lasted less than 10 working days. Regarding the provision for the days of absence, the law makes a distinction between a short period and long period of sick pay. Short sick pay is considered the absence of an employee due to illness for specific periods of time, provided by law, in accordance with the years of the employees' previous employment, i.e. up to one month for employees working up to four years with the same employer, etc.

7.4 Maternity leave

The total duration of maternity leave is set at 17 weeks in Greece. Eight weeks of those must be granted before the expected date of confinement and the remaining nine weeks after confinement. In cases where confinement takes place earlier than the expected date, the remainder of the leave must be granted subsequent to confinement so that the total of 17 weeks' leave is ensured.Unpaid leave. The granting of unpaid leave is not stipulated by Greek labour legislation and is always based on mutual agreement between the parties to the contract of employment and serves either special needs on the part of the employee or an unforeseen temporary reduction in the employer's business activities. During the period concerned, the obligations of the parties, such as the respective obligations to pay remuneration and to perform work, are suspended.

8. E.S.O.P.

See Section 4.2 concerning voluntary benefits.

9. Health and safety at work

The breach of the provisions on health and safety at work on the part of the employer, may result in administrative fines, such as

(a) a pecuniary fine, amounting from EUR 300 to 50,000 or (b) discontinuance of the company operations for six days or more, or even permanent discontinuance of the company operations and penal fines, imposed on the company and its legal

[13] *Law 539/1945, Article 2.*

representative(s), such as at least six months imprisonment and/or a pecuniary fine of at least EUR 900.

10. Amendment of the employment agreement

According to Greek labour legislation, the employer cannot proceed with any unilateral detrimental change of the employee's terms and conditions, without the affected employee's prior written consent. Said changes may be in the form of a sudden reduction in the employee's salary, changes to the bonus/commission structure or a reduction of the final amount paid, etc.

11. Termination of employment

The employment agreement may be terminated in the following ways:

(a) in the case of fixed-term contracts, upon the expiration of the employment agreement;

(b) in the case of employment agreements of an indefinite term, by the intention of both parties to terminate the agreement;

(c) the death of either the employee or the employer (if he is a physical person). In the case of the employer's death, the contract terminates if it was concluded because the employee was orientated to his person or in case there has been no succession to the undertaking;

(d) in the event that the employer and the employee become the same person;

(e) the unilateral act of termination by the employee (resignation) or of the employer (dismissal).

The mere change of employer, his bankruptcy, the dissolution of the undertaking or an event of force majeure are not events justifying the termination of the employment contract.

11.1 Termination by operation of law

In the case of fixed-term contracts, the employment agreement is terminated upon expiration of the employment agreement. Nevertheless, if the employee continues to offer his services and the employer continues to accept them, then it is considered that the employment relationship continues to exist.

11.2 Termination by employee

The employee may terminate the labour contract of indefinite time, at any time, with prior notice, which cannot exceed three months maximum. In the case of a fixed-term contract, termination is not permitted prior to the lapse of its duration without "important reason".

11.3 Termination by employer

Contracts for an indefinite term can be terminated in writing at any time, unilaterally by the employer, with or without prior notice, with payment of severance, unless the employee has been working in the undertaking for less than one year, in which case the termination does not require any formality.

Please note that there are some cases where the working relationship cannot be terminated, such as in case the employee is on a vacation leave or during army service or in case the employee is a protected member of a trade union, or if the employee is a new mother not having completed 18 months after the delivery, etc.

In the case of a fixed-term contract, termination is not permitted prior to the lapse of its duration without "important reason". If no such "important reason" exists, then the termination is not valid and the agreement is considered in full force and effect. The employee has the right to attack the termination as abusive and unfair and demand damages in the form of due salaries, until the agreed expiration date.

11.4 Procedure for termination by employer

The procedure for termination of the contract depends on the type of the employment contract, i.e. whether it is a contract for a fixed or indefinite term.

Special provisions apply for terminating an employment relationship of indefinite period of time.

If the employer terminates the contract with prior notice, during which the employee must offer his services, then he will have to pay half the severance payment provided by Law 2112/1920. In case the employer terminates the contract without prior notice, then he will have to pay the whole amount of the severance, which will be calculated according to the employee's seniority, as provided by Law 2112/1920.

Severance payment is calculated on the monthly base salary of the employee at the date of termination, multiplied by 14 (so as to take into account the Christmas bonus - one salary, the Easter bonus - one-half salary, and the annual leave of absence bonus - one-half salary) and divided by 12 in order to average it on a monthly basis. Such average salary is increased by all the fringe benefits the employee receives on a regular basis (such as car allowance or value of car, housing allowance, mobile telephone, insurance coverage, commissions - if the commission plan or variable pay scheme forms part of his individual agreement or is covered by a collective agreement, bonuses - if given by the employer on a regular basis and on a predetermined percentage, etc.). The average of the last two months fringe benefits is taken under consideration in order to calculate the amount that must be added to the base salary for the correct calculation of the severance due upon termination.

The employer must offer to the employee the termination document and the severance due at the same time - these are the procedural obligations the employer must follow, otherwise, the

termination is null and void. Other than the said two prerequisites, there is no other formal procedure (i.e. prior approval from a government agency, etc.). In the event that the employee refuses to receive the termination document and his severance, then a court bailiff serves both documents (termination document and severance cheque) to the home address of the employee. In case the latter refuses again to receive the above, then the termination document is attached on the door of his domicile and the severance is deposited to the Loans and Trust Fund.

In all cases of termination, the written form of the termination is required, the legal severance has to be paid simultaneously on the time of termination and the employer has to submit the termination document (E6 statutory form) within 4 days as of the termination date, to the "ERGANI" Information System of the Ministry of Labour.

(a) Procedure for termination in case of breach of work duty or work discipline

The employer may terminate the employment relationship in the case that the employee does not perform his duties or performs them insufficiently.

In addition, the so-called Internal Labour Codes may regulate matters, such as the imposition of disciplinary measures to employees. The measures imposed may be the following:

(a) oral or written record;

(ii) written warning;

(iii) pecuniary sanction - the employer has the right to set off up to one twenty-fifth of the employee's salary; or

(iv) leave or, according to an expression of the law, compulsory abstention from work - this penalty can last up to ten days per year.

For the imposition of any such penalty, the existence of an approved Internal Labour Code or Regulation is prerequisite. Before the imposition of any penalty, the employee must be given the right to explain and justify himself.

(b) Procedure for termination for incompetence

See Section 11.4(b) above.

(c) Procedure for termination in case of redundancy

The employer may dismiss employees in case of restructuring. In such case, certain criteria for dismissals must apply.

The most important criteria, according to the case law, are:

(i) the performance of the employee;

(ii) the seniority;

(iii) the age;

(iv) the family burdens;

(v) the financial situation;

(vi) the possibility of finding a new job.

Among those criteria, the case law gives a general and firm preponderance to the performance of the employee. A termination of an employment agreement of an employee whose performance has been judged as inefficient will not be judged as abusive. Therefore, the rest of the aforementioned criteria will have to be applied when deciding the termination between two employees whose performance is on equal level.

Such application must be based on a general, overall appreciation of all the criteria, without discriminating a particular one. However, it has to be mentioned that certain court decisions have given a relative priority to the criterion of seniority.

In the procedure of selecting the employees to be dismissed, the interests of the company cannot be ignored. It is such interest which imposes keeping in the company the employees with the best performance although performance must not be on its own, the only element to be taken into consideration, as in such a case all other social criteria will be superseded. Considering the above, whenever the difference in the social criteria between two employees is big, the difference in performance must be even bigger in order to maintain in the company the employee with the better performance.

Although all criteria should be considered in an overall appreciation, performance and seniority are the most important ones due to the fact that performance is linked with the interests of the company and seniority with the employee's right to work.

The aforementioned criteria are not limitative: the status of health of the employee, the status of health of his relatives, etc. are other elements to be considered as well. The employer must always be informed on all these facts by his own initiative, unless the employee refuses to give such information to his employer.

In addition, specific provisions exist for collective redundancies, which are subject to strict conditions and prerequisites, i.e. maximum percentage of employees' dismissals per month, specific procedure of their application. The law provides that in order for the dismissals not to be considered as collective, undertakings employing more than 20 employees have to abide by a certain threshold in one calendar month. In the case of collective dismissals consultation with the representatives of the employee must take place and alternative solutions to be proposed so as to minimise the impact of the dismissals. The employer has to inform the employees' representatives of its intention to proceed to collective dismissals and provide the reasons thereby, as well as all other required information. It should thereafter proceed to consultations and negotiations, which should not last less than 20 days. The company may also present a social plan for the employees who will be made redundant and explore any possibilities/methods/criteria for their re-hiring (if any). In any case, the employer shall file the information and consultation minutes to the Ministry of Labour.

If an agreement is reached with the employees' representatives, the terms of the agreement and the measures that will be taken must be set out in such document. In such case, the collective dismissals may take place in accordance with the terms of the same, after the lapse of 10 days as of the submission of the respective minutes to the Ministry of Labour.

If no agreement could be reached, the reasons for such non agreement must be stated. The company must submit the final consultation minutes to the Ministry of Labour and wait for its response, within 10 days as of their submission. The Ministry may: (i) confirm the compliance with the legal provisions regarding the collective dismissals procedure or (ii) extend the deadline for negotiations. In case the Ministry considers that the employer's obligations have been duly met, the collective dismissals are effective after the lapse of 20 days as of the issuance of the Ministry's respective decision. Otherwise, the Ministry may extend the consultations or set a deadline to the company in order to proceed with the required actions for the fulfilment of its obligations. In case the Ministry does not issue any such decision at all, the contemplated dismissals may take place after the lapse of 60 days as of the submission of the consultation minutes to the Ministry of Labour.

In the event that the employer does not respect the provisions of the law on collective dismissals, then the dismissals are void. In cases of collective dismissals, the employer must also apply the same provisions concerning the termination of employment contracts (written form, payment of severance, etc.).

(d) Remedies in the event of wrongful dismissal

According to Greek law, the termination of a working relationship of indefinite period of time does not have to mention the cause. This does not mean, however, that the employee does not have the right to contest his termination before the courts as invalid, abusive, etc. On the contrary, he has the right to contest the same, request salaries in arrears due between the date of dismissal and the date of the issuance of the court decision, plus interest and indemnity for moral damage, as well as demand restitution to his employment position. Consequently, it will be the competent courts that will judge whether a dismissal is valid or not.

Further, paying the right amount of severance in case of termination is extremely important since, if the correct amount is not paid, the employee has the right to file a lawsuit contesting the validity of the termination, requesting the court to declare it abusive and invalid. In the case such lawsuit is accepted by the court, then the employee is, retroactively to the date of termination, considered as being employed by the company and salaries due are owed to him, upon setting off the amount of severance. Note, however, that there are specific cases, enumerated by law, according to which no severance is due, such as in cases where the employer has filed criminal charges against the employee before the dismissal or in cases where the employee has provoked his dismissal by his attitude in order to receive the severance due, etc.

11.5 Mutual agreement on termination

The parties to the employment agreement may freely agree on its termination.

12. Non-compete

Confidentiality and non-competition clauses are usually included in an employment agreement. Employees have a duty of loyalty, i.e. to keep confidential any information related to the employer and its business, which is considered to be of a confidential nature. Moreover, employees have an obligation to abstain from competitive practices during the whole duration of their employment and, very often, even for a reasonable period of time after the termination of the employment agreement, if specific conditions are met. In such latter case, compensation for the compliance with such clause by the employee is provided in the relevant clause, which is usually proportionate to the period bound by such exclusivity obligation.

13. Global policies and procedures of employer

In the case of multi-national companies, the local entity often applies global HR policies and procedures, to the extent permitted by local laws.

14. Employment and mergers and acquisitions

Transfer of an enterprise to a new holder (successor) does not affect the existence of the employment relationship nor the application of the protective provisions of labour legislation[14]. The rights and obligations which arise from the contract of employment are assumed in their entirety by the successor. The transferor remains jointly and severally liable with the new employer for the obligations which will result from the employment relationship which the successor is taking over[15]. The new employer is obliged to observe the terms and conditions of employment established in the relevant collective agreement, arbitration award or contract of employment. In principle, the transfer of an enterprise does not in itself constitute grounds for the dismissal of employees. It is, however, possible to carry out dismissals for economic, technical or organisational reasons which necessitate changes in the enterprise's level of employment. An exception is made for private pension schemes, according to which the successor has the right to maintain, amend or discontinue the existing pension scheme(s).

[14] *Law 2112/1920, Article 6.*
[15] *EC Transfer Directive 98/50, Presidential Decree 178/2002.*

15. Industrial relations

Greece is characterised by state-organised business relations, adversarial labour relations and state-controlled wage bargaining. Unions are subject to detailed legal regulation. Relationships between employers, employees and the State are defined by law in detail.

More specifically, Law 1876/1990 as amended and in force today, regulates mediation and arbitration. The resolution of collective labour disputes arising out of unsuccessful collective bargaining, strikes or lockouts can be affected through the Organisation for Mediation and Arbitration. This organisation is an autonomous public legal entity and is constituted by a number of independent mediators/ arbitrators. Prior to the submission of a dispute to mediation/ arbitration, a summary procedure of reconciliation is provided by law. If the reconciliation procedure fails, then the parties may resort to mediation.

The submission of a dispute to mediation can be effected unilaterally by either party or by both parties, upon mutual agreement. If the mediator is unable to reconcile the parties within 20 days, he may submit his own proposal, which can be accepted or rejected within five days. If both parties accept the mediator's proposal, then the proposal acquires the force and effect of a collective labour agreement. Resort to arbitration is permitted by virtue of an agreement of the parties. As of 2019, unilateral recourse to Arbitration is allowed only as the ultimate supplementary resolution measure of collective labour disputes and exclusively in limited circumstances.

16. Employment intellectual property

The submission of a dispute to mediation can be effected unilaterally by either party or by both parties, upon mutual agreement. If the mediator is unable to reconcile the parties within 20 days, he may submit his own proposal, which can be accepted or rejected within five days. If both parties accept the mediator's proposal, then the proposal acquires the force and effect of a collective labour agreement. Resort to arbitration is permitted by virtue of agreement of the parties. As of 2019, unilateral recourse to Arbitration is allowed only as the ultimate supplementary resolution measure of collective labour disputes and exclusively in limited circumstances[16].

Often the employment agreement for executives or other special categories of employees, includes an intellectual property clause, according to which the employee shall promptly disclose in confidence to the employer all developments whether or not such developments are patentable, copyrightable or protectable as trade secrets, all developments shall be the sole and exclusive property of the employer, they shall constitute "work made for hire" with the employer being the person for whom the work was prepared and that all intellectual property rights therein shall be the sole and exclusive property of the employer, and that in the event that any such development is deemed not to be a work for hire, the employee hereby irrevocably assigns, transfers and conveys to the employer, exclusively and perpetually, all right, title and interest which the employee may have or acquires in and to each such development throughout the world, including without limitation any copyrights and patents, and the right to secure registrations, renewals, reissues and extensions thereof free and clear of any claims by the employee.

17. Discrimination and mobbing

The basic principle of equal treatment is regulated under the Greek Constitution and it is incorporated into Greek law according to the EU directives. In particular, Directives 2000/78/EC[17] and 2000/43/EC[18] have been recently implemented into Greek Law[19].

By virtue of these legislative provisions, direct or indirect discrimination based on race, colour, descent, racial or ethnic origin, religion or belief, disability or chronic illness, age, family or social status, or sexual orientation in the field of employment and occupation is not allowed. Direct discrimination occurs when a person is treated less favourably than another, while his employment status is the same or comparable. Indirect discrimination occurs when a provision, a practice or a criterion puts a person in disadvantage, as compared with other people of the same employment status. Indirect discrimination can only be justified by a legitimate purpose and where the means of achieving the purpose are appropriate and necessary.

The foregoing provisions apply to all persons whether in the private or public sector and in relation to work access, all types of selection criteria, vocational training, vocational guidance, working conditions, involvement in workers' and employees' organisations, social protection, social advantages, education and supply of goods and services that are available to the public.

Differentiation can be justified only if, due to the nature or the context of the particular working practice, it constitutes a basic and crucial working condition, if the aim is just and the condition appropriate.

[16] *Law 4635/2019, Articles 53 – 57.*
[17] *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.*
[18] *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.*
[19] *Law 4443/2016.*

18. Employment and personal data protection

The Greek privacy and data protection legislation consists notably of the General Data Protection Regulation (EU) 2016/679, widely known as the "GDPR", which applies directly in all European Union Member States, Greek Law 4624/2019 implementing certain options and discretions of the GDPR in Greece and transposing (EU) Directive 2016/680 into Greek legislation, as well as Greek Law 3471/2006 on "Protection of personal data and privacy in the electronic communications sector", which transposed (EU) Directive 2002/58/EC into Greek legislation.

Apart from the provisions of Article 27 of said Greek Law 4624/2019 encompassing special provisions on the processing of personal data in the workplace, i.e. the validity of consent provided by the employee, processing of special categories of personal data and lawful data processing through CCTV systems in the workplace, amongst others, there is no other data privacy legal provision that applies especially in the employment sphere.

19. Employment in practice

Individual disputes between employer and employee are resolved according to the Greek Code on Civil Procedure, which incorporates a specific chapter, under the title Labour Disputes Procedure. It should be noted that the parties cannot agree to private arbitration of employment disputes, since it is not permitted by Greek law.

Waivers of the exercise of statutory and contractual rights to potential employment claims, can be validly made by the employee only after the date when such rights come to existence and can be exercised, otherwise any waiver would be null and void.

The statute of limitations on employment claims, arising out of the working relationship is five years. However, regarding the right of the employee to file a claim for the annulment of his termination as invalid or abusive, the prescription period is three months, following the termination date. Finally, regarding the computation of severance, the prescription period is six months, following the termination date.

The principal governmental institution for the regulation, monitoring and administration of labour relationships is the Ministry of Labour.

KALO ASSOCIATES
ATTORNEYS AT LAW

KS

KOSOVO

1. General overview

The right to work and follow a profession is provided in Article 49 (1) and (2) of the Constitution of Republic of Kosovo[1], which expressly states that the right to work is guaranteed and each person is free to choose his profession and occupation. Employment relationships are governed by Law No. 03/L-212[2] on Labour (the **"LoL"**).

Employees are also entitled to occupational safety, protection of health and an appropriate labour environment in compliance with the LoL and Law No. 04/L – 161 on Safety and Health at Work[3] (**"LSH"**). In regards to discrimination, employees, aside from being protected by the provisions of the LoL, they are also protected by Law No. 05/L – 021 on Protection from Discrimination[4] (**"LPD"**).

3. Hiring

2.1 General

The LoL does not provide any special requirement in regard to recruiting employees. The minimum employment terms set forth by law, which are required to be considered by employers before concluding employment relationships with employees, are: (i) a minimum age of 18 years; however, in this respect, when an employee is employed for easy labour, which does not present a risk to either health or development and such work is not prohibited by any law or sub legal acts, the LoL allows an employment relationship with persons over 15 years old; (ii) a minimum wage, which will be defined annually by the Government of Kosovo based on the proposal of the Social Economic Council; (iii) an obligation to report employees to the Kosovo Tax Administration (**"KTA"**), and to other authorized institutions for managing and administering obligatory pension schemes; and (iv) safety measures.

2.2 Disabled persons

Under the provisions of Law No. 03/L-019 on Training, Professional Rehabilitation and Employment of Disabled Persons[5], disabled persons with general and special conditions have a right on employment and integration in the labour market. Employment of disabled persons with special conditions is considered self-employment and employment in households, whereas employment with general conditions is meant employment of disabled persons in the open labour market. An employment relationship between a disabled person and an employer is established by signing the employment contract in accordance with the LoL, collective agreement and internal act of the employer. They have the same rights and obligations as provided in the LoL, collective agreement and internal act except for the exclusion of working overtime, night shifts or of changing the working schedule only when harmonised and evaluated by a professional commission which has determined the decreased working ability.

Besides this law, the LoL provides a special provision for cases when an employee suffers from a disability during his employment relationship. In these cases, the employee shall be entitled to work on his position or perform other relevant duties, if the remaining working ability enables the performance of those duties without the need for professional rehabilitation.

Each employer, irrespective of the fact whether it belongs to the public or private sector, is obliged to respect the requirement of this law according to which for every 50 employees one disabled person should be employed. Employers who do meet this obligation are obliged to pay monthly contributions of one per cent of the minimum wage in the budget of Kosovo for stimulation of employing disabled persons.

2.3 Foreign employees

The Kosovo legislation in force, allows the possibility of hiring foreigners. Foreign citizenship employees are also subject to the provisions of the LoL after being equipped with a Residence Permit for Employment purposes as required by Law No. 04/L – 219 on Foreigners[6]. Should the foreigner work and live in Republic of Kosovo, he must acquire firstly a Residence Permit for Employment purposes prior to commencement of work. Competent authority for issuing the Residence Permit for Employment purposes is the Migration Office within the Ministry of Internal Affairs. The Residence Permit for Employment purposes shall be issued to the foreigner for a period of no longer than one year from the day of application.

1 *Dated 15 June 2008.*
2 *Approved by the Assembly of Kosovo on 2 November 2010 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-077-2010, dated 18 November 2010.*
3 *Approved by the Assembly of Kosovo on 16 May 2013 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-26-2013, dated 31 May 2013.*
4 *Approved by the Assembly of Kosovo on 28 May 2015 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-014-2015, dated 15 June 2015.*
5 *Approved by the Assembly of Kosovo on 5 August 2016 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-036-2016, dated 23 August 2016, as amended and supplemented through Law No. 05/L – 078.*
6 *Approved by the Assembly of Kosovo on 31 July 2013 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-42-2013, dated 19 August 2013.*

2.4 Secondments

The LoL provides a special provision regarding secondmends of employees. Under Article 19 of LoL, an employee may be temporary seconded by his employer to another employer only with prior consent of the employee on the conditions set between the current and future employer. The secondment should correspond to a post that conforms to the professional qualification of the employee in cases when:

(a) it was ascertained that there is no need for the work of the employee;

(b) the post is temporary terminated or when there is a decrease in the volume of work;

(c) working space, respectively, working tools are rented temporary to another employer.

It is an obligation of the employer receiving the employee to sign an employment contract with the employee. The employee shall cease all rights and obligations with the previous employer and after termination of the temporary secondment period, he is entitled to return to work to the previous employer in the same position or in other positions corresponding with his professional qualification.

3. Types of contracts

3.1 Employment

The LoL expressly recognizes only the written form of an employment contract signed by the employer and the employee, which shall contain the minimum rights for the employee stipulated by the LoL.

An employment contract shall include the minimum elements as follows:

(i) data of the employer (designation, residence and business register number);

(ii) data of the employee (name, surname and qualification);

(iii) designation, nature and the form of labour and/or services and the job description;

(iv) the place of work or a statement that work is performed at various locations;

(v) working hours and working schedule;

(vi) the date of commencement of work;

(vii) the duration of the employment contract;

(viii) the basic salary and any other allowance or income;

(ix) the period of vacations;

(x) termination of employment relationship;

(xi) other data that the employer and employee deem important for the regulation of employment relationship;

(xii) an employment contract may include other rights and duties provided for in the LoL;

(xiii) the rights and obligations not defined in the employment contract shall be regulated by the provisions of the LoL, collective contract and employer's Internal Act.

Employment contracts in Kosovo may be concluded for: (i) an unspecified period; (ii) a specified period; and (iii) specific tasks. A contract for a specified task may not be longer than 120 days within a year. Unless otherwise agreed in writing between the employer and employee, the first six months of employment relationship will be deemed a probation period. During the probation period either party may terminate the employment relationship with prior notice in a term of seven days.

3.2 Other types of engagement

The LoL stipulates the following types of engagement in an employment relationship:

(a) Part-time employment agreement

The employee agrees to work fewer working hours per week than a full-time job. Part-time employment relationship can be established for a definite or indefinite period of time. An employee working part-time is entitled to all the rights deriving from the employment relationship on the same basis as a full-time employee in proportion with the number of hours worked.

(b) Employment agreement with reduced working hours

Reduced working hours apply to employment relationships for jobs when despite the application of protective measures, the employees are exposed to harmful impacts on health. Working hours may be reduced to no less than 20 hours per week for jobs with high level of hazard. An employee working reduced working hours is entitled to all rights as full-time employees.

(c) Employment agreement for specific tasks

An employment agreement for specified task cannot be concluded for longer than 120 days. An employee in employment relationship for specific task is not entitled to annual leave and other rights as provided in collective and employment agreements.

3.3 Engagement of managing directors

Employees serving in capacity of managing directors are employed under the same rights and obligations similar to any other employee in the company. The LoL does not provide different rules for managing directors entering in an employment agreement, meaning that they are entitled to same protection as other employees in the company.

4. Salary and other payments and benefits

4.1 Salary

Employees are entitled to a salary defined in compliance with the present LoL, collective agreement, employer's internal act and employment agreement, which shall be paid in Euro as an official currency in the Republic of Kosovo. Salary shall be executed in compliance with the employment agreement or at least once a month. According to the applicable tax legislation in the Republic of Kosovo, respectively Law No. 05/L – 028 on Personal Income Tax7 and Law No. 04/L – 101 on Pension Funds of Kosovo8, it is at the employer's obligation to deduct from the employee's gross salary the incoming tax and pension contributions. Employers are obliged to respect the minimum salary as defined by the Government of Kosovo and proposed by the Social Economic Council.

4.2 Other mandatory payments not considered as salary

Under provisions of the applicable legislation in Kosovo, the following mandatory payments are not considered as salary: compensation received by an employee for expenses incurred during the time spent working outside his workplace (e.g. accommodation, travel expenses, food) on the basis of the terms and amounts as defined in the Employer's Internal Act.

4.3 Other benefits

The applicable legislation of Kosovo does not restrict the employers to provide their employees with any other/extra benefits.

5. Salary tax and mandatory social contributors

5.1 Social contribution and health insurance

The payment of social contributions and personal income taxes are regulated by Law No. 04/L – 101 on Pension Funds of Kosovo and Law No. 05/L – 028 on Personal Income Tax. Irrespective of the fact that the Law on Health Insurance[9] is adopted by the Parliament of Kosovo, in practice the same is not being implemented and now recently is under amendment and supplements. Therefore, health insurance is not mandatory for parties in an employment relationship. For now, the issue of health insurance in the employment relationship remains at the discretion of the employer in case they express willingness to provide their employees with a voluntary health insurance policy from licensed insurance companies in Kosovo. Up to date such insurance is being used only on a voluntary basis.

Under provisions of the relevant legislation regarding pension contributions, each employer is obliged to contribute on behalf of its employees to the Kosovo Pension Saving Trust ("KPST") and each employee is obliged to contribute on his own behalf to the KPST.

For financing the pension savings (i) each employer shall pay an amount equal to five percent of the total wage of the employee; and also, (ii) each employee shall pay five percent of his total wage. The relevant legislation allows employers and employees to contribute on a voluntarily basis up to 10 percent of the monthly salary with a maximum total of 15 percent. It is a mandatory obligation of the employer to make the relevant deductions from the employee's salary and to transfer the same to the specified account of the KPST together with a contribution, in due time pursuant to the respective rules issued by the Tax Administration of Kosovo.

6. Working hours

5.1 Social contribution and health insurance

The LoL has established the restriction for employers regarding the working hours. Under Article 20 of the LoL, working hours means a period of time, during which the employee performs services for the benefit of the employer. Full-time working hours is 40 hours per week, except for employees under 18 years old who are prohibited to work longer than 30 hours per week. The working hours must be set out in the individual employment agreement between the employer and employee.

The extra working hours are also governed by the LoL, which provides that the employee should be compensated with 30 per cent of the basic salary by the employer for any overtime. Article 56 of the LoL stipulates that any extra work executed during the weekends should be compensated with 50 per cent by the employer for any overtime.

The LoL also regulates the following:

(a) Part-time working hours

Employment relationship for part-time working hours can be concluded for definite and indefinite period of time, meaning that the working hours should be shorter than full-time working hours. An employee working part-time is entitled to all the rights deriving from the employment relationship on the same basis as a full-time employee in proportion with the number of hours worked.

(b) Reduced working hours

Reduced working hours shall apply to jobs and duties where despite the application of protective measures, the employee is exposed to harmful impacts for his health. In an employment relationship with reduced working hours, the hours shall be reduced in proportion with the health hazard of the employee

[7] *Approved by the Assembly of Kosovo on 10 April 2014 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-018-2014, dated 25 April 2014.*

but not less than 20 hours per week. An employee working with reduced working hours is entitled to similar rights to those of a full-time employee.

(c) Overtime

In regard to the overtime, the LoL is very strict given the fact that only in extraordinary cases and when the volume of work is increased on the request of the employer, an employee shall work overtime for a maximum of eight hours per week.

(d) Night shifts

Night shifts are defined as work between 10:00 p.m. and 06:00 a.m. The LoL provides that in cases when work is provided in shifts, it is necessary to organise shifts in order to prevent an employee from working a consecutive one week without a day off. Night shifts are allowed only for adults over 18 years old.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

Annual vacations are regulated with the LoL providing that an employee is entitled to a paid annual leave for at least four calendar weeks during a calendar year, regardless of the fact whether the employee works full-time or part-time. The LoL provides that the extension of the annual leave is stipulated on the basis of the work experience providing that one day should be added for every five years of service. The category of employees who perform work, which despite of the application of protective measures contain harmful effects, is entitled to an annual leave of 30 calendar days. In cases when the annual leave falls in an official holiday (in a business day), that day shall not be counted in the annual leave. For the period of using the annual leave, the employee is obliged to inform the employer with a notice at least 15 days in advance for the dates of his annual leave. The annual leave may be divided into two parts, so that the main part should be used for ten consecutive business days within a calendar year and the whole vacation shall be used no later than 30 June of the following year.

7.2 Paid leave

Besides the annual leave, the employee is entitled to a paid leave with salary compensation for: (i) five days in case of marriage; (ii) five days in case of death of a close family member; (iii) three days for a birth of child; (iv) one day in every case of voluntary blood donation; and (v) other cases as determined in the employer's act, employment agreement and collective contract.

According to the special provisions of the LoL, a pregnant woman, apart from the annual paid leave, is also entitled to 12 months of maternity leave of which only nine months are considered as paid maternity leave. During the period of the first six months of the maternity leave, the payment shall be made by the employer in the amount of 70 per cent of her basic salary. During the following three months, the leave will be paid by the Government of Kosovo in the amount of 50 per cent of the average salary in Kosovo.

7.3 Sick leave

Under Article 59 of the LoL, an employee is entitled to a compensation of 100 per cent of his salary for ordinary sick leave up to 20 business days within one calendar year. In cases of occupational injury and related illness as a result of work or service performance for and on behalf of the employer, the employee is entitled to a sick leave for a period from 10 up to 90 business days with compensation of 70 per cent of his salary which compensation falls under the obligation of the employer.

7.4 Unpaid leave

According to Article 40 of the LoL, an employee is also entitled to unpaid leave in cases when he requests from the employer to be absent from work without compensation. The duration of unpaid leave can be arranged with mutual consent between the employer and employee. It is at the employer's discretion to decide whether to accept or refuse the request of the employee. In cases when the employer accepts such a request by the employee, during the whole period of time of unpaid leave, all employee's rights and obligations are ceased from the employment relationship, apart from the rights deriving from the due payment of contributions by the employee.

7.5 Employment standstill

Article 53 of the LoL provides that except in the cases of collective dismissal, the employer is prohibited to terminate the employment relationship with the employee during the pregnancy period, maternity leave, absence from work due to special care for the child.

8. E.S.O.P.

The Employee Stock Ownership Plan (**"E.S.O.P."**) is not common in Kosovo. The E.S.O.P. is governed only by Law No. 02/L – 123 on Business Organizations[9] (the **"LOB"**), as amended. Article 209 of LOB provides that E.S.O.P. is a program which should be adopted by shareholders for encouraging employees to acquire shares of the Joint Stock Company (**"J.S.C."**). The E.S.O.P. may allow participants to subscribe for shares at a discounted rate or in consideration of their work. Only natural persons may enjoy the right of subscribing for shares. The E.S.O.P envisages that among other requirements that should be fulfilled by a person to benefit from this scheme, he should be in ongoing full-time employment relationship with the J.S.C. in question.

[9] *Approved by the Assembly of Kosovo on 27 September 2007 and promulgated by UNMIK Regulation No. 2008/26 of 27 May 2008 and is applicable together with the UNMIK Regulation.*

The E.S.O.P. comes into effect only if (i) the E.S.O.P. has been adopted by the shareholders at the duly called shareholders meeting; and (ii) a document describing all material details of the E.S.O.P. has been provided to the shareholders at least 30 days in advance of the shareholders meeting in question.

9. Health safety at work

Health and safety at work except being in general regulated by LoL, is specifically regulated by the LSH. According to the provisions of the LoL, an employee is entitled to occupational safety, protection of health and to an appropriate labour environment in compliance with the LoL and LSH.

Under special provisions of the LSH, it is an obligation of the employer to create conditions for occupational safety, health and working environment of its employees. These obligations also include coverage for treatment expenses of work-related accidents and illness. In order to be released from these expenses an employer shall establish a social security scheme with the employer's contributions. Organization and implementation of occupational safety, health and working environment measures falls also under the obligation of the employer who should inspect the efficiency and, especially shall undertake necessary measures for further improvements. An enterprise up to 50 employees, if competent, is entitled to implement measures on safety and health at work, provided that it will be able to fulfil the obligations as provided in sublegal acts issued by the Ministry of Labour. An employer with 50 up to 250 employees is obliged to assign a full-time safety expert and in cases when the number of employees exceeds 250, it should engage one or more safety experts.

9.1 Documentation and records

The employer is obliged to keep the following documentation: (i) technical certificate, which clearly specifies the application of occupational safety, health and working environment regulations for buildings or parts of buildings used as workrooms or facilities for the period of being in use; (ii) instructions on the use of all machinery and equipment in the work process; (iii) certificates confirming that the installations are in order and clearly show characteristics of the machine in use in accordance with the European Standards.

The employer is obliged to keep at the headquarters the following records: (i) training programs for employees for carrying out the work safely; (ii) preliminary and periodical medical check-up of employees designated to carry out the work in special working conditions; (iii) the produced dangerous substances; (iv) accidents at work, cases of serious injuries, cases of death at work and occupational diseases; (v) results of all risk managements, measures taken to eliminate such risks and the results of control on efficiency of such measures; (vi) changes in the technological process, which endangered or may entail danger to the occupational safety, health and working environment.

10. Amendment of the employment agreement

Under provisions of LoL, the employment agreement can be amended only with a mutual agreement by the employer and employee. The amended employment agreement should be drafted in written form and signed by both parties. The amendment of the employment agreement shall be considered as an integral part of the basic employment agreement.

11. Termination of employment

11.1 Termination of employment contracts on legal basis

The employment contract may be terminated in the following circumstances:

(a) upon death of the employee;

(b) upon death of the employer when the work performed or service provided by the employee are of personal nature and the contract cannot be extended to the successor of the employer;

(c) upon expiry of duration of the contract;

(d) when the employee reaches the pension age, respectively 65 years of age;

(e) in cases when there is a final ruling of the loss of the labour competencies;

(f) if an employee shall serve a sentence longer than six months;

(g) with a decision of a competent court, which follows the termination of employment contract;

(h) upon bankruptcy or liquidation of the company.

11.2 Termination of employment contract by mutual agreement

An employment contract may be terminated with the agreement of the parties. This termination of employment relationship shall be concluded in written form. In these circumstances the employer is obliged to execute the salary of the employee up to termination date.

11.3 Unilateral termination of the employment contract by the employee or/and employer

(a) Unilateral termination of the employment contract by the employee

An employee is entitled to the unilateral termination of the employment contract. An employee with a fixed term contract shall inform the employer in writing of his termination of the employment contract with 15 calendar days prior notice, whereas

an employee with an indefinite term contract shall notify the employer within 30 calendar days. The employee is also entitled to terminate the employment contract without providing the employer with the necessary prior notice in cases when the employer is in breach of his obligations under the employment contract.

(b) Unilateral termination of the employment contract by the employer

The period for giving notice to an employee by the employer for termination of an employment relationship depends on the duration of the contract. When an employment contract is concluded for an indefinite term, the following periods of prior notice shall be taken into consideration by the employer:

(i) from six months up to two years of employment: 30 calendar days;

(ii) from two up to 10 years of employment: 45 calendar days;

(iii) above 10 years of employment: 60 calendar days.

In the cases when the employment contract is concluded for a definite term, the employer shall give the employee prior notice of at least 30 calendar days. The decision for termination of an employment relationship by the employer is mandatory to be issued in written form and to contain also the grounds for the termination.

11.4 Procedure prior termination of the employment contract

The termination of employment relationship is followed by a decision in written form issued by employer which shall include the grounds for the dismissal. It is an obligation of the employer to execute the salary and other allowances up to the day of the termination of the employment relationship. The LoL expressly allows the possibility of "garden leave". The employer is entitled to deny an employee access to the enterprise's premises during the termination notice period, namely prior to terminating the employment contract.

11.5 Collective dismissal

Under special provisions of the LoL, the collective dismissal is defined as termination of employment relationships with at least 10 per cent of the employees, but not less than 20 employees within a six-month period.

In cases of large-scale lay off, prior to introducing changes (collective dismissal), an employer shall notify its employees (where applicable the employees' trade union) at least one month in advance in written form for the planned changes and its implication which should include:

(a) the number and category of employees that need to be laid off;

(b) the measures to be taken by the employer in order to alleviate consequences of collective dismissal including:

(i) limiting or stopping hiring of new employees;

(ii) internal reordering of the employees;

(iii) limiting the overtime working hours;

(iv) reducing the working hours;

(v) offering professional retraining; and

(vi) the rights of employees to be stipulated in individual employment contract, internal act, and collective contract.

With the notification provided in the above paragraph, the employer is entitled to terminate the employment contract of the employees within the notification period described in Section 11.3(b).

An employer is obliged to pay the full salary and other allowances up to the day of the termination of the employment relationship. In the case of collective dismissals, the severance payment for employees with an employment contract for an indefinite term is calculated as follows:

- from two to four years of service: one monthly salary;
- from five to nine years of service: two monthly salaries;
- from 10 to 19 years of service: three monthly salaries;
- from 20 to 29 years of service: six monthly salaries; and
- 30 years of service or more: seven monthly salaries.

If, within a period of one year from the termination of the employment contracts of employees (in cases of collective dismissal), the employer is in need for employees with the same qualifications or training, the employer shall not hire other persons before offering to hire the employees whose contracts have been terminated.

12. Non-compete

The LoL does not provide any special provisions that regulate the issue of non-competition of employees. The LOB contains a provision that sanctions apply to the managing director of a company if directly or indirectly engage, participate or have an interest in any business activity that is in competition with the company where he is employed. Moreover, this prohibition is limited to the managing director who engaged in capacity of employee consultant, contractor, general partner, director or controlling owner or shareholder of another business organization that engages in a business activity that is in competition with the company. Also, the provisions that govern the companies organized as J.S.C. provide the same identical obligation for directors. Furthermore, the issue of non-compete obligation can be regulated freely by contract clause(s) based on recognized principle of pacta sunt servanda provided in the Law on Obligations[10].

[10] *Approved by the Assembly of Kosovo on 10 May 2012 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-024-2012, dated 30 May 2012.*

13. Global policies and procedures of employer

The applicable legislation in Kosovo lacks any special regulation regarding global policies and procedures of employer. Generally, instructions and orders given by the employer should be followed by employees except orders and instructions which are in contradiction with the terms and conditions of the employment agreement.

14. Employment and mergers and acquisitions

The case of a business transfer which entails the change of the employer is regulated with LoL. When the employer is changed as result of a business transfer, the new employer shall take over all obligations of the former employer based on the individual employment agreement and collective agreement. In transactions involving the acquisition of a publicly-owned company through a concession agreement, the contracting state authority may impose limitations with respect to redundancies and employment conditions of the existing employees of the company in the transaction agreement.

15. Industrial relations

The freedom for establishing and to join trade unions with the intent of protecting interests of employees is provided in paragraph 2 of Article 44 of the Constitution of the Republic of Kosovo. Such a right may be limited by law for specific categories of employees (i.e. Police, Military Personnel and Fire Departments). Freedom of Trade Union Organizations is also recognized by the LoL without undue interference from any other organization or public authority.

The right to join and establish trade unions is sanctioned by Law No. 04/L-011 for Organizing the Trade Union in Kosovo[11]. Trade Union Association as basic organizational unit may be registered in Ministry of Labour and Social Welfare if a trade union has at least 10 members.

Employee trade unions are organised on a national level (according to the respective industry sector) and company level. Each legally founded trade union may submit a collective bargaining/social dialogue request to its employer or employer organisation, in order to commence negotiations in relation to a collective labour contract at either enterprise, group of enterprises, or sector level. Furthermore, the employees have the right to strike, which is provided for by the Constitution of the Republic of Kosovo, Law on Strikes[12] and by the Labour Law. Participation in any strike is voluntary and no one shall be forced to participate in a strike against their will.

Any action that includes threats or any kind of discrimination of 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 common understanding and sign the relevant agreement confirming the outcome of the negotiations. A strike shall be deemed lawful if it fulfils the conditions defined in the Law on Strikes. According to the Law on Strikes, Kosovo Security Force, Kosovo Police, Fire Services, Emergency Health Services, the employees have no right to organize strikes if not regulated differently by a special legal instrument.

Also the Law on Strikes envisages the reasons to conduct strikes, such as:

(i) non-implementation of legal provisions that protect workers' interests;

(ii) the non-fulfillment of worker's legal requirements that are based on protection of workers' social interests;

(iii) because of the non-payments of the salaries;

(iv) unsafety at work;

(v) non-implementation of provisions of General Collective Contract and the Working Contract, signed between the employer and the employee;

(vi) for other reasons which are based on the applicable Laws of Kosovo or in the International Labour Conventions.

16. Employment and intelectual property

According to Article 126(1) of the Law No. 04/L-065 on Copy Right and Other Related Rights, as amended with Law No. 05/L – 047[13] in cases when the author's work is created by an employee during his working relations, while fulfilling his work duties or according to the instruction given by the employer, it is considered that the property rights and other author's rights were assigned exclusively and without any limitations to the employer, for a period of ten years, from the date of completion of work, unless otherwise provided by the employment contract or by another signed act with the employer. Therefore, the agreement between the employee and employer over the ownership of copy rights is considered as prevailing act.

In case of death or cases of liquidation of employer (in capacity of legal person), the ownership rights over the copy rights will

[11] *Approved by the Assembly of Kosovo on 28 July 2011 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-015-2011, dated 9 August 2011.*
[12] *Approved by the Assembly of Kosovo on 6 September 2012 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-041-2012, dated 19 September 2012, amending and supplementing the law no. 03-L-200 on strikes.*
[13] *Approved by the Assembly of Kosovo on 11 October 2016 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-037-2016, dated 25 October 2016.*

be returned to the employed author before completion of the above term. Furthermore, if the employer does not use property rights or it uses them in a negligible manner, the employee is entitled to ask the employer to assign those rights to him, against compensation of expenses. Also, unless otherwise contracted between the employee and employer, the employee as the author of the work enjoys the right to claim additional compensation from the employer, if his salary is in disproportion with the incomings and savings realized due to the use of the work.

Similarly, the provisions of the Law No. 04/L – 029 on Patents as amended[14] provide that in case of invention created by the employee during working hours, the right on the patent shall belong to the employer, unless otherwise contracted between them. Moreover, if an invention has been made by the employee as part of execution of employment contract, the employee is entitled to the right of remuneration taking into account the value of the invention. In absence of agreement between the parties, the competent court is entitled to fix the remuneration.

17. Discrimination and mobbing

Under specific provisions of the Constitution of Republic of Kosovo, every form of discrimination is prohibited.

Under specific provisions of the LoL, discrimination is strictly prohibited in employment and occupation in respect of recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, and cancelation of employment contract or other matters arising out of employment relationship regulated with LoL and other laws in force. When hiring new employees, it is an obligation of the employer to create equal opportunities and criteria for male and female applicants.

The LoL recalls the application of Law No. 05/L – 021 on Protection from Discrimination[15] to be directly applicable in regards to employment relationships. Even though Kosovo is not a signatory party of the following international agreements and instruments granted with the Constitution of Kosovo (i) Convention of the elimination of all forms of racial discrimination; (ii) Convention on the elimination of all forms of discrimination against women, are directly applicable.

18. Employment and personal data protection

According to provisions of the Law No. 03/L-172 on Personal Data Protection[16] the employer is entitled to collect the personal data concerning the employee only with prior expressed consent of the employee and in cases when the processing is necessary for the performance of contract to which data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

Pursuant to this law, the Kosovo State Agency of Personal Data Protection must be notified of the processing of personal data by the data controllers.

Furthermore, the law provides for certain other obligations on the part of the controllers such as the obligation to maintain the confidentiality of personal data accessed during employment, even after the employment relationship has ceased, the obligation to inform and give access to the employers on their personal data being processed or transferred and the duty to correct or delete such data, the obligation to undertake organizational and technical measures for the security of processing of personal data.

Moreover, Article 64 of the Law on Personal Data Protection provides that video surveillance systems at work places may only be installed in cases where this is necessarily required for the safety of people, the security of property and the protection of confidential information if these purposes cannot be achieved by milder means. Video surveillance shall be prohibited outside

19. Employment in practice

In general, authorities in Kosovo, labour inspectorate and courts, tend to support the employees in disputes arising between them and the employers. This has been a practice during the Socialist Federal Republic of Yugoslavia and has continued until the present days.

Generally, the labour inspection authority is active towards construction companies considering their high number of employees and the risk that they expose. Their decisions are based on the provisions of the LSH and it is quite common that their decisions impose sanctions. It is important to note that the height of such sanctions is not always proportionate in respect to the violations made, especially when violations end with fatality on construction sites or similar scenarios.

[14] *Approved by the Assembly of Kosovo on 31 July 2015 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-024-2015, dated 17 August 2015.*
[15] *Approved by the Assembly of Kosovo on 28 May 2015 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-014-2015, dated 15 June 2015.*
[16] *Approved by the Assembly of Kosovo on 29 April 2010 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-020-2010, dated 13 May 2010.*

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MONTENEGRO

1. General overview

Montenegrin employment legislation is similar to employment legislations of other countries in the region of South-eastern Europe. There is a hierarchy of employment regulations at the pinnacle of which is the Labour Act[1] (**"Labour Act"**). Besides the Labour Act, employment-related issues in companies are regulated by the General Collective Agreement[2] (**"GCA"**) applicable to all employers and employees. There may also be an industrial collective agreement applicable to employers and employees in the particular industry. It is not mandatory for companies to have individual collective agreements concluded between the employer and the trade union organised at the employer. GCA, industrial collective, individual collective agreement or employment agreement may not have less favourable rights for employees than those in the Labour Act.

Employment agreement must be in writing. The Labour Act stipulates certain mandatory elements of the employment agreement (e.g. commencement date, working hours, duration of the employment relationship, place of work, amount of the basic salary, etc.).

2. Hiring

2.1 General

Employment relationship may be established with a person of at least 18 years old and with general health capability. A person older than 15 and younger than 18 can be employed subject to parental consent and medical certificate confirming his ability to work. Special requirements may apply to high-risk posts. Employer is free to provide in its internal enactments specific requirements for specific work posts.

2.2 Disabled persons

According to the Professional Rehabilitation and Employment of Persons with Disabilities Act[3], employers with 20 or more employees are obliged to employ a certain number of disabled persons (employers with 20 employees must employ at least one employee with disability, employers with over 50 employees must employ at least five per cent employees with disability of the total number of employees). Newly established companies are exempt from this obligation for the first 24 months from the establishment. Alternatively, instead of employing the prescribed number of persons with disability, the employer can contribute to a special fund by paying 20 per cent of the average salary in Montenegro for the preceding year for each person with disability it did not employ. The employer with less than 20 and more than 10 employees, who does not employ a person with disability, is obliged to pay a compensation in the amount of five per cent of the average salary in Montenegro for the preceding year to the special fund.

2.3 Foreign employees

Employment of foreign nationals is regulated by the Foreigners Act[4]. In general, a foreign national who intends to work in Montenegro based on an employment agreement or an out-of -employment agreement has to obtain a temporary residence and work permit or in certain exceptional cases a confirmation on work registration.

In order to obtain temporary residence and work permit, every foreigner, regardless of the intended duration of stay, is obliged to register his presence on the territory of Montenegro to the touristic organisation within 24 hours from arrival. If the foreign national stays in a hotel, the hotel is obliged to report his presence to the local police. If the foreigner has leased an apartment, the foreigner should approach the local police with his landlord. The issuance of temporary residence and work permit is subject to quotas, prescribed by the Government of Montenegro. Quotas are established in accordance with the requirements of the respective industry (e.g. tourism, agriculture, etc.) for each particular industry. Quotas do not apply in certain cases, such as: to foreign citizens employed on the basis of reciprocity in accordance with an international treaty concluded between Montenegro and the foreign country, a foreign citizen acting as executive director in a Montenegrin company, a foreign citizen holding a university degree and being employed at a managing position in a Montenegrin company, a foreign citizen who is employed for at least one year as a manager or a specialist in a foreign company which is a founder of a Montenegrin company and who is being allocated to Montenegrin company, etc.

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[1] *Official Gazette of Montenegro,No. 074/19.*
[2] *Official Gazette of Montenegro, No. 014/14, 040/18, 037/19 and 074/19.*
[3] *Official Gazette of Montenegro, No. 049/08, 073/10,039/11 and 055/16.*
[4] *Official Gazette of Montenegro, No. 012/18 and 003/19.*

The procedure for obtaining temporary residence permit usually takes 20 days to complete. The foreigner should submit the request for temporary residence permit to the Ministry of Interior (Foreigners' Office in the place of the foreigner's residence).

A company which uses services of a foreign company, which are to be performed by foreigners in Montenegro, may exceptionally obtain confirmation on work registration in some cases such as: work on installations, assembly or repair of machinery or performing additional training and qualification of employees from a legal entity established in Montenegro, by a foreign company, or performing additional training and qualification of employees of a foreign company employees by the Montenegrin company, if the companies are connected on ownership or business basis. These exceptions apply if the foreigner does not stay in Montenegro for more than 90 days within a one-year period.

2.4 Secondments

Secondment of Montenegrin employees abroad is regulated by the Act on Protection of Montenegrin Citizens at Work Abroad[5]. According to this law, Montenegrin employees may be seconded abroad on the basis of a cooperation agreement entered into between their Montenegrin employer and the foreign host. At least 15 days before sending its employee, the Montenegrin employer is required to notify the Ministry of Labour and Social Care with regard to each secondment and provide a copy of the cooperation agreement, and other documentation pertaining to the secondment.

3. Types of contracts

3.1 Employment

Employment relationship is the basic form of engagement of workers regulated by the Labour Act. Employment is established by an employment agreement concluded between the employer and the employee. A written employment agreement, containing the mandatory elements prescribed by the Labour Act, must be concluded with each employee before the moment of commencement of work.

Employment agreement may be concluded for indefinite or definite period. A definite-term employment agreement may be concluded for work the duration of which is pre¬determined by objective reasons (deadline for completing certain work, or occurrence of a specific event), during the existence of those reasons. In general, the maximum duration of definite-term employment agreements is 36 months, while in exceptional cases definite-term employment can last longer (e.g. in case of work on a specific project, the definite-term employment agreement can be concluded until the project's finalization).

3.2 Engagement outside employment

Personnel may also be engaged outside an employment relationship, under the limitations set by the Labour Act. The main types of out-of-employment engagement are:

(a) service agreement, which may be concluded only for the services which fall outside the scope of the company's business activities, i.e. for ancillary activities;

(b) staff can be engaged based on an agreement on temporary and periodical work for work which by its nature lasts up to 120 working days in a calendar year and for which no special knowledge or expertise is required (e.g. seasonal work);

(c) "Staff leasing". The Labour Act prescribes outsourcing through special agencies for temporary lease of employees registered before the Ministry of Labour and Social Care. Outsourcing agencies must have a license from the Ministry and may not perform other business activities. A Montenegrin company may not hire employees through agency to replace employees on strike or those who have been made redundant in the previous 12-month period. The employer has to notify the trade union every six months of the reasons for leasing personnel. Employees leased to the company remain employed within the agency, while the company using the employees is required to ensure health and safety measures applicable to all employers and special protection of certain categories of employees.

3.3 Engagement of managing directors

In accordance with the Montenegrin legislation, the executive director is an obligatory corporate position in the company. Labour Act provides that the executive director must enter into an employment agreement. This employment can be permanent or for a limited period of time equal to the duration of the mandate.

3.4 Teleworking arrangement

Teleworking arrangement is generally permitted where the very nature of the work allows it. In such case, the employment agreement must especially address the matter of duration of work hours, the manner of supervising the employee, usage of the employee's own equipment and work tools and the appertaining compensations. The employer has a general obligation to ensure occupational safety and health. This means that the employer must assess the risk associated with the remote work and properly train the employees on safety and health measures for such work.

4. Salary and other payments and benefits

4.1 Salary

The salary structure is complex and consists of the following mandatory elements:

[5] *Official Gazette of Montenegro, No. 11/04, 073/10, 040/11, 035/13 and 024/19.*

- special part of the salary (which encompasses food allowance and one-twelfth of the allowance for annual vacation)[6];
- basic salary (which must not be lower than the amount obtained by multiplying the prescribed accountable value of the coefficient and coefficient[7] for the respective group of jobs which is related to the level of qualification (education) of the employee[8]);
- increased salary payable for: work on a public holiday (150 per cent of the basic salary per hour), night work (40 per cent of the basic salary per hour), completed years of employment (for up to 10 years - 0.5 per cent, from 10-20 years - 0.75 per cent, over 20 years - one per cent), and overtime work (40 per cent of the basic salary for the relevant number of hours);
- performance part of the salary payable if the performance norm prescribed by an applicable collective agreement, and/or employment agreement is met.

The salary cannot be lower than 30 per cent of the average salary in Montenegro in the previous six months according to the official data determined by the administrative statistics authority ("minimal salary").

4.2 Other mandatory payments not considered as salary

The employer is obliged to compensate the employees for the following:

(a) per diem allowance, for a business trip in the country in the amount of 20 per cent of the accountable value of the coefficient (the travel and accommodation in a hotel with four or more stars are to be paid to the employee if they were previously approved by the employer);

(b) per diem allowance for a business trip abroad in the amount and in the manner prescribed by the competent authority of the state administration;

(c) compensation of the expenses in the amount of 25 per cent of the price of a litre of gasoline, per kilometre if the employee, with the consent of the employer, uses a private car for business purposes;

(d) support in case of death of the employee to the immediate family members, or of the immediate family members of the employee in the amount of two minimal net salaries;

(e) pension severance pay in the amount of three minimal net salaries.

The above-listed payments are not treated as salary and therefore, are not subject to the income tax and the mandatory social contributions (unless they exceed statutory non-taxable amounts).

4.3 Other benefits

Employers are free to provide their employees with other benefits, such as jubilee awards, additional health insurance, voluntary pension schemes, profits participation, etc.

5. Salary tax and mandatory social contributions

Salary is subject to income tax and mandatory pension and disability, health and unemployment insurance (together "mandatory social contributions"), payable by the employer on a withholding basis. The law distinguishes between mandatory social contributions levied on the employee, and mandatory social contributions levied on the employer. However, all mandatory social contributions are actually withheld and paid by the employer. The difference is only relevant in accounting terms: contributions levied on the employer are not part of the gross salary, which constitutes the basis for mandatory social contributions. The aggregate combined rate of all mandatory social contributions is 32.3 per cent (out of which 24 per cent is levied on the employee, and 8.3 per cent is levied on the employer).

Salary is subject to a progressive income tax at rate of nine per cent. In addition to the income tax, the employer is obliged to pay municipality tax on the calculated amount of income tax. The municipality taxes may vary. In Podgorica, the amount of municipality tax is 15 per cent of the amount calculated as income tax.

6. Working hours

Full-time working hours are 40 hours per week. As a rule, the working week lasts five days, but the maximum of 40 hours per week may also be stretched through a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the Labour Act, a 30-minute break for full-time employees is a statutory obligation and included in full-time working hours.

Work in excess of full-time hours is deemed overtime work - it may be ordered in exceptional cases only, and triggers a salary increase. Senior employees and management are not exempt from the overtime regime, i.e. their overtime is also subject to additional compensation. However, this can be overcome if the employment agreement provides so, i.e., if it is explicitly stated in the employment agreement that the salary is agreed so that it contains the overtime salary increase.

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[6] *Minimum amount is currently EUR 63 gross.*
[7] *The amount of accountable value of the coefficient is currently at least EUR 90 gross per month.*
[8] *The GCA prescribes the following coefficients for the respective group of jobs: 1.29 for primary school; 2.27 for high school diploma (2.52 for specialization within high school education); 2.88 for college education (so-called higher education), 3.09 or 3.40 for university education (depending on the diploma type); 3.71 for master degree/magisterium; 4.12 for PhD.*

Overtime work may not exceed 10 hours per week. Overtime has to be paid and cannot be compensated with days off or otherwise.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

In each calendar year, the employee is entitled to annual leave of a minimum duration of 20 working days. The employer has to provide an increase of the statutory minimum of 20 working days holiday based on (i) work experience (from five to 15 years - one working day, from 15-25 years - two working days, from 25-35 years - three working days, over 35 years - five working days); and

i. health condition (employee with disabilities - three working days, employee who is a parent of a child with disability - three working days).

According to the Labour Act, annual vacation may be used entirely within the pending year or split between two calendar years. In the latter case, the first part of vacation (which cannot be shorter than 10 days) can be used in the pending year, while the second part has to be consumed no later than by 30 June of the subsequent year. The employer decides on the schedule of annual leave, depending on the needs of the work process, with the prior consultation with the employee.

7.2 Paid leave

In addition to annual vacation, employees are also entitled to a paid leave for: a wedding - five working days, a childbirth by a spouse - three working days, a serious illness or death of an immediate family member - seven working days, care of a child with disabilities - three working days, removing the consequences of natural disasters in household - three working days, participation in a trade union sports cultural or other competitions of national and international importance - two working days, taking of professional exam – five working days, voluntary blood donation - one working day, and organ donation - in accordance with medical documentation.

7.3 Sick leave

In case of sickness or disability leave ("sick leave"), employees are entitled to a compensation of salary. This compensation amounts to 70 per cent of the employee's average salary calculated over the period of 12 months preceding the sick leave, in case of illness or injury not related to work, and 100 per cent of employee's average salary calculated over the period of 12 months preceding the leave, if the leave is caused by professional illness or injury. Employer is obliged to pay compensation of salary for the first 60 days of sick leave, whereas the state refunds the employer for the payment made for the period in excess of 60 days up to the amount of average salary in Montenegro in the previous year. There are no limitations with respect to the total duration of sick leave or the total number of sick leaves.

7.4 Maternity leave

A leave due to childbirth comprises of pregnancy leave and parental leave. Pregnancy leave starts 28 days prior to the due date and ends 70 days after the childbirth. Pregnancy leave and parental leave combined may last up to 365 days from the date of childbirth. A parent may start to work before the expiry of the parental leave, but not before the expiry of pregnancy leave. In case one of the parents starts to work before the expiry of the parental leave, but after 30 days from the start of the parental leave, the other parent may continue to use the unused part of the parental leave. The employer is obliged to pay the compensation of the salary during both pregnancy and parental leave, but it is entitled to a refund of the salary from the state. The amount of the refund depends on the duration of the employment with the employer and cannot be higher than two average salaries in Montenegro for the previous year. An employee cannot be validly terminated while on pregnancy leave and parental leave.

7.5 Unpaid leave

An employee is entitled to an unpaid leave in cases stipulated by the GCA. During the period of unpaid leave the employees' rights and obligations (e.g. salary, pension and invalidity insurance, etc.) are standstill, except that the employer is obliged to pay mandatory health contributions. According to the GCA, an employee is entitled to unpaid leave of up to 30 days in a calendar year for providing care to seriously ill immediate family member, obtaining medical treatment at his own cost, participation in the cultural, sport and other public manifestation, and in any other case provided there is a consent of the employer.

7.6 Employment standstill

The employee's employment relationship is at a standstill in the event of certain absences from work listed in the Labour Act (e.g. serving a prison sentence, safety, corrective or protective measures, lasting up to six months, appointment to a public position, etc.). During such absence the rights and obligations based on employment are at a standstill (e.g. right to salary). Upon the expiry of the standstill grounds, the employee is entitled to be reinstated to work.

8. E.S.O.P.

The matter of E.S.O.P.s is not regulated and the schemes are not used in practice. According to the Law on Personal Income Tax[9], the employee's income consisting of "shares" is considered salary and the taxable basis is the nominal value of the shares.

[9] *Official Gazette of Montenegro, No. 65/01, 12/02, 37/04, 29/05, 78/06, 04/07, 86/09, 40/11, 14/12, 006/13, 062/13, 060/14, 079/15, 083/16 and 067/19.*

Any such income would also be subject to the contributions for the social security. There are no any tax exemptions tied to the contributions to the E.S.O.P. schemes. On the other hand, the "income based on shares acquired by employees at subsidized conditions" is regarded as capital income, taxable at the rate of nine per cent.

9. Health and safety at work

The area of health and safety at work is regulated in detail by the Law on Protection and Health at Work[10]. The employer is obliged to ensure appropriate occupational and health and safety measures, including: (i) to appoint a person in charge of occupational health and safety (this can be outsourced); (ii) enact a Risk Assessment Act; (iii) ensure training of staff for safe work (theory and practice); (iv) perform periodic testing of employees;(v) supply any necessary safety equipment and a first aid kit; (vi) ensure medical check-ups where needed; (vii) ensure checking and maintenance of work tools; (viii) keep the prescribed records on health and safety; etc. All this can be performed and coordinated by an outsourced licensed expert.

10. Amendement of the employment agreement

The employment agreement may be amended by an annex in certain cases specified by the Labour Act. The annex must be accompanied by a written notification from the employer explaining the reasons for amending the employment agreement, the deadline for the employee's response (which may not be less than eight working days), and the notice of legal consequences arising from refusing to accept the proposed annex. In certain cases which are specified by the Labour Act, refusal to conclude the proposed annex may serve as a ground for unilateral dismissal by the employer.

11. Termination of employment

11.1 Termination by operation of law

According to the Labour Act, employment relationship is terminated by operation of law regardless of the will of the employee and/or the employer, and merely by the occurrence of one of the following facts in the following cases:

(a) when the employee turns 67 years of age and at least 15 years of employment, unless agreed otherwise;

(b) loss of work ability;

(c) prohibition to perform certain works imposed on the employee by the court or other competent body;

(d) prison sentence longer than six months;

(e) other sentence which requires absence from work longer than six months;

(f) bankruptcy or winding-up of employer;

(g) expiry of definite term employment;

(h) death of the employee.

11.2 Termination by the employee

An employee may terminate the employment agreement at any time, by delivering a written notice to the employer at least 30 days prior the effective termination date.

11.3 Termination by the employer

(a) Termination grounds in the Labour Act

The employer may unilaterally terminate an employment relationship for a limited number of grounds as specified in the Labour Act. The Labour Act provides that the employer may terminate employment without conducting proceedings for determining responsibility for a breach of duty which is explained below, in the following cases:

i. if the employee fails to perform the results of work determined by a collective agreement, employer's enactment or individual employment agreement in the period of at least 30 days;

ii. if the employee's behaviour is such that he cannot continue to work for the employer in the following cases: if the employee violated the rules of the occupational safety and thereby caused a danger to his own health or health of other employees, if the employee came to work intoxicated, in case of drinking during work or using narcotics, if the employee rejected the alcohol or drug tests; unjustified absence from work for three or more consecutive working days or five working days with interruptions during 12 months; if there is a final court decision convicting the employee for the criminal offense abuse of office; in case the employee disclosed a trade secret established by an act of the employer; in case of abusive, offensive, or inappropriate behaviour to the customers or the employees; if the employee commits a criminal offense at work or in relation to work; if the employee used and disposed with the business car, machines and tools for work contrary to the act of the employer with which the employee was previously familiar;

iii. if the employee prior to commencement of employment or an assignment to another job position gave false data relating to the conditions of employment, or performance of other tasks;

[10] *Official Gazette of Montenegro, No. 034/14 and 044/18.*

iv. refusal of the employee to sign an annex to his employment agreement for the purpose of (1) transfer to another employment position with the same employer; (2) transfer to another location within the same employer; or (3) amending the salary;

v. if the employee abused the right to a leave because of the temporary inability to work, especially if it was engaged with another employer, or if does not deliver to the employer a report on the temporary inability to work, within five days from issuing reports;

vi. if the employee did not return to work without a justified reason within two working days after the end of unpaid leave, or within 15 days from the day of expiry of employment standstill; and

vii. in other cases, determined by the collective agreement and employment agreement.

(b) Procedure for termination by the employer

i. Proceedings for determining responsibility for a breach of duty

These proceedings are a precondition for termination if the employee does not fulfil his obligations from the employment and are rather complicated and burdensome for the employer. The procedure for determining responsibility for a breach of duty may be initiated by the director upon learning that a breach of duty has been committed. The director is obliged to serve a written warning to the employee within 15 days from the day of learning of the breach ("Warning").

The Warning has to contain: (i) personal data of the employee and his job position; (ii) description and time frame of the breach of duty; (iii) an indication that the employee has the right to give an oral statement about allegations and facts indicating a breach of duty. The employee has the right to give his statement on the Warning within 15 days from the day of delivery of the Warning. If the employee does not give his statement within the 15 days deadline it is deemed that the employee agrees with the allegations and facts contained in the Warning. In addition, within five days from the day of delivery of the Warning to the employee, the employee has the right to request from the director to give his oral statement and the director is obliged to provide the employee with the opportunity to give a statement.

The oral hearing has to take place 15 days from the day the Warning was delivered to the employee. An oral hearing may be attended by an authorized representative of the trade union (if any), as well as the employee's lawyer, both upon the employee's request. The hearing is conducted by the director or another person authorized by the director. Minutes on the hearing have to be kept. The minutes have to contain data on (i) the director, i.e. authorized person; (ii) the place and time of the hearing; (iii) the employee; (iv) the participants in the hearing such as witnesses, or expert witnesses; (v) the content of the request for initiation of proceedings (if there was one); (vi) the statement of the employee on the breach of work obligations; (vii) statement of the authorized representative of the trade union, employee's lawyer, witnesses and expert witnesses; and (v) evidence presented during the proceedings. The minutes have to be signed by the director, i.e. the authorized person, the employee against whom the procedure is conducted, his lawyer and the person who kept the minutes. The director adopts a decision based on the results of the hearing. The director may decide to (i) suspend the proceedings; (ii) release the employee from liability; or (iii) determine the employee's liability and measure for breach of work duty.

The decision has to be adopted within 15 days from the day the 15 days deadline for the employee to deliver his statement on the Warning expires (if the hearing was not conducted); or 15 days from the hearing. In the case, the expert witness has to deliver his opinion, or some further inspection has to take place, this decision may be adopted within 30 days from the day the 15 days deadline for the employee to deliver his statement on the Warning expires. The decision has to contain: (i) introduction; (ii) the operative part; (iii) the explanation; and (iv) the instruction on how the employee may file legal remedy against the decision. The director is obliged to deliver the decision to the employee, his lawyer, and trade union representative within eight days from its adoption at the latest.

ii. Procedure for termination in case of redundancy

The employer informs the trade union / employees or employee representatives on the commencement of consultations. The consultations may last for a minimum of 30 days from the date of delivery of the notice. The notice has to contain: (i) reasons for termination of the need for work of employees; (ii) total number of employees; (iii) criteria for determining redundant employees; (iv) the number of redundant employees, as well as their workplaces and the jobs they perform; (v) criteria for calculating the amount of severance pay; (vi) measures for taking care of redundant employees which include: assignment to other jobs with the same employer in the level of education of the employee; transfer to another employer in the qualification of education level, i.e. professional qualification of the employee's, with his consent; professional training, retraining or additional training for work in another job with the same or another employer, and other measures in accordance with the collective agreement or employment contract.

After a written response to the proposals of the trade union/ employee representative/employees is delivered, the employer submits notification to the Employment Office/trade union on the conducted consultations. Within 30 days from the day of delivery of notice to the Employment Office by the employer, Employment Office may order the employer in writing to postpone the procedure of terminating the employment agreement to all or employees whose work is no longer needed for a maximum of 30 days, if it may provide the employees with continued employment during that period. The employer has to amend the systematization act and after the act comes into force, it has to enact the termination decision for each employee

who is terminated (which must contain the reasoning and notice on legal remedy. In case the thresholds are not met, the employer is obliged to inform the employee and the trade union in writing that employment of the employees will terminate at least five days before bringing the decision on termination of employment.

In case of termination of employment due to redundancy, the employer is obliged to make a severance payment to the employee who spent at least 18 months working for the employer. Minimum severance payment prescribed by the Labour Act is the higher of (1) one-third of the employee's average net monthly salary within the period of six months prior to dismissal for each year of work with the employer and (2) one-third of the average monthly net salary in Montenegro. In any case, the amount of severance payment cannot be lower than the higher of (1) three average monthly net salaries at the terminating employer in the period of six months prior to dismissal and (2) three average net salaries in Montenegro if this is more favourable for the employee.

iii. Remedies in the event of wrongful dismissal

In the event of wrongful dismissal, the employee may challenge the decision on employment termination in court proceedings by filing a lawsuit within 15 days from the date of delivery of the dismissal. If the employee successfully challenges the dismissal, the court may, depending on the scope of the employee's claim, order to the employer to reinstate the employee to work; and/or to compensate the employee for material damages, in the amount of lost salary and other earnings arising from employment that the employee would have earned had he not been unlawfully dismissed, less the amount of any income generated by the employee from work under another employment agreement during the period of termination, and to pay social security contributions towards the respective funds; and/or to compensate the employee for any non-material damages suffered, if it is determined that unlawful termination resulted in violation of human rights, dignity, and/or reputation.

11.4 Mutual termination

The employer and the employee may agree to terminate employment at any time. No severance payment is mandatory in case of termination by agreement but stimulating compensation packages are often agreed in practice.

12. Non-compete

Non-compete obligation may be imposed on the employee who works on a post at which he may acquire new and important technological knowledge, wide circle of business partners or important business information and business secrets. Non-compete- obligation may survive termination of employment agreement for a maximum period of two years, provided that compensation is paid to the employee.

The law does not prescribe any parameters for such compensation. Therefore, the amount can be freely agreed upon. The usual practice is to agree the amount that corresponds to the employee's salary for the period of duration of the non-compete obligation.

13. Global policies and procedures of employer

Employer's global policies and procedures developed on a global level do not automatically apply. In order to bind the employees in Montenegro, those policies and procedures have to be fully harmonised with the Montenegrin legislation and incorporated by an enactment of the Montenegrin employer.

14. Employment and mergers and acquisitions

The employer must notify the employees of the change of status (merger, spin-off) or a legal transaction that results in the "change of employer" no later than 15 days prior to the change. The predecessor employer and the successor employer are obliged to inform the trade union or the employees' representative at the latest 30 days before the change of the effective date of the change; b. the reasons for the change; c. legal, economic and social consequences for employees; and d. measures for mitigating the socio-economic impact of the change on the employees (if any). In the event of a "change of employer", employees transfer to the employer successor who is bound to respect all of their rights.

The employee who opposes the transfer to the successor employer is entitled to severance pay in the amount higher of (i) 1/3 of the employee's average net monthly salary earned within the period of six months prior to the termination, for each year of service with the employer and (ii) 1/3 of average monthly net salary in Montenegro, but in any event, no less than the higher of (a) three average monthly net salaries the employee earned from the employer in the period of six months prior to the termination and (b) three average net salaries in Montenegro in the last six months prior to the termination. The successor employer is responsible for the obligations arising from the employment incurred up to the date of transfer of the employment agreements jointly and severally with the predecessor employer.

The successor employer is obliged to conclude new employment agreements with the employees within five days from the change of status. If the employee refuses to conclude the new employment agreement within five days, his employment terminates. The new employment agreement cannot provide for less favourable rights of the employee compared to the previous agreement.

15. Industrial relations

The Montenegrin Constitution[11] and the Labour Act guarantee the freedom of trade union association. The major trade unions in Montenegro are Savez samostalnih sindikata Crne Gore and Unija slobodnih sindikata Crne Gore. Other trade unions exist on industry level and within individual companies. Trade unions are typically found in companies that underwent privatisation or in current state-owned companies. As in the most of other transitional economies, industrial disputes are quite usual in Montenegro, especially in companies undergoing financial difficulties. Strike is a legally recognised right of employees.

16. Employment and intellectual property

According to the Copyright Act[12], the employer is an exclusive owner of economic and other rights pertaining to copyright developed by the employee while performing regular work duties for a period of five years following the creation of copyright, unless otherwise provided in the agreement with the respective employee. After the said five-year period, these rights revert to the employee. However, the employee is obliged to assign these rights back to the employer, subject to payment of an adequate fee. Under the Patent Act[13], the default rule is that the employer has the right to patent protection with regard to the following groups of inventions: (i) those made in the course of the employee's performance of regular duties; (ii) those made in the course of the employee's performance related to the activities of the employer, or by using material and technical means, information and other conditions which were provided by the employer; (iii) during special tasks assigned in connection with scientific and technical research and development; (iv) created in carrying out the research agreement concluded with the employer; and (v) created by the employee within one year from the termination of the employment and which would, if it was created during employment be regarded as invention in the sense under (i) to (v). The employer and the employee may agree that the right belongs to the employee. The employee (i.e. inventor) is entitled to moral rights pertaining from the invention and to remuneration from the employer, in proportion with the effects of the commercial use of the invention.

17. Discrimination and mobbing

Montenegrin regulations prohibit any type of discrimination, either direct or indirect, towards employees or persons seeking employment, based on their: gender, age, health condition, nationality, religious view, social heritage and other personal traits, as well as any type of harassment. There is a separate law on mobbing - the Law on Prevention of Harassment at Work . According to the said law, mobbing is defined as any active or passive continuing act against an employee with the purpose or effect of harming personal dignity, respectability, personal or professional integrity, health or status of the affected employee, and which causes fear or creates unfriendly, humiliating or insulting environment, deteriorates work conditions for the employee or causes that the employee isolates himself or terminates his employment. The employer is responsible for its own acts of mobbing and is also liable in case other employees or management engages in mobbing. The indemnifying employer has the right to request compensation from the employee or manager engaged in mobbing.

The employer is obliged to deliver to its employees a written notification on prohibition of mobbing and rights and obligations related to mobbing, which specifically includes information on: (i) which behaviours are regarded as mobbing; (ii) that mobbing harassment is forbidden by law; (iii) that the employees may seek protection from mobbing from the employer, as well as before a competent court; (iv) the contact person at the employer to whom the employees may report mobbing and (v) other information in accordance with the law.

18. Employment and personal data protection

The area of personal data protection is regulated in detail by the Data Protection Act[15] according which, all data controllers (e.g. employers) must submit to the Personal Data Agency a substantiated notification of their intent to establish a filing system prior to the beginning of processing. The same law establishes various rights and obligations pertaining to collecting and processing personal data and regulates the conditions for transferring personal data abroad. For instance, the data subject whose data are being processed has the right to request rectification of incomplete or inaccurate data.

19. Employment in practice

The requirement that the executive director has to be employed with the company creates bureaucratic hurdles to companies and results in employments without substance, made only to satisfy the formal requirement. Courts tend to be sympathetic to employees. Therefore, each dismissal should be structured carefully in order to minimize this risk. On site labour inspections do not occur often. Fines for breaches of labour regulations can be up to EUR 20,000 but are rarely issued.

[11] *Official Gazette of Montenegro, No. 001/07 and 038/13.*
[12] *Official Gazette of Montenegro, No. 037/11 and 053/16.*
[13] *Official Gazette of Montenegro, No. 042/15 and 002/17.*
[14] *Official Gazette of Montenegro, No. 030/12 and 054/16.*
[15] *Official Gazette of Montenegro, No. 079/08, 070/09,044/12 and 022/17.*

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1. General overview

In accordance with the Macedonian legislation, there is a hierarchy of labour regulations, at the top of which is the Law on Labour Relations (**"Labour Law"**)[1]. Beside the Labour Law, employment- related matters in companies are regulated by the General Collective Agreement for Trade in the Republic of North Macedonia (**"GCA"**)[1, 2], applicable to all employers and employees in the Republic of North Macedonia. There may also be an industrial collective agreement applicable to all employers and employees in a particular industry.

A company may have an individual collective agreement concluded between the employer and the representative trade union. Written employment agreement must be concluded with each employee. The Labour Law provides for certain mandatory elements in the employment agreement.

The individual collective agreement and individual employment agreements must all be consistent with the Labour Law and may not provide for less protection to employees than that which is guaranteed by the Labour Law. In addition, the individual employment agreement may not provide for less favourable terms than those which are provided in the individual collective agreement.

Macedonian employment legislation is embedded with the socialist heritage of the former Yugoslavia. Its main feature is that it leans heavily towards the protection of employees especially in the case of dismissals.

2.1 General

The Labour Law does not proscribe any particular requirements pertaining to the recruitment of employees, except a general requirement according to which the employment relationship may be established with a person of at least 15 years of age who fulfils the conditions for work in the respective work post (if any). However, there are some restrictions with regard to the employment conditions that should be provided to minors as younger persons, i.e. persons from 15 to 18 years of age.

2.2 Disabled persons

In accordance with the Labour Law, the employer shall be obliged to provide conditions for the professional rehabilitation of an employee with a work-related disability entitled to professional rehabilitation based upon a professional inability to work and also to assign such an employee to another full-time position in accordance with the regulations on pension and disability insurance. The employer shall reassign an employee faced with the direct threat of the occurrence of disability to another adequate position in addition to salary compensation equivalent to the amount of the difference between the salary, which the employee received salary prior to the reassignment and the salary of the new position. The threat of occurrence of disability exists when the employee due to performance of certain work tasks wherein the working conditions, irrespective of the measures that are applied or could be applied, affects his health condition and working capability to such extent that a deterioration of his health condition has been noticed. In this case, the employee must be reassigned to another position corresponding to his education and abilities for the purposes of preventing the occurrence of disability. The existence of the threat of the occurrence of disability shall be established by the Commission for Evaluating the Working Ability within the Pension and Disability Insurance Fund of Macedonia (**"PDIF"**) based on their findings, evaluation and expert opinion.

2.3 Foreign employees

The employment of foreign citizens is regulated by the Law on Employment and Work of Foreigners[3]. The foreigners may be employed, self-employed, or work in the Republic of Macedonia, should possess a temporary residence permit for work purposes issued by the Ministry of Interior (**"MIA"**), or a work permit issued by the National Employment Agency (**"NEA"**) and regulated residence on any other ground in the Republic of Macedonia. In the procedure for obtaining a temporary residence permit for work purposes in accordance with the law, the NEA shall issue an opinion based on the quota fulfilment and the current needs of the labour market in the Republic of North Macedonia.

There are some exceptions from the rule for obtaining a temporary residence permit on the basis of work in certain cases, such as: short-term services provided by foreigners (up to 90 days in a calendar year), creative services in the area of culture, services

[1] *Zakon za rabotnite odnosi, Official Gazette of Republic of North Macedonia, No. 62/05, 106/06, 161/08, 114/09, 130/09, 149/09, 50/2010, 52/2010 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016 and 120/2018, and Official Gazette of the Republic of North Macedonia No. 110/2019, 267/2020 and No. 151/2021.*

[2] *Opst kolektiven dogovor za privatniot sektor od oblasta na stopanstvoto vo Republika Makedonija, Official Gazette of Republic of Macedonia, No. 115/2014 – consolidated text,119/2015 and 150/2016.*

[3] *Zakon za vrabotuvanje i rabota na stranci, Official Gazette of Republic of Macedonia, No. 217/2015 and Official Gazette of Republic of North Macedonia, No. 163/2021.*

for trade fairs, works performed by foreigners residing for study purposes, and services for emergency cases. In these cases, the company engaging the persons should only register the work of the persons at the NEA.

According to the Law on Foreigners[4], a foreigner must register with a local police station within 48 hours after entering the country, unless staying in a hotel, in which case the hotel manages the registration procedure. The police station issues a confirmation for such registration to the foreigner, i.e. "white card." As a result of the Covid-19 pandemic, additional restrictions concerning entry in North Macedonia could be applicable, depending on the foreigner's country.

A foreigner wishing to work in Macedonia must obtain a temporary residence permit on the basis of work (or, if special conditions are met, permanent residence permit). The documents, which need to be submitted together with the request, include the evidence of possession of sufficient funds (e.g. credit card), health insurance documents, criminal record certificates and documentation with regard to the work engagement. The term "work" as determined by the applicable laws, refers to employment, seasonal employment and work by a foreigner as a seconded employee (secondment).

The request for obtaining a temporary residence permit on the basis of work may be submitted by the foreigner, by the legal entity with which the foreigner is to conclude an employment contract or by a person authorized by the foreigner. Such request may be submitted at the diplomatic-consular representative office of the Republic of North Macedonia in the foreigner's country, or it may also be submitted directly at the MIA. During the procedure, the MIA ex officio communicates with the NEA, and the NEA issues a positive opinion in case the foreigner meets the requirements in accordance with the law for such engagement. Upon the given opinion by the NEA, if the request is approved, the MIA issues the temporary residence permit. The final step for registration of the foreigner's work engagement is completed at the NEA.

The temporary residence permit for the purposes of work is issued for the period for which the positive opinion from NEA is issued. The same may be extended if the requirements determined in the Law on Foreigners are met. If the temporary residence permit for the purposes of work is issued in accordance with the positive opinion of the NEA, it shall be issued for the period which the foreigner has stated in its request, but not longer than one year. It should also be noted that the foreigner to whom a temporary residence permit for the purposes of work is issued, may carry out only the work for which the permit is issued.

2.4 Secondments

The procedure of obtaining a temporary residence permit for work purposes usually takes approximately two months. The foreigner may not commence with work until the permit is issued and the work is registered at the NEA. In that view, it is advisable for the company to file the request at the MIA before the foreigner comes to North Macedonia (provided that there is no visa requirement for the foreigner's entry in the country), in order to save time.

The secondment of Macedonian employees abroad is regulated by the Labour Law. In accordance with this law, Macedonian employees may be seconded abroad on the basis of an employment agreement entered into between their Macedonian employer and the foreign host.

The duration of the secondment is calculated on the basis of the referential period of one year as of the day of secondment. The employee may refuse the assignment abroad due to justified reasons, such as: (i) pregnancy; (ii) disability; (iii) health problems; (iv) care of a child under the age of seven; (v) care of a child under the age of 15, if the employee is a single parent living alone with the child and taking care of his education and protection; and (vi) other reasons determined by the employment contract, that is, by the collective agreement which directly binds the employer.

If the employment contract does not stipulate the possibility of employee's secondment, the employer and the employee shall be obliged to conclude a new, amended employment contract. The contract may be concluded for a period necessary to complete the project, i.e. for a period of completing the works carried out by the employee posted to work abroad.

It should be noted that the bureaucratic secondment procedure stipulated by the subject law is often disregarded in practice.

2. Types of contracts

3.1 Employment

The traditional employment relationship is the most usual manner of engaging personnel in Macedonia. There are two types of employment relationship, depending on the duration, indefinite and definite term employment agreement. The employment contract may be concluded for a definite period of time for performing the same activities, with an interruption or without an interruption up to five years. The definite-term employment contract for replacement of a temporary absent employee may be concluded for the period until the reinstatement of the temporary absent employee.

3.2 Engagement outside employment

Personnel may also be engaged outside an employment relationship, in cases and subject to the conditions proscribed by the Labour Law. These flexible kinds of engagement include:

(a) service agreement (only for work which is outside the employer's main business activities);

(b) agency agreement;

[4] *Zakon za strancite, Official Gazette of Republic of Macedonia No. 97/2018 and Official Gazette of the Republic of North Macedonia No.108/2019.*

(c) agreement on professional improvement (concluded mainly with trainees);

(d) voluntary work (only with respect to non-for-profit activities);

(e) internship;

(f) management agreement (please see Section 3.3 below).

3.3 Engagement of management personnel

Persons serving as managing directors, as well as other appointed management personnel may be employed under a management agreement (permanently, or for a limited period of time equal to the duration of the mandate). The managing directors may also be engaged outside the employment context, pursuant to a management agreement without the establishment of a labour relation. A foreign person may be appointed as the managing director without any limitations. Based on this appointment, such a foreign person is eligible to obtain temporary residence in North Macedonia, based on employment in the local company, or based on secondment.

3.4 Teleworking arrangementl

The teleworking arrangement (or "work from home" under the law) is regulated with the Labour Law. The same is defined as a work carried out by the employee at his home, or in premises by his own choice, which are outside the employer's business premises. For the purpose of such arrangement, it is necessary for the employer and the employee to conclude an agreement for the performance of work from home. By virtue of such agreement, the employer and the employee may agree for the employee to carry out the work, which falls within the employer's business activity or which is necessary for carrying out the employer's business activity, at home. The rights, obligations and conditions that depend on the nature of the work carried out at home shall be regulated between the employer and the employee by the employment contract.

Based on the teleworking arrangement, the employee shall be entitled to compensation for using his own resources for working at home. The amount of the compensation is determined in the employment contract. In addition, the employer is obliged to submit the employment contract for work at home to the labour inspector, within three days from the date of conclusion of the contract. The employer is also obliged to ensure safe conditions in the case of teleworking. In this regard, the labour inspector may ban the employer to organise work at home if it is harmful to the employees working at home, or to the living and working environment where the work is carried out.

Based on the above, it follows that the teleworking arrangement is a contractual arrangement, established under an employment agreement between the employer and the employee. However, the Labour Law also provides the possibility of a unilateral change of the employees' place of work, but only in extraordinary circumstances, such as protection of the employees' health and safety *(as in the case with the Covid-19 pandemic)*. Nevertheless, this could only represent a temporary mechanism, for the time period when such circumstances exist, i.e. it could not become a regular teleworking arrangement.

It is evident that teleworking in North Macedonia, in particular, work from home, are becoming a more permanent solution for many employers in the current period, especially considering the Covid-19 epidemic which triggered such type of flexible arrangement. Therefore, such occurrence could create further developments in the implementation of this legal mechanism, and cause the necessity of a more specific and flexible legal framework in this regard.

3. Salary and other payments and benefits

4.1 Salary

The remuneration on the basis of the employment agreement must always be paid in money. The employer must observe the minimum amount to be paid as prescribed by law and collective agreement, in accordance with the law, which binds him directly. Pursuant to the Law of Minimum Salary in the Republic of North Macedonia[5], the current amount of the minimum salary, determined for the period of salary payment of April 2021 is MKD 22,146 in gross amount (approximately EUR 360). The amount of the minimum salary in the country is adjusted each year by:

(i) one-third of the increase in the average paid salary in the Republic of North Macedonia;

(ii) one-third of the rise in the consumer price index, and

(iii) one-third of the real GDP growth for the previous year, according to the data from the State Statistical Office.

The Labour Law proscribes that the total salary is calculated as the sum of the following elements:

(a) the basic salary shall be determined taking into account the requirements of the job position for which the employee has entered into the employment agreement;

(b) the job performance of the employee shall be determined taking into account the conscientious conduct, quality and volume of the performed work, for which the employee has concluded the employment agreement; and

(c) the allowances shall be determined for special working conditions arising from the distribution of working hours, such as work in shifts, split work, night work, work on duty, in accordance with the law, overtime work, work on a weekly resting day, work on statutory holidays and years of service allowance.

[5] *Zakon za minimalna plata vo Republika Severna Makedonija, Official Gazette of Republic of North Macedonia, No. 11/2012, 30/2014, 180/2014, 81/2015, 129/2015, 132/2017 and 140/2018, and Official Gazette of Republic of North Macedonia No. 124/2019 and No. 239/2019.*

4.2 Other mandatory payments not considered as salary

In accordance with the Labour Law, the employer is also obliged to make the following payments to the employees:

(a) compensation for the costs of commuting to and from work;

(b) *per diem* payments for time spent on business travel within the country and abroad;

(c) compensation for accommodation and food during field work, unless the employer provides for accommodation and food;

(d) compensation for the use of a private vehicle for business travel;

(e) family separation allowance; and

(f) compensation for the death of the employee, or of a member of his family.

5. Salary tax and mandatory social contributions

The employee shall be entitled to earnings - salary, in accordance with the law, collective agreement and the employment agreement. In matters of payments the employer must observe the minimum amount laid down by law and the collective agreement, in accordance with the law which binds him directly. The employer may pay the employee a thirteenth salary, if the employer is able to pay it, i.e. is not a mandatory requirement. The employer shall be obliged to pay the salary to the employee by the end of the payday at the usual place of payment, but no later than the 15th day in the month, for the previous calendar month. The employer shall be obliged to issue to the employee upon every salary payment and until 31 January of the new calendar year, a written calculation of the salary, salary contributions and salary allowances for the payment period, i.e. for the previous year, which also shows the calculation and payment of taxes and contributions. If the payday of salary is a non-working day, the salary shall be paid on the first subsequent working day at the latest. The employer shall be obliged to notify the employees in advance in writing of the payday and of any change in the payday.

The rights, obligations and responsibilities based on the performance of work arising from the labour relationship, as well as participation in the mandatory social insurance scheme based on the labour relationship is exercised on the day the employee commences work as agreed upon in the employment agreement. The employer shall be obliged to file a registration/cancellation form (electronic M1/M2 Form printed from the system of the NEA) for the employee in the mandatory social insurance scheme (pension and disability insurance, health insurance and insurance in case of unemployment), in accordance with the special regulations, in the NEA, by electronic means or directly at the NEA, by attaching the PPR Form (Application for the needs of employee), the authorization for the authorized person along with a list of persons to be registered/cancelled, one day before the commencement of the employment. A certified copy of the registration form or a copy from a computerised entry from the NEA's information system shall be presented to the employee within three days from the day of commencing the employment. The NEA, the PDIF and the Health Insurance Fund of the Republic of Macedonia (**"HIF"**) shall be obliged to maintain and permanently keep the records of the registrations and cancellations of the registrations in the social insurance and, at request of the employee, provide data on the condition and the changes related to the social insurance of the employee. The NEA, the PDIF and the HIF shall exchange data related to the social insurance. The employee may not commence work prior to the conclusion of the employment agreement and prior to the moment when the employer registers him for the obligatory social insurance.

6. Working hours

The Labour Law determines that full-time working hours are 40 hours per week. As a rule, the working week lasts five days, but the maximum of 40 hours per week may also be extended over a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the Labour Law, a 30-minute break is a statutory obligation and is included in the full-time working hours. In practical terms this means that in normal cases, a working day consists of seven and a half working hours. Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 20 working days. This minimum can be increased based on various criteria determined in the GCA, individual collective agreement or the individual employment agreements. In accordance with the Labour Law, annual vacation may be used in several parts in agreement with the employer, but one part of the annual vacation must last at least two consecutive working weeks. The employer is obliged to ensure that the employee uses the two consecutive working weeks of his annual vacation until the end of the current calendar year, and the remaining part until 30 June of the subsequent year.

7.2 Paid leave

In addition to the annual vacation, employees are also entitled to a total of seven-days paid leave per year in cases prescribed by the GCA (e.g. in cases of wedding (three days), childbirth by a spouse,

marriage of employee's child (two days)). In addition, employees are entitled to additional paid leave of five-days duration in the case of death of a spouse or child, two days in the case of death of a parent, brother, sister, parent of spouse; one day in the case of death of grandmother or grandfather; up to three days for taking an exam for the needs of the employer, and up to seven days in the case of natural disasters.

7.3 Sick leave

The employer shall also pay salary compensation in the event of the employee's incapacity to work due to illness or injury for a period of up to 30 days, and if the absence lasts for more than 30 days, the salary compensation shall be covered by the obligatory health insurance, provided that the employee fulfills the statutory requirements for such compensation. In the event of starting a new period of sick leave within three days after the expiry of the previous period of sick leave, the employer shall be entitled to request from the medical commission of the first instance to confirm the new period of sick leave, or to extend the previously expired sick leave.

7.4 Maternity leave

According to the Labour Law, maternity leave comprises pregnancy leave and childcare leave. Pregnancy leave starts no earlier than 45 days and no later than 28 days prior to the due date and lasts for nine-month paid leave during the period of pregnancy, childbirth and maternity. If the employee gives birth to more than one child (twins, triplets, etc.), she is entitled to continuous paid leave period of 15 months.

Pregnancy leave is fully paid for by the state (provided that the employee fulfills the statutory requirements for such salary compensation). Childcare leave begins upon the expiry of the pregnancy leave. The employee cannot be validly terminated while on maternity (pregnancy or childcare) leave, except in the case of expiration of the validity of a fixed-term employment agreement, in which case the employee should continue to receive the salary compensation from the mandatory health insurance, until the completion of the leave. If a female employee gives birth to a stillborn child or if the child passes away before the expiry of the pregnancy, childbirth and maternity leave, she shall be entitled to extend the maternity leave for a period which is, according to the doctor's finding, necessary for her to recover from the childbirth and from the emotional situation caused by the loss of her child, of at least 45 days, when she shall be entitled to all rights pertaining to the pregnancy, childbirth and maternity leave. If the female employee does not use the maternity leave, the child's father or the adoptive parent shall be entitled to parenthood leave.

7.5 Unpaid leave

The employee may be granted with an unpaid leave, in the cases and under conditions determined with the GCA (or industry-specific/ individual collective agreement on employer level) (e.g. taking care of a family member, repairement/ construction of a house/ apartment, attending congresses, conferences, etc.), up to three months during the calendar year. The employee's employment-related rights and obligations are at a standstill during unpaid leave unless certain rights or obligations are otherwise explicitly prescribed. In any case, the decision for granting of unnpaid leave is adopted by the employer, in accordance with the requirements of the working process.

7.6 Employment standstill

The employee's employment relationship is at a standstill in the case of certain absences from work listed in the Labour Law (e.g. serving the army, secondment, appointment to a public position, etc.). During such absence, the rights and obligations based on employment are at a standstill, unless certain rights or obligations are otherwise explicitly prescribed. Upon the expiry of the standstill grounds, the employee is entitled to be reinstated to work.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Macedonia is rarity. The regulatory framework is lacking on both corporate law and tax law levels. In practice, a type of ESOP scheme is modestly implemented only in some companies, but they are not publicly disclosed.

9. Health and safety at work

The area of health and safety at work is regulated in detail by the Law on Safety and Health at Work[6]. All employers and employees are obliged to adhere to specific obligations introduced by this law. This law, *inter alia*, stipulates that each employer has to adopt the Act on Risk Evaluation of Job Positions, containing a description of the work process with the evaluated risk for each job position and identification of measures for the removal of such risk.

The law also requires employers to insure all employees against work-related injuries and professional illnesses, organising trainings for safe performance of the work, employees' medical examinations and regular health check-ups, providing the employees with personal protective equipment, appointing an employees' representative(s) for health and safety at work, and adopting other measures for safe performance of the work. In practice, certain measures in this regard are organised in cooperation with licensed entities/ health institutions, in the area of occupational health and safety, based on a concluded contract with the employer.

[6] *Zakon za bezbednost i zdravje pri rabota, Official Gazette of Republic of Macedonia, No. 92/07 136/2011, 23/2013, 25/2013, 137/2013, 164/2013, 158/2014, 15/2015, 129/2015, 192/2015 and 30/2016, and Official Gazette of the Republic of North Macedonia No.18/2020.*

10. Amendment of the employment agreement

The employment agreement may be amended by virtue of an annex in specified cases. Amendments to the employment agreement can be proposed by the employer or by the employee. Amendments to the employment agreement shall be carried out by concluding an annex to the employment agreement. In accordance with the law, the annex to the employment agreement shall be concluded in the same form as the employment agreement. Amendments to the employment agreement can be made on the condition that both parties agree thereon.

11. Termination of employment

11.1 Termination by operation of law

The employment relationship is terminated by operation of law in the following cases:

(a) expiry of temporary employment;

(b) employee's death;

(c) permanent loss of ability to work;

(d) prohibition to perform certain work imposed on the employee by the court or other competent body;

(e) cessation of employer;

(f) by consensual cancellation;

(g) by notice of dismissal; and

(h) in other cases, defined by law.

11.2 Termination by the employee

In accordance with the Labour Law, the employee may freely terminate his employment relationship at any time and for any reason, subject to a one-month notice period. The employment agreement or the collective agreement may stipulate a longer notice period but it may not exceed three months.

11.3 Termination by employer

The employer may unilaterally terminate the employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) the employee due to his conduct, lack of knowledge or capabilities or due to the non-fulfilment of special requirements defined by law is incapable of performing the contractual or other obligations arising from the labour relationship (personal reason); or

(b) the employee violates the contractual or other obligations arising from the labour relation (fault reason); and

(c) the need to carry out certain work ceases under the conditions stated in the employment agreement due to economic, organisational, technological, structural or similar reasons of the employer (business reasons).

11.4 Procedure for termination by the employer

a) General requirements

The termination of the employment agreement must be made in writing, by virtue of a decision on termination. The employer shall be obliged to explain the reason for the termination of the employment agreement in writing, together with providing a legal remedies notice in the decision. The notice of termination of the employment agreement must be presented to the contracting party whose employment agreement is being terminated. The employer must present the notice of termination of the employment agreement to the employee in person, as a rule at the employer's premises, i.e. at the address of domicile, i.e. the residence from which the employee comes to work on a daily basis. If the employee cannot be reached at the address of residence from which he comes to work on a daily basis (except in cases of justified absence from work) or he has no permanent or temporary residence in the Republic of Macedonia or refuses to accept the notice, the termination of the employment agreement shall be made public on the notice board in the employer's headquarters. After the expiry of eight working days from making the termination public on the notice board, the handing over shall be considered done. The notice period shall start running on the day following the day of handing over the decision on termination of the employment agreement.

(b) Personal reasons dismissal

In the event of a personal reasons dismissal (as explained in item 11.3), the employer may terminate the employment contract if the employee is provided with the necessary working conditions and is given appropriate instructions, guidelines and written warning by the employer regarding the fact that the employer is not satisfied with the manner of performing the duties, and if the employee still does not improve his work after the given warning within the period determined by the employer, which cannot be shorter than 15 days as of the day of receipt of the written warning, in the cases laid down in a collective agreement.

As a separate type of dismissal (which could fall into the personal reasons dismissal category) is also the termination of employment based on an unsuccessfully completed probationary period. However, instead of a written warning, a negative performance evaluation is required for such type of dismissal.

(b) Fault reasons dismissal (breach of work duty or work discipline)

Prior to the termination of the employment agreement due to the employee's fault, the employer must provide the employee with the opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity. The Labour Law prescribes certain grounds for dismissal due to fault reasons, representing breaches of workplace order and discipline, which could result in a dismissal with or without notice period. However, in practice it is also possible for the employer to adopt additional grounds for dismissal by virtue of an internal regulation on workplace discipline. As the disciplinary procedure (procedure for determining the employee's liability for a breach) is not established with the Labour Law and the GCA, the employees in the private sector could also adopt internal rules for conducting the disciplinary process.

(c) Procedure for termination in the event of redundancy

In the event that that the employer intends to terminate the labour relationships of a large number of employees due to business reasons, i.e. at least 20 employees over a period of 90 days, or in the event of a termination of labour relationship regardless of the number of employees within the employer, this shall be considered as a collective dismissal due to business reasons. When the employer intends to conduct collective dismissal, he shall be obliged to commence a consultation procedure with the employees' representatives at least one month prior to the commencement of the collective dismissal and provide all relevant information before the commencement of the consultations, for the purpose of reaching an agreement. The consultations shall include at least the manners and means for avoiding collective dismissal, reduction in the number of dismissed employees or for the purpose of mitigating the consequences by referring to accompanying social measures, aimed to help the dismissed employees find re-employment or training. In order to allow the employees' representatives to prepare constructive proposals, the employers during the consultation period shall provide them with all relevant information, regarding:

i. the reasons for the planned dismissals;
ii. the number and categories of employees being dismissed;
iii. the total number and categories of employed employees; and
iv. the period over which the planned dismissals are to take place.

The obligations regarding the provision of information and consultations shall be applied regardless of whether the decision on collective dismissal has been adopted by the employer or a person performing inspection. When reviewing an alleged breach of obligations regarding the provision of information, consulting and reporting, any justification of the employer based on the fact that the person performing inspection adopted the decision for collective dismissals without providing the requested information to the employer, shall not be taken into consideration.

In the event of individual dismissals due to redundancy, which are not considered as collective dismissals, the employer should nevertheless inform and consult with the employees' representatives, if the same has more than 50 employees employed in total (if the employer is a trade company, public company or other legal entity), or 20 employees, if the employer is an institution.

The redundancy procedure in the abovementioned cases is conducted with the involvement of the trade union, if any (Đr employees' representatives), and the NEA. The employer is obliged to prepare a redundancy programme which has to specify the reasons for redundancy, redundancy criteria (specified in the Labour Law), number of employees to be made redundant, measures for the employment of redundant employees, etc.

In case of the termination for redundancy, the employer is obliged to provide severance payment to the employees to be terminated.

The employer who terminates the employment agreement due to business reasons shall be obliged to pay the employee a severance pay as follows:

(a) up to five years of employment - the amount of one net salary;

(b) from five to 10 years of employment - the amount of two and a half net salaries;

(c) from 10 to 15 years of employment - the amount of three and a half net salaries;

(d) from 15 to 20 years of employment - the amount of four and a half net salaries;

(e) from 20 to 25 years of employment - the amount of six net salaries; and

(f) over 25 years of employment - the amount of seven net salaries.

It should be noted that in case of redundancy, the employer cannot employ another employee for the same works, with the same vocational training and profession, within a period of two years as of the day of termination of the employment. If a need for carrying out the same works is created prior to the expiry of such deadline, the employee whose employment has been previously terminated shall have a priority for conclusion of an employment contract.

The GCA does not proscribe any rules for selecting employees to be declared redundant, however such rules are usually prescribed with the collective agreements on an industry level. In any case, the employer may adopt internal rules for regulating the redundancy process.

(d) Procedure for termination on grounds of incompetence

If under the conditions and in the manner determined by law, it is established that the employee has lost his working ability, the employment agreement shall cease to be valid from the day on which a legally valid decision establishing the lost working ability is submitted.

(e) In the event of initiating procedure for the dissolution of the employer, the employment agreement shall cease to be valid in accordance with law. Those employees, whose employment contract is terminated in accordance with law due to the initiation of procedure for the dissolution of the employer, shall also be entitled to payment of:

(a) net salaries, pension and disability insurance contributions and allowances for the period of the last three months prior to the initiation of the procedure for dissolution of the employer;

(ii) compensation for injuries at work which the employee sustained with the employer, as well as for occupational illnesses; and

(iii) unpaid compensation for annual leave not taken for the current calendar year.

11.5 Remedies in the event of wrongful dismissal

The employee shall have a right to appeal to the employer against the decision on termination of the employment agreement, in term of eight days as of the receipt of the decision on dismissal. The decision upon the objection shall be adopted within eight days from the submission of the objection. When a decision has not been adopted with regard to the objection referred to or when the employer is not satisfied with the decision adopted upon the objection, he shall be entitled to initiate a dispute before a competent court within a period of 15 days. If the court passes a legally valid decision which determines that the employment agreement has been illegally terminated with regard to the employee, the employee shall be entitled to return to work if he requires so. In addition to returning to work, the employer shall be obliged to pay compensation for damages to the employee, in accordance with law, collective agreement and employment agreement, and to pay the compulsory social insurance contributions. The compensation for damages shall be reduced by the amount of the income the employee received based on work performed after termination of the labour relationship. The employee who disputes the dismissal may also request the court to issue an order of temporary return to work temporarily until the completion of the dispute. If the court, by a legally valid decision, establishes that the termination of the employee's employment agreement is illegal, and it is unacceptable for the employee to continue employment, the court at the employee's request shall appoint the date of the termination of the labour relationship and assign compensation for damages depending on the period of employment, age, social status and obligations for support of the employee.

12. Non-compete

In accordance with the Labour Law, a non-compete obligation may be imposed on the employee who works in a job position wherein he may acquire new and important technological knowledge, a wide circle of business partners or important business information and business secrets. The non-compete obligation may survive the termination of the employment agreement for a maximum period of two years, provided that the employment agreement was terminated by grounds of employee's fault, or employee's will. If observation of the competition clause prevents the employee from gaining appropriate earnings, the employer shall be obliged to pay him monetary compensation during the whole period of observing the ban. The compensation for observing the ban on competition has to be defined in the employment agreement and shall amount on a monthly basis to at least one half Đf the employee's average salary during the past three months prior to the termination of the employment agreement.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level could be applicable in North Macedonia, provided that such policies and procedures are fully harmonised with the Macedonian legislation and incorporated by reference within an enactment of the Macedonian employer.

14. Employment and mergers and acquisitions

All rights, obligations and responsibilities arising from the employment agreement and labour relationship shall be transferred to the new employer in cases of statutory changes. The new employer shall be obliged to guarantee to the employees all rights, obligations and responsibilities for at least one year, i.e. until the expiry of the employment agreement, i.e. the collective agreement which bounds the previous employer. If due to the change of the employer, the rights under the employment agreement deteriorate for objective reasons and the employee, therefore, terminates the employment agreement, the employee shall have the same rights as if the employment agreement was terminated for business reasons. When determining the notice period and the right to severance pay, the employee's period of service with both employers shall be taken into account. The previous and the new employer shall be jointly liable to compensate the employee for damages related to all claims which occurred due to termination of the employment agreement. If the employer, on the basis of a legal transaction (lease, rent), temporarily transfers the overall or part of the activity to another employer, after the termination of the validity

of this legal transaction, the employees shall again be transferred to the previous employer or to the new employer taking over the activity. Before the transfer of rights and obligations arising from the labour relationship of the employees within the employer - transferor to the employer - acquirer, the transferee and the acquirer shall be obliged to provide prior notice to the trade unions of this fact and to consult with them, in order to reach an agreement regarding the:

(a) determined or proposed date of transfer;

(b) the reasons for such transfer;

(c) the legal, economic and social implications for the employees; and

(d) the anticipated measures connected to the employees.

The transferee shall be obliged to, in connection with the transfer, in a timely manner and before the implementation of the transfer, to inform the trade union representatives of its employees. The acquirer must in a timely manner before the implementation of the transfer and in connection with the transfer, inform the trade union representatives representing the interests of its employees before its employees are directly affected with regarding to their working conditions and employment. When the transferee or the acquirer envisage measures affecting their employees, the transferor or the acquirer shall be obliged in a timely manner to consult the trade union representatives representing the interests of their employees, regarding such measures, before concluding an agreement.

15. Industrial relations

The employees shall have the right to constitute a trade union and become members thereof at their own free choice, under the conditions set forth by the statute or by the rules of that trade union. The trade union is an autonomous, democratic and independent organisation of employees which they join voluntarily for the purpose of representing, promoting and protecting of their economic, social and other individual and collective interests. The employers shall have the right to constitute an association and become members thereof at their own free choice, under the conditions set forth by the statute or by the rules of that association. The employers' association is an autonomous, democratic and independent organisation which they join voluntarily for the purpose of representing, promoting and protecting their economic, social and other interests. The employee, i.e. the employer shall freely decide on his joining and leaving the trade union, i.e. employers' association. Any employee must not be put in a less favourable position because of his membership or non-membership in the trade union, i.e. employers' association, i.e. participation or non-participation in the activity of the trade union, i.e. employers' association.

The trade union, i.e. employers' association may not be dissolved or their activity ceased by administrative measures, if they are constituted and perform their activity in compliance with the law. The activity of the trade union and its representative may not be limited by employer's act, if it is in compliance with the law and collective agreement. The trade unions, i.e. employers' associations may constitute their own unions or other forms of associations in which their interests shall be associated at a higher level (trade unions and employers' associations at a higher level). The trade unions and employers' associations at higher level shall enjoy all rights and freedoms guaranteed to the trade union, i.e. employers' association. The trade unions and employers' associations shall be entitled to freely associate and cooperate with international organisations established for the purpose of exercising their rights and interests. The union representative is protected against dismissal in accordance with the law. The salary of the union representative may not be reduced or his employment contract may not be terminated due to union activities. Pursuant to the Labour Law, the employer may terminate the employment contract of the union representative in the course of performing the duty only by prior consent of the union.

16. Employment and intellectual property

When the author's work is created by an employee in the performance of his duties or when following instructions of the employer, it is considered the economic rights of the copyright holder of this work, are exclusively transferred to the employer for a period of five years upon the completion of the work, unless otherwise proscribed by collective agreement or employment contract. After the expiration of the stated term, the economic rights belong to the employee and the employer may demand their exclusive transfer again, provided that it has duly paid a monetary compensation to the employee.

17. Discrimination and mobbing

The employer must not treat the job seeker or the employee unequally on the basis of race and ethnical origin, colour of skin, gender, age, health or disability, religious, political or other belief, membership of trade unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances. Women and men must be provided with equal opportunities and equal treatment in connection with:

(a) access to employment, including promotion and training and professional retraining while working;

(b) working conditions;

(c) equal payment for equal work;

[7] *Zakon za sprecuvanje i zastita od diskriminacija, Official Gazette of Republic of North Macedonia, No. 258/2020.*

(d) professional schemes for social insurance;

(e) absence from work;

(f) working hours; and

(g) termination of the employment agreement.

The new Law on Prevention of and Protection Against Discrimination[7] contains rules and obligations relating to prevention of and prohibition of discrimination, the forms and types of discrimination, the procedures for protection against discrimination, as well as the establishment and the work of the Commission for prevention and protection against discrimination. The cited Law also applies, *inter alia*, in the area of employment and labour relations.

Any direct or indirect discrimination, reference to and incitement to discrimination, and assistance in discriminatory treatment on the basis of sex, race, skin colour, origin, gender, genus, belonging to a marginalized group, national or ethnic origin, language, nationality, sexual orientation, gender identity, language, citizenship, social background, religion or religious beliefs, other types of beliefs, education, political affiliation, personal or social status, mental and physical impediment, age, family or marital status, property status, health condition or any other basis shall be prohibited.

Any type of mental abuse at the workplace (mobbing) is prohibited. Mental abuse at the workplace is considered as discrimination. Mental abuse at the workplace, in terms of the Labour Law, is any negative behaviour of individual or group being often repeated (in minimum period of six months), and refers to violation of the dignity, integrity, reputation and honour of the employees, and causes fear or creates unfriendly, humiliating or offensive behaviour, with final aim to terminate the labour relation or quit the workplace. One or several persons with negative behaviour in terms, regardless of their capacity (employer as natural person, responsible person or worker) can perform mental abuse on the workplace.

The mobbing is more specifically regulated by the Law on Protection Against Harassment at the Workplace[8]. This Law regulates the rights, obligations, and responsibilities of the employers and employees related to prevention of mental and sexual harassment at the workplace and at the place of work (**"harassment at the workplace"**), the measures and the procedure for protection against harassment at the workplace, as well as the other matters referring to the prevention of, and protection against, harassment at the workplace. The purpose of this Law is prevention and protection against mental and sexual harassment at the workplace, i.e., the place of work and provision of a healthy working environment.

18. Employment and personal data protection

The area of personal data protection is generally regulated in detail by the Data Protection Law[9], adopted in line with the GDPR regulations. Pursuant to this Law, the personal data protection is guaranteed to any natural person, without discrimination based on its nationality, race, skin colour, religious beliefs, ethnicity, gender, language, political or other beliefs, material status, origin by birth, education, social origin, citizenship, place or type of residence, or any other personal characteristics.

Pursuant to the Law, the processing of personal data is lawful, only if and to the extent if at least one of the following conditions is fulfilled:

(i) the subject of personal data have provided consent for processing of his personal data, for one or more particular purposes;

(ii) the processing is necessary for fulfillment of an agreement where the subject of personal data is a contracting party, or for the purpose of undertaking activities upon request of the subject of personal data prior to its assessment to the agreement;

(iii) the processing is necessary for the protection of the essential interest of the subject of personal data, or another natural person;

(iv) the processing is necessary for performing works of public interest, or during exercise of public authorisation of the controller, determined under the law;

(v) the processing is required for the purposes of legitimate interest of the controller or a third party, except when such interest do not prevail over the interests, or core rights and freedoms of the personal data subject, which require protection of the personal data, especially when the subject of personal data is a child.

In addition, the processing of special categories of personal data *(personal data disclosing race or ethnic origin, political opinions, religious or philosophical beliefs, or membership in trade unions, as well as genetic data, biometric data, health data, data on the sexual life or sexual orientation of the person)* is prohibited, except in certain cases determined by the Law, such as: (i) if the subject of personal data has given explicit consent for processing of such personal data for one or more specific purposes, except if the Law stipulates that the prohibition for processing such data may not be waived by the personal data subject; (ii) the processing is required for the purpose of performing the obligations and accomplishment of the special rights of the controller, or the subject of personal data, in the area of employment or social security, and in the regulations of social protection, if allowed under the law and

[8] *Zakon za sprecuvanje i zastita od diskriminacija, Official Gazette of Republic of North Macedonia, No. 258/2020.*
[9] *Zakon za zastita od voznemiruvanje na rabotno mesto, Official Gazette of Republic of Macedonia, No. 79/2013, 147/2015, and Official Gazette of Republic of North Macedonia No. 103/2021.*

collective agreement, where there are determined appropriate measures for protection of the fundamental rights and interests of the subject of personal data, etc.

Moreover, the personal citizen number of the employees (subjects of personal data) may be processed by the employer (controller) only:

(i) upon explicit consent of the subject of personal data, in accordance with the Law;

(ii) for accomplishment of the legally determined rights and obligations of the personal data subject or the controller; and

(iii) in other cases determined under the Law.

It should also be noted that the Law contains a particular provision concerning processing of personal data in the context of employment. According to such provision, more specific rules could be determined under the law, or collective agreements, in order to ensure protection of the rights and obligations concerning processing of personal data in the context of employment, especially for the purposes of employment, fulfillment of the employment agreement, including performance of the obligations determined with the law or with collective agreements, management, planning and organisation of the work, equality and diversity at the workplace, health and safety at work, protection of the employer's property, or the customers for the purpose of accomplishment and usage of an individual or collective basis for the rights and the benefits from employment, and also for the purposes of the employment termination.

The rules mentioned above include appropriate and specific measures for protection of the human dignity, legitimate interest and fundamental rights of the personal data subject, especially concerning the transparency of the processing, the transfer of personal data within a group of legal entities, or group of legal entities which perform mutual economic business activity. The Macedonian Agency for personal data protection gives opinion whether any specific rules determined in the law or collective agreements, as mentioned above, are in line with the Data Protection Law.

The employee whose data is to be processed has the right to request information on a number of issues related to the processing, such as where the data is being transferred, to whom it is being transferred, the purpose of the transfer, the legal grounds for the transfer, etc.

According to the Labour Law, personal data of employees may be collected, processed, used and provided to third parties only if this Law or another law stipulates that or if it is necessary for the purposes of exercising the rights and obligations arising from or related to the labour relationship. Personal data of employees may only be collected, processed, used and provided to third parties by the employer or the employee who is specially authorised to do so by the employer. If the legal basis for collecting personal data of employees does not exist anymore, they must be immediately deleted and used no more. The requirements mentioned above also apply to the personal data of the employment candidates.

19. Employment in practice

The employment and labour relations in practice have been significantly affected by the COVID-19 pandemic. The new circumstances and restrictions imposed by the Macedonian Government, triggered enourmous growth of telework arrangements, as well as other mechanisms for organising the working process in the country in order to preserve the business of the employers, especially in the private sector, such as organising paid compulsory allowance, reorganising the working hours schedule, redundancy procedures, etc. The Macedonian Government adopted certain regulations in the area of employment, introducing protective measures to certain employee categories, as well as providing financial support for payment of salaries and social security contributions, under specific conditions. Moreover, the Macedonian authorities usually tend to be sympathetic towards employees and reinstatement to work is the frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk. On the other hand, visits by the labour inspectors are frequent and fines are frequently imposed. Additionally, it should be noted that the Ministry of Labour and Social Policy has started the process of drafting a new Labour Law, that is intended to correct the current ambiguities of the Law and provide a more practical approach to flexible working arrangements. The process has been suspended due to the COVID-19 pandemic, however from the current practice it seems that a new, more flexible and precisely drafted Labour Law is essential for further developments in the employment legal framework in North Macedonia.

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ROMANIA

1. General overview

The employment legal framework in Romania is mainly based on the Labour Code[1] (**"Labour Code"**), collective labour agreements (at sector of activity, group of companies and company levels) and individual employment agreements.

The collective labour agreements which are concluded at sector of activity, group of companies and companies' levels usually grant rights in addition to those stated by the law and establish the rights and obligations customised to the specifics of the industry/company (object of activity, working conditions, etc.) It should be mentioned that within companies hiring at least 21 employees, the employer is obliged to initiate collective negations for the signing of a collective labour agreement within the company according to the deadlines indicated by law. However, the conclusion of a collective labour agreement is not mandatory at the company's level.

Additionally, other rules generally apply to the employment relationships affecting the rights and obligations of the employees and of the employer, such as:

(a) Internal Regulations

Each employer must prepare an Internal Regulation with the consultation of the employee's representatives or trade union (as the case may be) and based on the minimum content required by law (e.g. rules regarding labour protection, safety and hygiene; rules regarding the principle of non-discrimination and of elimination of any human dignity violation; the rights and obligations of the employer and the employees, etc.). An exemption has been established in what concers microenterprises (which have up to 9 employees ad achieve a net annual turnover or hold total assets of up to the equivalent in RON of EUR 2 mil.) for which having an internal Regulation has becoame optional;

(b) Minimum content for individual employment agreements

A written employment agreement must be concluded with each employee having the minimum content required by law.

The collective labour agreement concluded at company's level, the Internal Regulation and individual employment agreements must all be consistent with the labour legal framework and may not provide for less protection to employees than as is guaranteed by such (including collective labour agreements concluded at higher level).

Generally, Romanian legislation is very protective of employees, especially in respect of terminating the employment agreement at the initiative of the employer (dismissal).

2. Hiring

2.1 General

As a general rule, an employment agreement must be entered into in written form, in Romanian language and must observe the minimum content provided by the template of employment agreement approved by ministerial order. Before the signing of the employment agreement, the employer is obliged to inform the candidate with respect to the main clauses to be included within the employment agreement. In principle, the candidate must be at least 16 years old and provide a medical certificate attesting that he is able to perform the relevant activity on the basis of the employment agreement. The individual employment agreement must be registered within the general register of employees prior to the commencement of the work by the employee.

Obligation to hire disabled persons

According to the Law on Protection and Promotion of Disabled Persons' Rights[2], legal persons employing at least 50 employees are obliged to hire disabled persons in a percentage of at least 4 per cent of the total number of employees. If this requirement is not fulfilled, the employer has the obligation either to pay to the state budget a monthly amount representing the minimum gross base salary at national level, multiplied by the number of working places not occupied by disabled persons or, alternatively, pay 50 per cent of such a sum and, with the remaining sum, to acquire, based on partnership, products or services resulting from activity of the disabled persons employed in authorised protected units. The law expressly provides the categories of companies exempted from observing such obligations. Failure to comply with the abovementioned obligation represents an administrative offence carrying fine.

2.2 Foreign employees

Over the past years, the legal framework governing visas and work permits has undergone extensive amendments. These changes were meant to ensure the implementation of the EU principle of free movement within the country, as well as to enforce new bilateral agreements related to the treatment of foreign citizens.

[1] *Law No. 53/2003, Official Gazette of Romania No. 345 of 18 May 2011, as republished.*
[2] *Law No. 448/2006, Official Gazette of Romania, No. 1006 of 18 December 2006, as republished.*

Foreign citizens require work approvals to be legally employed in Romania. Categories of foreign citizens exempted from the requirement of obtaining a work approval would include, among others:

(a) EU/EEA/Swiss Confederation citizens, and their dependents, irrespective of citizenship;

(b) foreign citizens having permanent residence permits;

(c) foreign citizens who are or were family members of Romanians;

(d) foreign employee of an EU/EEA/Swiss Confederation-based company sent on a secondment arrangement to a local Romanian company.

The types of work approvals may be described, *inter alia*, as follows:

(a) work approvals for permanent employees under individual employment contracts - with yearly renewal possibility;

(b) work approvals for highly skilled workers under individual employment contracts - with renewal possibility in two years;

(c) work approvals for secondment arrangement - generally limited to one year within any given five-year periods;

(d) work approvals for ICT workers for periods of up to three years;

(e) work approvals for ICT workers for short-term and long-term mobility.

The application for the work approvals must be submitted by the local Romanian company, acting either as local employer or as company benefiting from secondment, or by the local employer natural person. The type of documents varies depending on the declared scope of work. As a general rule, the documents submitted must provide sufficient evidence of the activities that the applicant intends to carry out in Romania. The general legal adjudication deadline for the work approval is between 30 to 45 calendar days calculated from the submission date. In fact, the entire procedure may take at least 90 days, including all the legal deadlines for the issuance of the visas, fulfilment of the preliminary procedures for the work approvals application and the application for the temporary residence permit.

Foreign citizens require a residence permit if they extend their stay in Romania for more than 90 days within 180 days following a prior moving for the following purposes: secondment, ICT, local employment, studies, family reunification, etc. The type of documents varies depending on the declared scope of stay (i.e., secondment, employment, professional, commercial, studies, family reunification, religious or humanitarian activities, etc.). The documents submitted must provide sufficient evidence of the activities that the applicant intends to carry out in Romania. The legal adjudication deadline for the residence permit is 30 calendar days.

Romania and Brexit

UK citizens and their family members, who resided in Romania and wish to remain in Romania **after the end of the transition period**, should register for the new Resident status as beneficiaries of the **Withdrawal Agreement**. Registration is to be carried out with the General Inspectorate for Immigration.

UK citizens and their family members shall receive the right to reside in Romania on condition of compliance with the Withdrawal Agreement, namely the requirement that they are legal residents in Romania at the end of the transition period. The main requirements for obtaining a residence permit are similar to those established under current EU law. Decisions to grant the new resident status based on the Withdrawal Agreement will rely on the objective criteria established therein and on the same requirements as those provided for in the EU Directive on the free movement of persons. Following registration, the UK citizens and their family members shall be issued with a residence permit attesting to their status as beneficiaries of the Withdrawal Agreement. The document will have a uniform, Europe-wide format and will start producing effects as of 1 January 2021.

The UK citizens and their family members subject to the Withdrawal Agreement and registered as such, can enter Romania without a visa, at any time during the validity period of their residence permits.

The UK citizens who are not entitled to rights under the Withdrawal Agreement can enter Romania without a visa for no longer than 90 days out of any 180 days. However, a work permit, long stay visa for employment and residence permit forworking purposes will be required for UK citizens entering inland following January 1, 2021 having no previours valid residence permit, should such be seeking work in Romania.

UK citizens who are beneficiaries of the Withdrawal Agreement and hired in Romania will only require a residence permit for UK frontier workers. The residence permit will be issued upon request by the immigration services in the area where activities will take place. Pre-requisites for grant of a residence permit are a valid travel document/passport in original and copy and a copy of the Romanian employment contract. The legal adjudication deadline will be 30 calendar days from submission. A 15-day extension is possible if the immigration authorities require additional information. The residence permit is valid for five years. The validity of the residence permit for UK frontier workers is equal to that of the employment contract but no longer than five years. The residence permit must be extended 30 days before its expiration date.

2.3 Secondments

Secondment of Romanian employees abroad is performed considering the EU Regulation on the Coordination of Social Security Systems[3]. According to the EU Regulation, Romanian employees may be seconded abroad for a period of maximum

[3] *Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the Coordination of Social Security Systems, as amended and completed.*

two years. On grounds of the secondment, the Romanian employer can request to the competent authorities to issue an A1 Form, in order to assess the payment of the social contributions in Romania during the period of the secondment.

In addition, for transnational posting of workers within the provision of transnational services (either from Romania or to Romania), there is a special legal framework applicable[4], recently amended and updated in light of the EU legislative developments in this field so as to include, among other elements: a) new definitions and clarifications regarding remuneration applicable on Romanian territory or that of an EU member state; b) a series of particular requirements for employers, such as the obligation to inform the employees to be posted on a series of essential aspects (i.e. constitutive elements and total amount of remuneration on the posting period, expenses effectively generated by posting etc.); c) particular rights and benefits to which posted employees are entitled, regardless of the law applicable to their employment relation; d) special provisions on long-term posting etc.

3. Types of contracts

3.1 Employment

Under the Romanian legislation, performance by a natural person of activities to the benefit and under the authority of another person is considered as an employment relationship based on an employment agreement, the natural person having the legal status of an employee benefiting of all rights granted by the labour legislation. Generally, an employment agreement should be concluded in the case of performing work, except for those cases when the law allows that the activity is performed on other contractual grounds (e.g., on the basis of a mandate agreement).

The general rule governing the employment relationships is that the employment agreement should be concluded for unlimited period of time. Thus, only exceptionally, employment agreements can be entered into for a limited period of time of up to 36 months and only in the cases expressly and limitedly provided by the Labour Code (e.g. in case of replacement of an employee in the event that his employment contract is suspended, in case of a temporary increase in the employer's activity or in case of performance of seasonal activities, etc.). The employment agreement concluded for a limited period of time may be extended based on the parties' written consent with the period necessary for fulfilment of a project, program or assignment. Up to three successive agreements for a limited period of time could be concluded between the same parties. The agreements for a limited period of time, concluded within three months after the termination of a previous employment agreement for a limited duration, are considered successive and cannot be executed for a duration longer than 12 months.

3.2 Performance of activity outside an employment relationship

A person may also perform a specific activity outside an employment relationship, in the cases and subject to the conditions prescribed by the Romanian Law, such as:

(a) service agreement (only in case of activities carried out by individuals performing independent activities, provided that no subordination relationship is established between the company and the respective individual and the activities performed are genuinely independent (the independence criteria provided by the tax law are observed accordingly);

(b) internship agreement (concluded with trainees);

(c) voluntary work (only with respect to non-for-profit activities of public interest); and

(d) management agreement (please see Section 3.3).

The Labour Code also regulates the work performed by temporary agency workers who are employed (and paid) by a temporary work agent and placed at the disposal of a user for the duration necessary for carrying out certain precise and temporary duties. The user may "hire" such workers only on the basis of an agreement concluded to this aim with a temporary work agency authorised in accordance with the applicable legislation. The Labour Code provides for mandatory rules regarding the work performed by temporary agency workers, duration of such work and the agreements that must be executed by the involved parties.

3.3 Engagement of managing directors

Pursuant to the Companies Law[5], within joint-stock companies, *during the exercise of their mandate, directors (members of the board) cannot be in an employment agreement with the company and in case the directors were appointed from among the company's employees, the individual employment agreement is suspended during the mandate period.* This provision is applicable also to the managers of joint-stock companies (including the general manager) to whom management attributions within the company have been delegated by the directors (members of the board), irrespective of the name of the occupied position. Thus, in a joint-stock company, directors and managers cannot cumulate their function with the quality of employee during the exercise of their mandate, their relation to the company being usually regulated by mandate/ management agreements. Such prohibition is not applicable in what concerns other types of commercial companies (e.g. limited liability companies). Remuneration of the directors of joint-stock companies working based on a mandate agreement are taxed similarly as salary income in terms of income tax and social contributions. Directors working based on a mandate agreement are considered to derive salary income, which is taxed accordingly in terms of income tax and social contributions. The same rules apply to the agreements entered into by the abovementioned category of managers.

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[4] *Law no. 16/2017, Official Gazette of Romania, No. 1096 of 21 march 2017, as amended by Law no. 172/2020.*
[5] *Law no. 31/1990, Official Gazette of Romania, No. 1066 of 17 November 2004, as republished.*
[6] *Law no. 81/2018, Official Gazette of Romania, No. 296 of 2 April 2018.*

3.4 Teleworking arrangement

Under Romanian legislation, teleworking activity is regulated by a special law[6] and represents the activity carried out regularly and voluntarily by the employee in another place than the workplace organised by the employer, using the information and communications technology.

As a general rule, according to the teleworking law, the teleworking activity is based on the parties' agreement and it must be expressly provided within the employment contract once it is concluded, for the newly hired staff, or within an addendum to the existing employment contract. The refusal of the employee to consent to the performance of the telework activity cannot constitute a reason for unilateral modification of the employment contract and it cannot constitute a reason for their disciplinary sanction.

In what concerns the place/places of telework, recently, the teleworking law has been amended so as to repeat the requirement of having the place of telework expressly regulated in the individual employment agreement or the addendum thereof implementing teleworking regime. However, from a practical perspective arguments remain for the parties to be interested in agreeing on such places and still have them expressly regulated in their arrangement. There is no express legal provision prohibiting performance of telework from abroad, but discussions may arise from a tax perspective.

As anticipated above, the teleworking law imposes a minimum mandatory content of the employment contract/addendum implementing the teleworking regime:

(a) the express provision that the employee performs activity in teleworking regime;

(b) the period and/or days when the employee performs activity from the workplace organised by the employer;

(c) the schedule according to which the employer is entitled to check the activity of the employee and the exact manner in which this verification is performed;

(d) the manner in which the hours worked by the teleworker is outlined;

(e) the responsibilities of the parties depending on the place/places where telework is performed, including the specific health and safety responsibilities as per the teleworking law;

(f) the employer's obligation to ensure the transport to and from the place where telework is performed of the materials necessary for the teleworker to carry out his/her activity;

(g) the employer's obligation to inform the teleworker as regards the provisions of legal norms, of the applicable collective bargaining agreement and/or of the internal regulation as regards the protection of personal data, as well as the teleworker's obligation to comply with these provisions;

(h) the measures taken by the employer so that the teleworker is not isolated from his/her colleagues and that ensure the possibility of the teleworker to regularly meet with his/her colleagues;

(i) the conditions in which the employer bears the expenses corresponding to the teleworking activity.

There are other particularities of the teleworking regime, such as:

(a) In carrying out their specific duties, the teleworkers organise the working schedule by means of an agreement with the employer and in compliance with the provisions of the individual employment agreement, internal regulation and/or the applicable collective bargaining agreement and with the provisions of the law.

(b) The employer is entitled to verify the activity performed by the teleworker mainly through the use of information and communication technology in compliance with the legal provisions.

(c) Overtime may be performed only following the employer's request in this regard and subject to the written consent of the full-time employee.

Non-compliance with these provisions may trigger administrative liability in case of controls performed by the labour inspection, as well as a civil liability or criminal liability in case of certain obligations involving the health and safety of the employees. The law also sets out the main rights and obligations of the teleworkers. Correlatively, employers have the following main obligations in this field:

(a) to provide information and communication technology means and / or secure work equipment necessary for the performance of the work – in this case, the parties may agree in writing, that the teleworker shall use his/her own equipment, with the specification of usage instructions;

(b) to install, inspect and maintain the necessary work equipment, unless the parties agree otherwise;

(c) to ensure conditions for the teleworker to receive sufficient and adequate training in the field of occupational safety and health, in particular in the form of information and work instructions, regarding the use of display screen equipment on employment, when introducing new work equipment, when introducing any new working procedure.

4. Salary and other payments and benefits

4.1 Salary

According to the Labour Code, the salary includes the following elements:

(a) basic salary (mandatory);

(b) other wage related rights, as follows:

i. wage increments - there are no permanent wage increments mandatory to be paid by the employer, except if the applicable collective labour agreements, any internal policy or the individual employment agreements provide otherwise;

ii. indemnities (not mandatory);

iii. other additional benefits (not mandatory) - for example, meal tickets.

4.2 Other mandatory payments

There are no other mandatory payments to the employee in addition to the salary except those regulated within the applicable collective labour agreement, any internal procedure or individual labour agreement case in which such should be observed.

According to the Labour Code, the employer should reimburse the employee's costs made for the accommodation, transportation and per diems for time spent within the country and abroad in case of delegation or secondment. There is no legal provision regulating the amounts of such payments, except for the public sector, generally such being regulated through the sector of activity/ company's level collective labour agreements or internal policies.

Note should be made that the Romanian legislation provides for a minimum gross base salary to be granted to the employees.

4.3 Other benefits

Employers are free to grant their employees other benefits, such as employees' stock option plans, profits participation, etc.

Equity based plans (e.g. stock option plans, restricted stock units, etc.) are poorly regulated under the Romanian tax law, even though the participation of the Romanian employees in such equity-based plans is a quite frequent practice for multinational companies having local presence. In relation to tax treatment of such equity-based plans, please refer to Section 8 below.

According to Romanian law, salary income is considered all income in cash or in kind derived by an individual carrying out an activity based on an employment contract or another similar contractual arrangement as provided by law, irrespective of the period to which the income refers, the nature of income or the manner in which is granted.

The computation of employment income follows the rules of a payroll deduction system in which the taxes and mandatory social contributions due by the employee are withheld by the employer when the employment income is paid.

Salary income is subject to income tax of 10 per cent. The taxable base determined as the difference between the monthly gross salary and (i) the social contributions (see below), (ii) the trade union contribution, if any, (iii) the contributions to the voluntary pension schemes, within a limit of EUR 400 per year, if the case, and (iv) voluntary health insurance premiums as well as the medical services under the form of subscription, in certain cases and within a limit of EUR 400 per year.

The social contributions due by the employees in 2021 in relation to salary income are the following:

(a) pension contribution (or social security contribution) - 25 per cent, applied to the monthly gross employment income;

(b) health contribution - ten per cent of the monthly gross employment income.

Moreover, the employer is liable to pay the insurance contribution for work of 2.25 per cent applied to gross income.

It should be noted that the employers (or persons assimilated to employers) are required to pay an additional four or eight per cent, representing social security contribution, only if their employees carry out activities entailing special/difficult working conditions.

(iv) The gross salary fund represents the sum of all gross salaries payable by an employer in a month. Also, they are due in relation to income payable to all individuals working under a labour agreement concluded in accordance with Romanian law, regardless of whether the employee is a Romanian national or a foreign national.

5. Salary tax and mandatory social contributions

Salary income comprises all income in cash or in kind received by an individual for carrying out an activity based on an employment contract or similar contractual arrangement.

The income tax and the social security contributions detailed below are due as regards income payable to any individual working under an employment contract concluded under Romanian law, regardless of the individual's nationality.

Salary income is subject to a flat-rate personal income tax of 10 per cent and is calculated and withheld by the employer at source and paid to the tax authorities on a monthly basis.

The income tax applies to the employee's gross salary, minus a series of elements/sums: (i) the employee's social security contributions (see below); (ii) any trade union membership fees; (iii) voluntary private pension contributions (up to a cap sum) and (iv) voluntary health insurance (up to a cap sum). Employees may also be entitled to a particular personal tax allowance.

In addition, employers and employees must pay a range of contributions to the state social security system.

The total contributions of employers vary approximately from 2.25 to 10.25 per cent of employees' gross pay, as the case may be, the highest percentage going to the social security pension scheme.

This particular contribution varies in line with the individual employee's working conditions, standing in 2020 at:

(a) four per cent of gross pay in respect of employees with "particular" working conditions - referring to jobs that may, permanently or temporarily, affect the employee's working capacity because of a high risk of exposure to hazards; and

(b) eight per cent of gross pay in respect of employees with "special" working conditions – a category referring to certain jobs in sectors such as mining, the nuclear industry and aviation.

Moreover, employers are obliged to make work insurance contributions at 2.25 per cent of employees' gross pay.

As for the employees, the social security contributions owed are as follows:

(a) 25 per cent of gross pay to compulsory pension schemes (3.75 per cent of pay goes to the second-pillar individual retirement account scheme this scheme and 21.25 per cent to the first-pillar public pension system, in case employees are covered by this second pillar account scheme). Otherwise, the entire contribution of 25 per cent goes to the public pension scheme.

(b) 10 per cent of total gross pay, with no cap, for health insurance.

As for the social contribution mechanism, the employer deducts employees' social security contributions from pay at source and passes/pays them, on a monthly basis, along with its own contributions, to the relevant authorities.

As a particularity, from 1 January 2019, for individuals working in the construction field, a preferential income tax and social security contributions regime applies for salary revenues, under certain conditions.

6. Working hours

The Labour Code determines that full-time working hours is of eight hours per day and 40 hours per week. As a rule, the working week lasts five days (from Monday to Friday). In case the daily working time exceeds six hours, the employer is obliged to grant the employees a lunch break under the terms and conditions stipulated within the applicable collective labour agreements and internal regulation.

Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation. The Labour Code establishes that, as a rule, the maximum working week is of 48 hours, including overtime. The overtime work is compensated with corresponding paid time-off granted to the employee in the next 90 calendar days since the overtime was performed and, only in case such compensation is not possible, the employee shall be granted with a bonus amounting to at least 75 per cent of the base salary. In case the collective labour agreements concluded at sector of activity/group/company's level, any internal policy of the employer or the employment agreement provides for a higher amount of such bonus, such provisions should be observed.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 20 working days. Employees working under difficult, dangerous or harmful conditions, visually impaired persons, other disabled persons and young people under the age of eighteen benefit of an additional annual vacation of at least three working days.

The minimum annual vacation can be increased based on various criteria determined in the collective labour agreements concluded at the sector of activity level, group level or at the company's level, by an internal policy of the employer or through the individual employment agreements.

Annual vacation, as a rule, must be performed each year and may be performed either entirely or in part. If it is performed in part, at least one part shall be of minimum of 10 working days. For the duration of the holiday, employees shall benefit from an annual vacation allowance.

As a particularity, the employees undergoing an in vitro procedure receive annually an additional, paid, three-day rest leave, granted as follows: a) one day at the time of ovarian puncture; b) two days starting with the date of the embriotransfer.

7.2 Paid leave

Besides the annual vacation, employees are also entitled to paid time-off in the case of special family events, the exact events and the number of paid time-off granted are regulated through the collective labour agreements concluded at the sector of activity/ group level/ company's level or internal regulation.

In addition, a total number of 15 days of legal holidays is provided by the Labour Code, as well as two days for each of the 3 annual religious holidays, declared as such by the legally recognised religions, other than the Christian ones, for the persons belonging to them. Particular categories of paid days off have also been regulated and granted (on temporary basis, during specific periods), subject to certain conditions, to one of the parents for the supervision of the children in case the classes have been suspended or the educational units have been closed, due to the pandemic context. Regulation also exists for unfavourable weather conditions.

7.3 Sick leave

The leave for temporary work incapacity (the sick leave) is generally granted for a period of up to 183 days within a year

starting from the first day when the person is ill. Starting from the 91st day of illness, the leave may be extended only with the endorsement of the healthcare security expert physician. For well justified grounds, the primary physician or the specialised physician for the illness affecting the employee may propose the extension of the 183 days period, in order to avoid the retirement of the employee on medical grounds. In the event that such a proposal is not made, the employee shall be retired on medical grounds, receiving the relevant pension regulated by the Public Pensions Law[5].

The minimum contribution threshold in order to be granted the work incapacity income is set at six months from the previous 12 months prior to the month in which the respective leave is granted. The gross work incapacity indemnity amounts to 75 per cent of the average of the monthly incomes obtained within the last six months of the 12 months which represents the duration of contribution without exceeding a limit of 12 minimum gross monthly salaries at national level. In case of special diseases, the indemnity amounts to 100 per cent of the calculation base.

7.4 Maternity leave

Female employees are entitled to a minimum leave of 126 days of maternity leave (which is generally divided in two periods: a period of 63 days before the birth and a period of 63 days after the birth). However, such periods can be compensated, according to the medical recommendation provided that a minimum period of 42 days maternity leave shall be carried out by the female employee after giving birth. The female employee with disabilities is entitled to such leave starting from the sixth month of pregnancy.

During maternity leave, when the employment agreement is suspended by effect of law, the employee shall receive an allowance amounting to 85 per cent of the average income of the last six months, capped to maximum 12 minimum gross base salaries. Such an amount shall be paid by the employer and afterwards, the employer shall integrally recover these sums from a designated state fund.

In addition, according to Romanian legislation, persons with taxable income for at least 12 months within two years before the date of the childbirth may benefit from parental leave with additional parental allowance until the child reaches the age of two or three years for children with disabilities. The persons entitled to benefit from such leave are one of the child's parents, the adopter, or other persons entitled by the law.

The father is entitled to paternal leave of five working days that are granted within the first eight weeks as of the birth of the child. If the father has graduated childcare course, he is entitled to additional 10 working days of paid leave.

7.5 Unpaid leave

According to the Labour Code, the employees are entitled to unpaid leave for professional training purpose for the duration of such trainings. In addition, it is provided that the employees have the right to unpaid leave for resolving personal problems (the granting conditions being subject to the provisions of the applicable collective labour agreements or internal regulation).

The employee's employment-related rights and obligations are generally suspended during unpaid leave, unless otherwise explicitly stipulated for certain rights or obligations.

7.6 Employment suspension

The employee's employment relationship is suspended in certain cases expressly provided by the Labour Code. Considering such cases, the suspension of employment can occur by effect of law, at the initiative of one of the parties or as a result of the parties' agreement. During the suspension, the rights and obligations based on employment are at a standstill, unless otherwise is explicitly stipulated by the law (including applicable collective labour agreements), internal policies or individual employment agreements. Upon the expiry of the grounds for suspension, the employment agreement shall continue to produce its effects as before the suspension.

8. E.S.O.P.

The tax legislation defines a Stock Option Plan (**"SOP"**) as a program launched by a company, whereby the employees, directors and managers of that company or of any affiliate thereto are granted the right to acquire an established number of shares issued by that company, for no consideration or for a preferred price. Additionally, for a program to qualify as an SOP under the Romanian tax law, a minimum period of one year must exist between the grant and the vesting. Limited provisions are also included in the Companies Law, which provides that a joint-stock company may acquire its own shares in order to distribute them to its employees or may grant loans or advances in view of the acquisition of its shares by its own employees. Specific provisions are applicable in case of acquisition by the company of its own shares in order to be distributed to its employees, as follows: (a) the operation must be approved by the general meeting of shareholders by resolution; this resolution must provide the conditions under which the acquisition can take place, e.g. the maximum number of shares which can be acquired and the term for which the authorisation was granted, which cannot exceed 18 months as of the date of publication of the general meeting of shareholders' resolution in the Official Gazette; (b) the nominal value of the shares to be acquired may not exceed ten per cent of the subscribed share capital; (c) the transaction can only have as its object fully paid shares; (d) the payment of such shares shall only be made from the profit that can be distributed or from the available reserves mentioned in the last approved financial statements (with the exception of the legal reserves); (e) the shares obtained must be distributed to the employees within 12 months from the date on which they were acquired.

Moreover, the Romanian tax legislation provides that the advantages derived under an SOP are not taxable at granting date or at the exercise date. Consequently, the SOPs which do not fall

under the definition above do not benefit from the exemption regime provided by the tax law.

9. Health and safety at work

Health and safety at work is regulated in detail by the Law on Health and Safety at Work and its norms. All employers and employees are obliged to adhere to specific obligations introduced by this law. The Law on Health and Safety at Work stipulates, *inter alia*, that each employer has several obligations among which: (i) taking the necessary measures for the provision of the health and safety protection of the workers, (ii) evaluating the risks for the safety and the health of the workers, (iii) carrying out and holding an evaluation of the risks for the health and safety at work, including for those groups that are sensible of specific risks, (iv) drawing up a prevention and safety plan including the technical, sanitary and organising measures and of other nature, based on the evaluation of the risks, which will be applied properly to the work conditions that are specific to the company, etc.

10. Amendment of the employment agreement

Any amendments to the employment agreement can be made by means of additional act concluded in written form and which has to be registered with the labour authorities within the legal deadlines. However, please note that the written form is mandatory as per the Labour Code. In special cases expressly provided by law (e.g. force majeure), the amendments (which can be only temporary) can be made by unilateral decision of the employer. Failure to register amendments operated to the individual employment agreement in the General Registry of Employees, within the legal deadlines represents an administrative offence carrying fines.

11. Termonation of employment

11.1 Termination by operation of law

An employment relationship is terminated by operation of law in the following cases, expressly provided by law:

(a) on the date of the employee's death or of employer who is a natural person, as well as in case of dissolution of employer who is a legal person, from the date when the employer ceased to exist according to the law;

(b) on the date a judgment, declaring the death or placing under interdiction of the employee or the employer who is a natural person, is final;

(c) on the date of cumulative fulfilment of the standard retirement age conditions and of the minimum contribution period for retirement or, exceptionally, for the employee (women) who opts in writing to continue employment relation, within 30 calendar days before fulfilling the standard age conditions and the minimum contribution period for retirement, at the age of 65; on the date of communication of the pension decision the partial early retirement pension, the early retirement pension, the old-age pension with the reduction of the standard retirement age; on the date of communication of the medical decision on work capacity in case of first or second degree disability;

(d) as a result of ascertaining the absolute nullity of the employment agreement, from the date the nullity was ascertained based on the parties' consent, or a final judgment;

(e) as a result of the admittance by the court of the claim for reinstating in the position occupied by the employee of a person unlawfully dismissed or for ungrounded grounds, from the date when such decision is final;

(f) as a result of a sentence to execute an imprisonment punishment, from the date when such judgment is final;

(g) from the date of withdrawal, by the competent authorities or bodies, of the approvals, authorisations, or certifications necessary for exercising one's profession;

(h) as a result of the interdiction to exercise a profession or to perform a job, as a safety measure or complementary punishment, from the date when the judgment ordering the interdiction is final;

(i) on the expiry of the duration of the employment agreement concluded for a definite term;

(j) from the date of withdrawal of the parents' or legal representatives' consent, for employees whose age ranges between 15 and 16 years.

Based on a request made 30 days before the date of cumulative fulfilment of the standard retirement age conditions and the minimum contribution period for retirement and with the approval of the employer, the employee may continue working on the same position up to 3 years above the standard retirement age, with the possibility of annual extension of the individual employment agreement.

11.2 Termination by employee

According to the Labour Code, an employee may freely terminate his employment relationship at any time and for any reason or no reason, by means of a written notification sent to the employer and subject to a notice period.

According to the law, the maximum duration of the notice period is 20 working days in case of execution positions and 45 working days in case of management positions. This notice period may not be extended by parties' agreement. As an exception, the employee can resign without notice if the employer has not met his obligations according to the individual employment agreement.

During the notice period, the employment agreement shall continue to be in force. The agreement shall terminate on the date of expiry of the term of notice or on the date the employer waives the benefit of such term, either entirely or partially.

11.3 Termination by employer

The employer may unilaterally terminate the employment relationship only for a limited number of reasons specified in the Labour Code, as follows:

(a) for reasons related to the employee's person:
- gross misconduct or repeated misconduct (disciplinary reasons);
- in the event that the employee is under preventive custody or arrest at domicile for more than 30 days;
- physical unfitness and/or mental incapacity (only after a decision is issued by the competent medical authority determining such incapacity);
- in case the employee is not professionally fit for the position held (professional inadequacy).

(b) for reasons not related to the employee's person (i.e. redundancy).

The Labour Code prohibits the dismissal of the employees (i) generally based on criteria such as, for example, gender, sexual orientation, race, colour of the skin, or for the exercise, under the terms of the law, of their right to strike and (ii) temporary in those cases expressly provided by law (e.g. for the duration of maternity leave; a temporary working incapacity, medically certified; annual vacation, etc.).

11.4 Procedure for termination by employer

In either case, to achieve dismissal, the employer needs to comply with strict procedural rules. The notice period is prescribed in case of termination for professional inadequacy, physical unfitness and/or mental incapacity and redundancy and it is of minimum 20 working days. To the extent that the collective labour agreements concluded at sector of activity/group/company's level, any internal policy of the employer or the employment agreement provide for a longer notice period, such provisions should be observed.

(a) Procedure for termination for disciplinary reasons

The employee may be dismissed as a disciplinary sanction only in two cases: (i) if the employee committed a serious misconduct and (ii) if the employee committed several deeds of misconduct. The seriousness of the misconduct is evaluated by taking into account all the elements provided by the law (the circumstances in which the deed took place; the employee's guilt degree; the consequences of the breach of discipline; the employee's general behaviour at work; possible disciplinary sanctions previously undergone by him).

The disciplinary dismissal may be implemented only following the performance of a preliminary investigation procedure provided by the law and the internal rules and regulations. Such investigation must be carried out by a designated person, a commision or an external consultant specialized in labour law (either a lawyer, an expert in labor laor, as the case may be, mediator specialized in labor law) empowered by the employer to this end after acknowledgement of a situation of misconduct. If the employee does not appear at the investigation meeting he was summoned to, the employer may issue the disciplinary sanction without being obliged to carry out the preliminary investigation procedure. The dismissal decision must be issued in writing within 30 calendar days as of the acknowledgement of the misconduct but no later than six months as of the date the misconduct was committed.

The dismissal decision has to include specific provisions and to be communicated to the employee within maximum five calendar days from the day it was issued and will produce effects from the day of the communication. The receipt of the communication must be confirmed by the employee under signature. In case the employee refuses to receive the disciplinary decision or to sign the proof of communication, the disciplinary decision shall be sent to the employee's domicile or residence by means of registered mail.

(b) Procedure for termination for professional inadequacy

According to the provisions of the Labour Code, any decision to terminate the employment relationship due to professional inadequacy may be adopted only after a prior evaluation procedure conducted according to the evaluation procedure regulated by the applicable collective labour agreement or the internal regulation. It also must be taken into account that professional inadequacy must result from assessing the employee's performance during a rather long period of time.

To the extent that following the evaluation procedure the employee is found professionally inadequate, the employer is obliged to offer to the employee another position suited to his capacities and background and in the case of an absence of such vacant position, the employer has to notify the workforce agency on the dismissal for professional inadequacy.

The employer must also grant to the employee a notice period of at least 20 working days (or a longer notice period if such is provided in the applicable collective labour agreement, any internal policy or employment agreement). However, the employee is not entitled to any severance payment unless the applicable collective labour agreement, the employment agreement or employer's internal policies expressly provide for such payment.

(c) Procedure for termination in case of redundancy

Dismissal for reasons not related to the employee's person represents a cause for termination of the individual employment agreement, caused by the suppression of that employee's position due to one or more reasons not related to the employee's person.

The dismissal decision must be issued in writing and must contain all the elements provided within the Labour Code. The company must grant to the employee a notice period of at least 20 working days (or a longer notice period if such is provided in the applicable collective labour agreement, any internal policy or employment agreement).

The employee may receive severance payments as provided by the applicable laws and/or the applicable collective labour agreement. At present, there are no legal norms providing the amount of severance payments applicable to private companies. In case the collective labour agreements concluded at sector of activity, group of companies' level and/or company's level, any internal policy or the employment agreement provide for a specific amount of the severance payment, such provisions should be observed.

Additional rules are provided in the case the employer is performing a collective dismissal. Collective dismissals occur in case the employer operates within a period of 30 calendar days at least a specific number of dismissals for reasons not related to the employee's person, as follows:

(i) at least 10 employees in establishments employing more than 20 and less than 100 employees;

(ii) at least 10 per cent of the number of employees in establishments employing at least 100 but less than 300 employees;

(iii) at least 30 employees in establishments employing 300 employees or more.

The rules to be observed in the case of collective dismissals include, *inter alia*, consultation with the trade union or the employees' representatives, correspondence with the competent labour authorities, specific terms, etc.

(d) Remedies in the event of wrongful dismissal

Under Romanian legislation in all cases when the dismissed employee challenges the dismissal decision before the court, the employer has the burden of proving that the dismissal decision is well grounded and that all procedural rules imposed by the legislation have been complied with. The Romanian law expressly provides the protection of employees against illegal dismissal and the courts pay special attention to the observance of the legal provisions in case of the dismissal of an employee. The employee has 30 calendar days/45 calendar days (depending on the dismissal case) to challenge the dismissal decision before the competent court.

If the employer does not succeed in proving the observance of all applicable legal provisions (the existence of dismissal grounds and observance of all procedural rules), the court shall cancel the dismissal decision, oblige the employer to pay an indemnity equal to the indexed, increased or updated salary and the other entitlements the employee would have otherwise benefited from and, at the employee's express request, reinstate him in the position he has been dismissed from. Moral damages could also be granted to the dismissed employee.

11.5 Mutual agreement on termination

The Labour Code allows the mutual agreement on termination of the employment relationship. No severance payment is mandatory in case of such termination, but compensation packages are almost always agreed in practice. Any such compensation is generally subject to salary tax and mandatory social contributions. However, in case of a mutual termination, the employee cannot benefit from unemployment allowance.

12. Non-compete

Upon the conclusion of the employment agreement or during its execution, the parties could negotiate and include in the agreement a non-compete clause. According to the Labour Code, the non-compete clause produces its effects after the termination of the employment agreement, provided that the clause contains the following elements:

(a) the exact activities that cannot be performed by the employee after the employment termination;

(b) the amount of the monthly non-compete indemnity;

(c) the duration of the prohibition (the maximum duration of a non-compete clause is of two years after the termination of the employment agreement);

(d) the third parties to whom the employee in question may not provide the forbidden activities;

(e) the geographic area within which the prohibition is effective.

The monthly non-compete compensation due to the employee is negotiable and shall amount at least to 50 per cent of the average gross salary income of the employee for the past six months prior to the termination of the employment agreement or, if the duration of the employment is less than six months, of the average gross monthly salary income due to him throughout the contract period. The non-compete clause must not lead to the absolute prohibition for the former employee to perform his activity. However, upon notification of the employee or territorial labour inspectorate, the competent court of law can limit the effects of the non-compete clause.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level could be applicable in Romania, provided that such policies and procedures are fully harmonised with the Romanian legislation, approved by the competent body of the Romanian employer (therefore, becoming the policy of the Romanian employer) and communicated to the employees.

14. Employment and mergers and acquisitions

The Labour Code imposes certain obligations in cases of "change of employer" by means of a transfer of undertakings. The Transfer of Undertakings Law[7] applies to any transfer of an undertaking, business or part of undertaking or business located on the Romanian territory, as a result of a legal transfer or merger. Pursuant to the transfer of undertakings related legislation, all employees affected to the transferred business are automatically transferred from the transferor to the transferee as of the date of the transfer, together with all rights and obligations under the employment agreements. In addition, the law expressly prohibits the transferor and the transferee to terminate the employment agreements based solely on the transfer. The collective labour agreement in force at the level of the transferor, if there is such an agreement, will also be transferred as a result of the transfer, and the transferee will not be allowed to initiate negotiations for the amendment of this agreement within the first year from the transfer date. The Transfer of Undertakings Law provides that the transferor and transferee's must inform and/or consult the employees' representatives on the measures envisaged to be taken in relation to the transfer at least 30 days prior to the date thereof. The information should include details relating to the legal, economic and social effects of the business transfer and will have to provide for the minimum content as requested by law. Failure to comply with such obligation represents administrative offence carrying fines. With regard to a situation involving a company sale (share deal), the Romanian legislation does not make any express reference to obligations of information and/or consultation. As a rule, no changes in the labour relationship arise as a result of such transfer. However, in case the applicable collective labour agreements provide special rules in this respect, such should be observed.

15. Industrial relations

The Romanian Constitution and Labour Code guarantee the freedom of trade union association. In practice, there are five major trade unions/ confederations in Romania, that are considered representative at national level. Other trade unions exist on industry level and within individual companies. However, at the level of the individual companies, it is not usual for the employees to establish a trade union.

Trade unions are defined by statute as voluntary associations formed by employees to defend their individual and collective rights, as laid down in the law, collective agreements and employment contracts, and their employment, economic and social interests. Trade unions must be independent of the public authorities, political parties and employers' organizations.

The establishment, organization and operation of trade unions is subject to detailed statutory regulation, covering matters such as their statutes, management, finances, property, merger and dissolution. Trade unions may acquire a "legal personality" by making an application for registration to a court. Legal personality is required for a trade union to have legal rights and obligations and is thus a prerequisite for a union to operate, for example in terms of engaging in collective bargaining.

Individual trade unions are company- or organisation-level structures, drawing members from employees of the same employer. Two or more trade unions in the same sector can establish a federation, while two or more federations in different sectors can establish a confederation. Federations and confederations can set up organisations at a territorial (that is, local or regional) level.

The establishment of a trade union at individual company/ organization level requires 15 union members in that company/ organization. An employee may not be a member of more than one basic union at the same company/organization. Further requirements and procedures are set out by special law as regards obtaining certain entitlements such as representative status, collective bargaining rights etc., as well as the actual manner in which collective negotiations are performed.

16. Employment and intellectual property

16.1 Copyright

According to the Romanian Copyright Law[8], the economic rights over the works protected by copyright, created by an employee while performing his/her work duties mentioned within the employment agreement, belong to the author of the works, unless otherwise contractually agreed. However, the employer may use the respective works within its business scope without requiring the approval of the author-employee. Moreover, the author may authorise third parties to use such works only with the employer's consent and with the indemnification of the employer for its contribution to the costs of the creation.

In the event the employee contractually agrees to assign to the employer his economic rights over the works created in the performance of his work duties, an assignment term must be provided. Otherwise, there is a legal presumption that the assignment has been made for a three-year term. After the expiry of this assignment term, the economic rights revert to the employee. In such a case, the employer is entitled to ask for a reasonable share of the revenues obtained by the author from the use of the respective works as compensation for the costs incurred by the employer for the creation of the works.

[7] *Law no. 67/2006, Official Gazette of Romania, No. 276 of 28 March 2006.*
[8] *Law No.8/1996 on Copyright and Related Rights, Official Gazette of Romania No. 60 of 26 March 1996, as amended, republished with updated numbering in the Official Gazette of Romania No. 489 of 14 June 2018.*

Notwithstanding the above, lacking any contrary contractual provisions, economic copyright over software (i.e. according to the legal definition, the protection of software includes any expression of a program, applications and operating systems, expressed in any language, either source code or object-code, the conception materials, as well as the manuals) vests with the employer, if such software was created by the employee while exercising his/her job attributions or following the instructions of the employer.

In the case of an interpretation or execution of an artist performed within the framework of an individual employment agreement, the artist's economic rights over his interpretation or execution that are transmitted to the employer must be expressly provided in the individual labour agreement.

In all cases the employee remains the owner of moral rights over the works created which cannot be transferred or waived and has the exclusive right to use the respective works as part of his work portfolio.

16.2 Patents and utility models

According to the Law on Employment Inventions[9], employment inventions are the inventions, which (a) resulted from completion of the job attributions of the employee, expressly assigned to him through the individual labour agreement, or the job description, or otherwise established through mandatory acts for the employee (**"creative mission inventions"**) or (b) were created during the fulfillment of individual employment contract, or during a period of two years following the termination of this contract, as the case may be, leveraging knowledge of and using the employer's expertise, using the employer's means, as a consequence of the professional training acquired by the employee-inventor due to the employer's care and on the employer's expenses or using information resulting from the employer's activity or made available by the latter (**"employment-related inventions"**). The decision whether an invention is a employment invention or not lies with the employer.

The employee has the legal obligation to immediately inform the employer of the inventions he/she created. The employer must decide whether the notified inventions are employment inventions and if it wishes to claim rights over them. The employer has to make a decision within four months of being informed, or a longer term if such is stipulated in internal regulations. The employee who is not satisfied with the decision may appeal it in court within four months. The rights over creative-mission inventions belong to the employer. The rights over the employment-related inventions belong to the employee if the employer does not claim them. The rights over inventions that are not creative-mission inventions or employment-related inventions belong to the employee in accordance with Law on Patents, as amended[10].

For the employment-related inventions, which have been claimed by the employer, the employee is entitled to a remuneration established by the employer in its internal regulations. In the absence of such regulations, depending on the case, one or more of the following criteria will be used: (i) the economic, commercial and/or social outcome arising from the exploitation of the invention by the employer or by third parties with the employer's consent; (ii) the extent to which the employer is involved in deploying the employee's invention, including the employer's resources made available to this end; (iii) the creative contribution of the employee-inventor, where the invention is created by more inventors. The employer may either file for a patent or a utility model for the employment inventions over which it has rights or keep it as a trade secret (in the latter case, the employee is compelled to maintain confidentiality). If, during the registration proceedings, the employer no longer wishes to continue such proceedings or is not interested in protecting the invention in certain countries, other than Romania, the employer gives the right of registration to the employee, on condition that the employee grants the employer a non-exclusive license for the patented invention. The conditions for such license are established in the internal regulation of the employer or, when there is no internal regulation of the employer, in an agreement concluded by the parties.

16.3 Plant Varieties

According to Romanian Plant Variety Law[11], the right to a patent for a new plant variety created by an employee during his work belongs to the employee, unless otherwise provided in his/her individual employment agreement.

16.4 Designs/Models

According to Romanian Designs legislation[12], the right to a registration certificate for a design/model created by an employee during his/her work duties belongs to the employer, unless otherwise contractually agreed.

16.5 Topographies of semiconductor products

According to Romanian Law on Topographies of Semiconductor Products[13], the right to protection of a topography created by an employee during his/her work duties, belongs to the employer, unless otherwise contractually agreed.

17. Discrimination and mobbing

Any direct or indirect discrimination towards an employee, based on criteria of gender, sexual orientation, genetic factors, age, citizenship, race, ethnic origin, colour, nationality, language, religion, beliefs, political views, social category or origin, physical impairment/disability/chronic non-contagious disease/HIV

[9] *Law No. 83/2014, Official Gazette of Romania, No. 471 of 26 June 2014.*
[10] *Law No. 64/1991, as republished in the Official Gazette of Romania No.471 of 26 June 2014.*
[11] *Law No. 255/1998 on the Protection of New Plant Varieties, Official Gazette of Romania, No. 525 of 31 December 1998, as amended.*
[12] *Law No. 129/1992 on the Protection of Designs and Models, Official Gazette of Romania, No. 876 of 20 December 2007, as amended and Government Decision No. 211/2008 for the Approval of the Regulation for the implementation of Law No. 129/1992 on the Protection of Designs and Models.*
[13] *Law No. 16/1995 on the Protection of Topographies of Semiconductor Products, Official Gazette of Romania, No. 45 of 9 March 1995, as amended.*

positive status, family situation or responsibility, marital status, trade union membership or activity, belonging to a disadvantaged social group, exercising rights to maternity leave, as well as any form of harassment or sexual harassment are forbidden by the Labour Code and the correlated special legislation[14].

The prohibition of discrimination on the statutory grounds listed above applies to the conditions and criteria for recruitment and selection, employment conditions, criteria for promotion, and access to vocational guidance, training and retraining.

The applicable legal framework provides that various discriminatory acts are administrative offences, punishable by a fine. Such acts include a refusal to recruit a person because that person has any of the protected characteristics listed above, or discrimination on these grounds in areas such as pay and other benefits, work duties, training, promotion, discipline and termination of employment.

17.1 Discrimination prohibition

The prohibition of discrimination in employment covers:

(a) direct discrimination - occurring where a person is disadvantaged by acts or facts of exclusion, distinction, restriction or preference, associated with one or more of the statutory grounds, that have the purpose or effect of denying, restricting or removing the recognition, enjoyment or exercise of the rights provided for by employment legislation;

(b) indirect discrimination - any provision, action, criterion or practice apparently neutral that has as effect the disadvantage caused to a person as opposed to another person based on one or more of the criteria provided above, except for the situation when the provision, action, criterion or practice in question is objectively justified, by a legitimate purpose and if the means to reach that purpose are proportional, appropriate and necessary;

(c) discrimination by association defined as any act or fact of discrimination towards a person that, although does not belong to a category of persons identified based on the criteria above, is associated or presumed to be associated with one or more persons belonging to such category;

(d) harassment and sexual harassment (also regulated by special legal provisions);

(e) victimization or adverse treatment;

(f) instructions to discriminate representing any behaviour that consists in ordering a person, in writing or orally, to use a form of discrimination based on one of the criteria provided above, against one or more persons, is considered discrimination; and

(g) multiple discrimination on two or more of the statutory grounds.

Employment legislation stipulates that the principle of equal treatment must apply within the framework of the employment relationship, and gives all employees the right to equal opportunities and treatment.

At the same time, differential treatment based on a characteristic associated with one of the discrimination criteria mentioned above can be deemed lawful if, because of the nature of the work or the context in which the work is carried out, the characteristic constitutes a genuine and determining occupational requirement that has a legitimate purpose and is appropriate and necessary to achieve that purpose.

The exclusion, distinction, restriction or preference as regards a particular job do not represent discrimination if, by means of the specific nature of the activity in question or the conditions under which the activity is performed, there are certain essential and decisive professional requirements, provided that the purpose is legitimate and the requirements are proportionate.

Indirect discrimination on the statutory grounds may be permitted in some circumstances if the indirectly discriminatory provision, criterion or practice is objectively justified by a legitimate purpose and the means of achieving that purposes are proportional, adequate and necessary.

Certain forms of positive action are permitted and do not constitute unlawful discrimination.

With regard to sex discrimination, special measures stipulated by law for the protection of maternity, birth and breastfeeding are not considered to constitute unlawful discrimination.

17.2 Moral Harassment

Although the concept of mobbing is not expressly provided within the law, according to rather recent legal developments, moral harassment is introduced within Romanian legislation as a separate type of harassment, being defined and detailed through series of provisions, as follows:

(a) any behaviour exercised towards an employee by another employee that is his/her hierarchic superior, by a subordinate and / or by a hierarchically comparable employee, as regards the work relations, that has as purpose or effect a deterioration of the work conditions by violation of rights or dignity of the employee in question, by impairing his/her physical or mental health or by compromising the professional future of the employee, a behaviour manifested in any of the following forms:

- hostile or unwanted conduct;
- verbal comments;
- actions or gestures;

[14] *Law no. 137/2000 on combating all forms of discrimination, Official Gazette of Romania, No. 166 of 7 March 2014, as republished.*

(b) any conduct which, by its systematic nature, is likely to prejudice the dignity, physical or mental integrity of an employee or group of employees, endangering their work or degrading the working environment, including in the form of stress and physical exhaustion;

(c) moral harassment at the workplace on gender criteria is also prohibited and sanctioned accordingly.

A series of rights and obligations are established in relation to cases of moral harassment:

(a) the right of every employee to a workplace free from acts of harassment, without being sanctioned, dismissed or discriminated against, directly or indirectly, including with regard to salary rights, professional training, promotion or prolongation of work relations, because he/she has been subjected or has refused to be subjected to moral harassment at the workplace;

(b) the employer's obligation to take all necessary measures to prevent and combat acts of moral harassment at the workplace, including by providing within the internal regulations the disciplinary sanctions for the employees that commit acts or deeds of moral harassment at the workplace – the non-compliance with these obligations being sanctioned with administrative fines ranging from RON 30,000 to RON 50,000;

(c) the prohibition applicable to the employer with regard to the establishment, in any form, of internal rules or measures which compel, determine or induce employees to commit acts or deeds of moral harassment at the workplace – the non-compliance with these provisions being sanctioned with administrative fines ranging from RON 50,000 to RON200,000;

(d) the fact that the employee - victim of moral harassment, has to prove the factual elements / aspects of the alleged moral harassment case, but the burden of proof belongs to the employer, in compliance with the legal provisions applicable; the intention to prejudice by acts and deeds of moral harassment at the workplace does not have to be proven.

18. Employment and personal data protection

The General Data Protection Regulation[15](applicable as of May 25, 2018) and Law No. 190/2018[16] represent the main legal framework applicable in Romania in the data protection field. Romania adopted Law No. 190/2018 based on the GDPR provisions allowing EU Member States to enact national legislation specifying, restricting or expanding the scope of some general requirements under the GDPR. Among others, Law No. 190/2018 sets out requirements affecting also the employment field. According to Law No. 190/2018 (Article 5), the processing of employees' personal data in the context of monitoring electronic communications or video surveillance at work, on the grounds of the employer's legitimate interests, is permitted only subject to the following conditions:

(a) the legitimate interests pursued by the employer are duly justified and prevail over the interests or rights and freedoms of the employees;

(b) the employer has provided employees with mandatory, complete and explicit information about the monitoring;

(c) the employer has consulted the trade union or, if appropriate, employees' representatives before implementing the monitoring systems;

(d) other less intrusive ways to achieve the purpose pursued by the employer have been proven ineffective before; and,

(e) the retention period of the personal data collected is proportionate to the pursued purpose and is no longer than 30 days, except when expressly provided by law or in duly justified cases.

In case the employer processes employees' national identification number (e.g., personal numeric code) based on the legitimate interest of the employer or of a third party, the implementation of the following guarantees shall be observed by the employer, according to Law No. 190/2018 (Article 4) and in addition to the general ones under the GDPR:

(a) implementation of adequate technical and organisational measures in order to respect the data minimisation and the integrity and confidentiality requirements, according to Article 32 of the GDPR;

(b) designation of a data protection officer, whose activities and tasks shall be performed according to Article 38 and 39 of GDPR;

(c) establishing storage terms for maintaining the personal data in accordance with the nature and purpose of the processing activity, as well as specific terms in which the personal data must be deleted or revised for deletion;

(d) periodic training the persons who are processing the personal data, under the direct authority of the employer, in respect to the obligations incumbent to them when processing the data.

[15] *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR).*

[16] *Law No.190/2018 on the measures aimed at implementing GDPR (Law No. 190/2018).*

In addition, under Law No. 190/2018 (Article 3), to the extent the employer intents to process the employees' genetic, biometric or health data for the purposes of automated decision making or profiling, the employer may process the data either (i) based on the explicit consent of the employees or (ii) based on an express legal provision. In any case, the employer must implement appropriate measures to protect the rights, freedoms and legitimate interests of the data subjects. As the employees' consent is often not considered valid under the GDPR, in particular, due to the imbalance of powers between the employer and its employees, employers should use caution before processing employees' genetic, biometric or health data for such purposes.

The Romanian Supervisory Authority issued Decision No. 174[17] regulating the processing activities for which controllers must perform a data protection impact assessment (DPIA), as follows:

(a) processing personal data in order to accomplish a systematic and extensive assessment of the personal aspects relating to a natural person, which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;

(b) processing on a large scale of special category data and/or criminal offence data;

(c) processing on a large scale of personal data for purposes of systematic monitoring of a publicly accessible area, such as video surveillance in shopping centers, stadiums, markets, parks or others such areas;

(d) processing on a large scale of personal data of vulnerable persons, in particular of minors and employees, through automated means of monitoring and/or systematic monitoring of behaviour, including for the purpose of carrying out marketing and advertising activities;

(e) processing on a large scale of personal data through the innovative use or implementation of new technologies, especially when such operations restrict the capacity of individuals to exercise their rights, such as the use of facial recognition techniques in order to facilitate access in different areas;

(f) processing on a large scale of personal data generated by sensor devices which transmit data via the Internet or by other means (such as "Internet of Things", connected vehicles, intelligent meters, smart toys, smart cities or other applications);

(g) processing on a large scale and/or systematic of traffic and / or location data of natural persons (such as Wi-Fi monitoring, data processing of geographic location of passengers in public transport or other such situations) when processing is not required to provide a service requested by the individual.

Law No. 129/2018[18] repealed and replaced the local legislation applicable prior to GDPR, in particular, Law No. 677/2001[19]. According to Law No. 129/2018 provisions, all the references in other laws to Law No. 677/2001 shall be construed as references to the GDPR.

19. Employment in practice

Each employment agreement and addenda thereto need to be registered with the labour authorities within defined legal deadlines. On the other hand, each employer needs to keep an updated general registry of employees, which also has to be submitted to the labour authorities, as well as personal file for each employee.

The Romanian courts of law tend to be sympathetic towards employees and reinstatement to work is a frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk. On the other hand, visits by the labour inspectors occur quite often and are either announced or occur unexpectedly. Nevertheless, in practice, fines may not be applied by first misconduct and, instead, the employers are given a determined period of time to comply with the law in the event that breaches thereof are identified.

[17] *Decision No. 174/2018 on the list of operations for which it is mandatory to perform a data protection impact assessment (Decision No. 174/2018).*
[18] *Law No. 129/2018 amending and supplementing Law No.102/2005 on the establishment, organization, and functioning of the National Supervisory Authority for Personal Data Processing as well as for the repealing of Law No. 677/2001 (Law No. 129/2018).*
[19] *Law No. 677/2001 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data, as amended (Law No. 677/2001).*

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SERBIA

1. General overview

According to Serbian legislation there is a hierarchy of labour regulations at the top of which is the Labour Act[1] (**"Labour Act"**). Employment matters may also be regulated by a general collective agreement, and a branch collective agreement, applicable to some or all employers in a particular industry. In addition, a company may have an individual collective agreement (**"ICA"**) concluded between the company and the representative trade union(s). Companies which do not have the ICA usually regulate employment matters by a general enactment called Work Rules.

The ICA or, as the case may be, the Work Rules, as well as the individual employment agreements, must all be consistent with the Labour Act and the general/branch collective agreement (if any), and may not provide for less favourable work conditions and rights to employees than what is guaranteed by the Labour Act and general/branch collective agreement.

In addition, individual employment agreement may not provide for less favourable terms than it is provided in the ICA or, as the case may be, Work Rules.

2. Hiring

2.1. General

In accordance with the Labour Act, an employer may employ only individuals who are over 15 years of age. Special requirements may be determined at the discretion of the employer, depending on the type of job. These special requirements must not be discriminatory.

2.2. Disabled persons

According to the Professional Rehabilitation and Employment of Persons with Disabilities Act[2], employers with 20 or more employees are obliged to employ a certain number of disabled persons (employers with 20 employees must employ at least one person with disability, employers with 50 employees must employ at least two persons with disability, and one person with disability for every additional 50 employees). Alternatively, instead of employing the prescribed number of persons with disability, the employer can contribute to a special fund by paying 50% of the average salary in Republic of Serbia for each person with disability it did not employ. Newly established companies are exempt from this obligation for the first 24 months after their establishment.

2.3. Foreign employees

Employment of foreign nationals is regulated by the Foreigners Act[3] and the Employment of Foreigners Act[4]. In general, a foreign national who intends to work in Serbia based on an employment agreement or on an out-of-employment basis has to obtain: (i) the registration of residence (the so-called "white card"); (ii) a temporary residence permit or a visa for longer stay ("Visa D") and (iii) a work permit (which must be obtained before the commencement of work in Serbia). The same applies to foreign staff seconded to Serbia.

Certain exceptions apply to directors, other representatives and members of company bodies, if they are not employed with the Serbian company. In that case, they need to obtain a temporary residence permit and work permit only if they reside in Serbia for longer than 90 days within a six-month period, counting from the day of the first entry. There are some other exceptions to the work permit requirement such as: attendance of business meetings or performance of business activities for the purpose of establishing the business in Serbia; and work on installations, assembly or repair of machinery or provision of training for work on machinery or equipment in accordance with a business cooperation agreement. These exceptions apply if the foreigner does not stay in Serbia for more than 90 days within a six-month period counting from the date of first entry into Serbia.

Every foreigner, regardless of the intended duration of stay, is obliged to register his / her presence on the territory of Serbia within 24 hours from arrival, by obtaining the so-called "white card". If the foreign national stays in a hotel, the hotel is obliged to report his / her presence to the local police and the hotel issues a white card. If the foreigner stays in a rented apartment, the white card is issued at the local police station, in which case the landlord must accompany the foreigner to the police. The Temporary residence permit is issued by the Foreigners' Department of the Serbian Ministry of Interior, within 30 days from the submission of the necessary documentation. The applicant may submit and collect the documentation in person in Serbia.

Alternatively, the applicant may electronically apply for a temporary residence permit via an online platform. If the temporary residence permit is granted, the foreigner is electronically notified of the date and the location in Serbia where s/he may collect the

[1] *Official Gazette of Republic of Serbia, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 and 113/2017.*
[2] *Official Gazette of the Republic of Serbia, Nos. 36/2009 and 32/2013.*
[3] *Official Gazette of the Republic of Serbia, Nos. 24/2018 and 31/2019.*
[4] *Official Gazette of the Republic of Serbia, No. 128/2014. 113/2017, 50/2018 and 31/2019.*

permit in person. As the foreigner's presence in Serbia is required when collecting the permit, entry visa requirements should be taken into account. For more details see http://www.mfa.gov.rs/en/consular-affairs/entry-serbia/visa-regime.

Visa D is issued by any diplomatic or consular mission of the Republic of Serbia, generally, within 15 days from the submission of required documentation. The Work permit is issued by the Serbian National Employment Service ("NES") upon the application of the employer or the foreigner (depending on the type of the work permit), usually within two weeks from the application. The foreigner can submit a single application for a temporary resident permit and a work permit personally at the police station in the district of their residence in Serbia or electronically. The police then forwards the application to NES. The applicant can submit the supporting documentation directly to NES via email, post, or in person. The same procedure applies to the extension of the work permit.

When an employment-type of work permit is requested on the basis of Visa D, the Serbian employer can submit the request for the work permit while the procedure for the issuance of Visa D is pending abroad. The temporary residence permit and work permit for employment (as opposed to self-employment) are subject to the labour market test conducted by NES. The goal of this test is to confirm that no unemployed Serbian national fulfills the requirements for the job. In practice, the test is a pure formality.

2.4. Secondments

The secondment of Serbian employees abroad is regulated by the Act on Conditions for Secondment of Employees to Temporary Work Abroad and their Protection[5]. A Serbian employee may be seconded abroad only for the following purposes: (i) provision of services pursuant to a business cooperation agreement with a foreign partner; (ii) work or professional training in the employer's foreign subsidiary, branch or representative office; (iii) work or professional training in the employer's parent or sister company. The Serbian employer seconding its employee abroad must ensure that the seconded employee fulfills the immigration requirements of the host country is provided the minimum employment law guarantees in terms of salary, occupational health and safety protection, accommodation and food under Serbian or under the law of the destination country, whichever is more favourable for the employee.

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3. Types of engagement

3.1. Employment

Employment relationship is the basic form of engagement of workers regulated by the Labour Act. Employment is established by an employment agreement concluded between the employer and the employee. Written employment agreement, containing mandatory elements prescribed by the Labour Act, must be concluded with each employee no later than on the date of commencement of work.

Employment agreement may be concluded for indefinite term or on a fixed-term basis. A fixed-term employment agreement may be concluded for the work the duration of which is limited in advance for objective reasons (deadline for completion of a certain work; occurrence of a specific event). As a general rule, the maximum duration of a fixed-term employment agreement is 24 months, although there is a number of exceptions allowing for a longer duration (e.g. replacement of an employee on sick leave; project-related work; directorship).

3.2. Engagement outside employment

Workers can be engaged outside employment relationship, subject to the limitations set by the Labour Act. Out-of-employment engagement forms are:

(a) service agreement - for the services which fall outside the scope of the company's regular business activities, i.e. for ancillary activities;

(b) agreement on temporary and periodical work – for work which, by its nature, lasts up to 120 working days in a calendar year (seasonal work);

(c) agreement on supplemental work – with a person who already has full-time employment with another employer, for a maximum of one-third of full-time work hours;

(d) agreement of vocational training – for internships or trainees subject to professional exam requirement or when the employer's jobs systematization requires an internship for a particular job; or

(e) "staff leasing".

3.3. Engagement of managing directors

In accordance with the Labour Act, the directors (and other statutory representatives), regardless of their nationality, are required to enter with the Serbian company in which they serve into either a regular employment agreement or a management agreement. If the director is already employed elsewhere on a full-time basis, a management agreement is the only option. Unlike employment agreement, which is subject to a general employment law regime, management agreement offers more flexibility for the parties to determine the terms and conditions of the engagement since mandatory employment law protections (sick leave, annual leave, overtime, dismissal regime, etc) do not apply. According to the Labour Act, a director hired under management agreement is entitled to remuneration for work "in accordance with the agreement". This could be read to mean that the director who is not employed is free to waive a remuneration, although the Serbian tax authority has had certain controversial practices as to tax and mandatory social security contributions on personal income in such cases.

[5] *Official Gazette of the Republic of Serbia, Nos. 91/2015and 50/2018.*

3.4. Teleworking (remote work)

According to the Labour Act, remote work is a specific type of employment. Employment agreement for remote work must regulate work hours; the manner in which the employee is supervised; whether the employee will be using the employer's or his own equipment and work tools and, if former, how the equipment and work tools will be maintained, and, if latter, whether the employee is to be compensated for the amortisation of own equipment and other remote work-related costs.

When the employment agreement is for work from the employer's premises, the employer and the employee may nevertheless agree that the employee may work a certain number of hours or days from home.

There is no basis in the law for the employer to unilaterally impose work from home even in extraordinary circumstances such as pending COVID-19 outbreak.

4. Salary and other payments and benefits

4.1 Salary

Salary structure is complex and consist of the following components:

(a) basic salary;

(b) performance-based part of the salary applicable if clearly defined performance targets are met;

(c) extra pay for: work on a public holiday (110% of the basic salary per hour); night work (26% of the basic salary per hour): years of service with (i) the current employer plus (ii) any legal predecessor of the current employer (in case it had undergone a status change, e.g. merger, split off, spin off); plus (iii) any other party related to the current employer within the meaning of the Companies' Act (0.4% of the monthly basic salary for each year); and overtime work (26% of the basic salary for the relevant number of hours).

Meal allowance and annual vacation allowance are also mandatory payments taxed as salary, although the law does not prescribe the minimum amounts. The Labour Act guarantees the minimum amount of basic salary, which is determined at the national level, based on the parameters set by the Socio-Economic Council of Republic of Serbia. Currently, the minimum hourly wage is RSD 183.93 (approx. EUR 1.56) net per hour.

4.2 Other mandatory payments

The employer is obliged to compensate the employees:

(a) for the cost of commute to and from work, in the amount equal to the price of a public transportation ticket (unless the employer organizes the transport independently);

(b) for the cost of sustenance on business trip (per diem allowance)

(c) the cost of accommodation and travel in case of business trip (unless the employer covers the cost);

(d) for funeral expenses in case of death of the employee's immediate family member, and to the immediate family members in case of the employee's death.

(e) The employer also has to pay a retirement severance payment in the amount of two average salaries in Serbia.

These payments and disbursement are not subject to income tax and mandatory social contributions (to the extent that cost and expenses compensations do not exceed statutory non-taxable amount).

4.3 Other benefits

Employers are free to provide their employees other benefits, such as jubilee awards, additional health insurance, voluntary pension schemes, profits participation, etc.

5. Salary tax and mandatory social contributions

Salary is subject to payroll tax and mandatory social security contributions for pension and disability, health and unemployment insurances (together "SSCs"). The law distinguishes between SSCs attributable to the employee, and those attributable to the employer, although even the former, as well as the payroll tax, are payable by the employer on a withholding basis. The difference is only relevant in accounting terms: contributions levied on the employer are not part of the gross salary, which constitutes the basis for the SSCs. The aggregate combined rate of all SSCs is 36.55% (out of which 19.9% is levied on the employee, and 16.65%. is levied on the employer). The basis for the SSCs is the amount of the employee's gross salary (which consists of net salary, payroll tax, and the SSCs levied on the employee), and is capped at the monthly level at five times the average monthly salary in Serbia (the cap for 2021 amounts to RSD 405,750 (approx. EUR 3,450)).

The payroll tax rate is 10% and is imposed on the gross salary (consisting of net salary, payroll tax and the SSCs levied on the employee), less the non-taxable amount (currently RSD 18,300 (approx. EUR 155)).

Salary income forms part of total annual income, which is subject to additional taxation if the threshold of three times the average annual salary in Serbia, which is currently approx. EUR 23,200, is exceeded. Personal deductions and deductions for a spouse and children are available. Annual income which is between the above threshold and approx. EUR 46,500 is taxed at the rate of 10% while the excess above EUR 46,500 (currently) is taxed at the rate of 15%.

Freelancer's income is taxed at the rate of 20% (with a standard deduction of 20% from the tax base for deemed costs) and is subject to SSCs for pension and health insurance (health insurance SSCs do not attach to freelancer's income if the individual already has state health insurance on another basis, such as employment or registered entrepreneurship).

Income of foreign personnel (with the exception of foreign diplomatic or consular missions and IGOs staff who are neither citizens of nor residents for tax purposes in Serbia) are subject to local personal income tax and SSCs unless the applicable DTT and/or social security treaty provide otherwise.

6. Working hours

Full-time working hours amount to 40 hours per week. As a rule, work week lasts for five days, but the maximum of 40 hours per week may also be stretched through a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the Labour Act, a 30-minute break for full-time employees is a statutory obligation and is included in full-time working hours.

Work in excess of full-time hours is deemed overtime work. Overtime work may be imposed in exceptional cases only, and triggers a salary increase. Senior employees and management are not exempt from the overtime regime, i.e. their overtime is also subject to additional compensation.

Overtime work may not exceed eight hours per week. An employee cannot work more than 12 hours per day including overtime.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

In each calendar year, the employee is entitled to annual leave of a minimum of 20 work days. This statutory minimum must be increased based on (i) the employee's contribution to work, (ii) working conditions, (iii) work experience, and (iv) the professional qualifications of the employee. The employer is, however, free to define the threshold for these criteria.

The employee is entitled to use annual leave after one month of continuous work with the employer. The employee is entitled to one-twelfth of his total annual leave entitlement for each month of work in the calendar year in which he commenced the work and the calendar year in which his employment is terminated.

Annual leave may be used all at once, if that does not disturb the work process, or in two instalments. Annual leave may be used in more than two installments only if the employee agrees so. The employer decides on the schedule of annual leave, depending on the needs of the work process, subject to a prior consultation of the employee. All annual leave days must be consumed until 30 June of the following year or the entitlement is forfeited.

7.2 Paid leave

In addition to annual vacation, employees are also entitled to a total of five working days of paid leave per year on the account of wedding, childbirth (in case of male employees), serious illness of an immediate family member, as well as to additional five days in case of death of an immediate family member and two additional days on the account of voluntary blood donation.

7.3 Sick leave

In case of sick or disability leave (together, "sick leave"), employees are entitled to a salary in lieu. This compensation amounts to 65% of the employee's average salary calculated over the period of 12 months preceding the sick leave, in case of illness or injury not related to work (the employer bears this cost for the first 30 days of leave, and the state covers it from the 31st day), and 100% of employee's average salary calculated over the period of 12 months preceding the leave, if the leave is caused by professional illness or injury (the employer bears the entire cost). There are no limitations with respect to the total duration of sick leave or the total number of sick leaves.

7.4 Maternity leave

Maternity leave consists of pregnancy leave and childcare leave. Pregnancy leave starts no earlier than 45 days and no later than 28 days prior to the due date and lasts for three months from the childbirth. Pregnancy leave is fully paid by the state directly to the beneficiary's bank account. Childcare leave begins upon the expiry of the pregnancy leave. Pregnancy leave and childcare leave combined may last for up to 365 days (or up to two years in case of giving birth to a third (and each next) child).

A male employee is entitled to pregnancy leave (under the same terms and conditions as a female employee) only if the mother of his child dies or abandons the child or is justifiably prevented from using the pregnancy leave (e.g. due to a prison sentence, serious illness), irrespective of whether the mother is employed. Father is entitled to use childcare leave if mother of his child decides not to use it. An employee cannot be lawfully terminated while pregnant and while on maternity (pregnancy/childcare) leave.

7.5 Unpaid leave

Employees are not entitled to unpaid leave in any particular circumstances. Unpaid leave is therefore within the domain of agreement between the employer and the employee. During the approved unpaid leave, the employee's employment relationship is at standstill.

7.6 Employment standstill

Employment relationship is at a mandatory standstill as a matter of law when the employee is seconded to work abroad, appointed to a public position, or serves a prison sentence which is up to six months. Upon the expiry of the standstill, the employee is entitled to be reinstated to work.

8. E.S.O.P.

8.1 Share Option Plans of foreign companies

The Securities Act imposes significant restrictions on foreign companies wishing to offer share options plans to the employees of their Serbian subsidiaries. The Serbian Securities Commission ("SEC") has opined that any unsolicited (whereby the criteria as to what is solicited and what is unsolicited are strict) offer to purchase shares or options to acquire shares (which are also regarded as securities) directed to anyone in Serbia, including to a limited number of Serbian employees, is considered a public offer of foreign currency-denominated securities which must take place in accordance with the general regime (entailing a prospectus, a Serbian-licensed broker, registration with the Serbian Central Register and Depository of Securities, etc).

The SEC has also stated that share options cannot be offered in Serbia, including as part of employee share plans, if they qualify as financial derivatives in the home country.

Finally, SEC has confirmed that foreign companies cannot provide investment services to Serbian employees related to the administration of share plans except for those services that are exclusive to the administration of the plans or any funds of the Serbian employees credited to bank accounts abroad. Any service that is generally rendered with respect to financial instruments in general, such as handling of sale and purchase orders, maintenance of custody accounts etc., cannot be done on a cross-border basis but only by Serbian-licensed investment companies.

8.2 Share option plans of Serbian companies

Serbia has recently amended the Companies' Act[6] to introduce a legal framework for employee share option plans ("ESOPs") in limited liability companies ("LLCs").

8.2.1 Reserved Treasury Share

LLC wishing to set up an ESOP should first create a treasury share reserved for the sole purpose of issuing options ("RTS"). Owners can create RTS by contributing a portion of their respective fully-paid up ownership quotas free of charge. RTS must be registered with the commercial register. LLC can have more than one RTS and may not sell or pledge RTS. The total nominal value of all RTS may not exceed 40% of the total registered share capital of the LLC.

8.2.2 Share options - LLC issues share options against RTS.

Share option entitles its holder to acquire, upon maturity, an ownership quota in LLC of a pre-determined nominal value. Share option can be exercised by payment to LLC of the option exercise price determined in the resolution on the share options issue. In order to benefit from personal income tax exemption, the exercise price must be less than the market price of the corresponding LLC share at the time of the relevant share option issue. Share options issued pursuant to LLC's ESOP are strictly personal and non-transferable, non-pledgable and inheritable financial instruments.

The issuance of share options is not considered a public offering. It is a special form of a private placement of financial instruments, which is arranged via the Central Registry, Depository and Clearing House of Securities. The issuance of share options must be covered by a shareholders' resolution or, if so provided in the Memorandum of Association, by a resolution of the LLC's board of directors, supervisory board or, as the case may be, sole director.

8.2.3 Personal income taxation under ESOP

Acquisition of shares of LLC by the employees for less than market value is a taxable event. The tax base is the market value of the shares acquired in LLC, less the price paid. Payroll tax is in this case calculated and withheld by the employer. However, the acquisition of shares in LLC by employees pursuant to ESOP is exempt from payroll tax and consequently from social security contributions if certain conditions are met, including is that the employee does not sell the share acquired pursuant to the share option exercise before the expiry of two years from the acquisition date. If the employee sells the share during the two-year lock-up period, the obligation of the employer to calculate and pay on payroll tax and social security contributions on a withholding basis is triggered.

The withholding obligation is also triggered if the company redeems the shares/quotas from the employee at any time, even after the expiry of the two-year lock-up period. When an employee sells the share acquired by exercise of a share option at a gain, such gain is subject to the capital gain tax.

8.3 Phantom or cash-settled share plans

Foreign parents of Serbian subsidiaries usually include Serbian employees into cash-settled plans. Such plans usually provide for granting to the employees "options" structured as a right to receive a cash amount on "exercise" of the option, where the cash amount equals the market price of the issuer's share at the time of exercise less the "exercise" price of the option. There is usually certain vesting period, e.g. three years, at the expiry of which the employee becomes entitled to exercise the option.

[6] *"Official Gazette of the RoS", Nos. 36/2011, 99/2011, 83/2014, 5/2015, 44/2018, 95/2018 and 91/2019)*

9. Health and safety at work

Under the Serbian Occupational Health and Safety Act[7], employer is obliged to ensure appropriate occupational and health and safety measures, including: (i) to appoint a person in charge of occupational health and safety (this can be outsourced); (ii) enact a Risk Assessment Act; (iii) ensure training of staff for safe work (theory and practice); (iv) perform periodic testing of employees (every four years, or on annual basis for those working on high-risk posts); (v) supply any necessary safety equipment and a first aid kit; (vi) ensure medical check-ups where needed; (vii) ensure checking and maintenance of work tools and safety equipment; (viii) keep the prescribed records on health and safety; etc. All this can be performed and coordinated by an outsourced licensed expert.

10. Amendment of the employment agreement

Employment agreement may be amended by an annex in certain cases specified by the Labour Act. The annex must be accompanied by a written notification from the employer explaining the reasons for amendment, the deadline for the employee's response (which may not be less than eight working days), and a notice of legal consequences if the employee refuses to accept the proposed annex. In certain cases which are specified by the Labour Act, a refusal to conclude the proposed annex is a ground for unilateral dismissal by the employer.

11. Termination of employment

11.1 Termination by operation of law

The Labour Act prescribes the cases in which employment relationships can be terminated regardless of the will of the employee and/or the employer, and merely by the occurrence of one of the following facts:

- by expiry of a fixed-term employment[8];
- when the employee turns 65 years of age and completes at least 15 years of insured service (unless the employer and the employee agree otherwise);
- at the request of parents (or guardians) of an employee younger than 18 years of age;
- loss of the employee's work ability;
- if the employee is prohibited from performing certain job to perform certain jobs based on a statute, or on a final decision of a court or other competent body (provided that the employer may not provide him an alternative job);
- in the event that the employee must be absent from work for longer than six months due to serving a prison sentence;
- in the event that the employee must be absent from work longer than six months due to serving other types of sentence (e.g. a safety measure prohibiting the employee to perform certain work, or another type of sentence in accordance with the Criminal Code);
- at an employee's death;
- winding up of the employer (e.g. liquidation).

11.2 Termination by the employee

An employee may terminate the employment agreement at any time, by delivering a written notice to the employer at least 15 days prior the effective termination date. Longer notice periods may be determined by the employer's general enactment (ICA or the Work Rules) or by the employment agreement, but it may not exceed 30 days.

11.3 Termination by the employer

The employer may unilaterally terminate an employment relationship for a limited number of grounds as specified in the Labour Act, which are as follows:

(a) professional incompetence or underperformance;

(b) if the employee has been convicted for committing a criminal offence at work or in relation to work by a court decision brought in a criminal procedure;

(c) failure to return to work within 15 days from the day of expiry of unpaid leave or employment standstill;

(d) breach of work duties by the employee's fault – the following specific breaches which may represent grounds for termination are stipulated in the Labour Act[9]:

i. negligent or careless execution of work duties;

ii. misuse of position or exceeding authorisation;

iii. inappropriate and irresponsible use of work funds;

iv. not using or inappropriately using provided means or equipment for personal protection at work:

v. other breach of work duty as may be determined by the employer's general enactment or employment agreement.

[7] *Official Gazette of the Republic of Serbia, Nos. 101/2005, 91/2015 and 113/2017.*
[8] *An exception applies in the case of a pregnant employee, and employees on maternity leave, child care leave and special child care leave, in which case a definite-term employment agreement shall be extended until the expiry of the right to leave.*
[9] *The list of breaches of work duty that represent valid grounds for termination may be expanded by the employment agreement, and/or the employer's general act (ICA or the Work Rules).*
[10] *These include: (i) transfer to another suitable work post; (ii) relocation to another place of work at the same employer; (iii) assignment of employee to work at another employer; (iv) providing.*

(e) breach of work discipline – The following specific violations which may represent grounds for dismissal are stipulated in the Labour Act[10]:

i. If the employee unjustifiably refuses to perform duties and execute the employer's orders in accordance with the law;

ii. If the employee fails to submit a medical certificate of temporary inability to work (sick leave) in accordance with the Labour Act;

iii. if the employee misuses sick leave;

iv. if the employee comes to work under the influence of alcohol or other intoxicating substances, that is uses alcohol or other intoxicating substances during working hours, which has or may have an impact on job performance;

v. if the employee provides incorrect information crucial for the establishment of employment;

vi. if an employee who works on jobs with an increased level of risk refuses to undergo assessment of his health ability;

vii. if the employee breaches work discipline prescribed by the employer's enactment, that is if the employee's conduct is such, that he cannot continue to work with the employer;

viii. if due to technological, economic or organisational change performance of a particular job becomes unnecessary or the work load becomes reduced (redundancy);

ix. if the employee refuses to enter into an annex to the employment agreement in certain cases determined by the Labour Act[11].

11.4 Procedure for termination by the employer

Unilateral termination of employment is formal and the employer must observe a number of procedural requirements, which depend on the specific ground for termination. The main requirements include:

(a) **Termination on the ground of professional incompetence or underperformance** (see 11.3(a)) - Prior to termination on this ground, the employee must be notified in written form on his incompetence/underperformance and provided with the adequate instructions aimed at improvement of his performance within a reasonably determined period of time ("cure period"). If the employee would continue to perform at unsatisfactory level after receiving this notification, upon expiry of the cure period, employer would be entitled to proceed with termination of his employment, by enacting a decision on termination of employment which must be enacted within the statute of limitation period, and serve on the employee.

(b) **Termination due to breach of work duty or work discipline** (see 11.3 (d) and (e)) - Prior to employment termination on these grounds, the employer is obliged to: (i) deliver to the employee a prior written notice, which must contain grounds, specific facts and evidences for termination, and (ii) leave at least eight days for the employee to respond to to the allegations from the written notice. After expiry of this period, the employer can issue a decision on termination of employment, which must be enacted within the statute of limitation period, and which must contain certain elements prescribed by the Labour Act.

(c) **Termination of employment due to redundancy** (see 11.3 (viii)) - The employer must prepare a redundancy programme in cooperation with the National Employment Service ("NES") and the representative trade union (if any), if, due to technological, economic or organisational change within the period of 30 days, it plans to terminate: (i) 10 of its employees, provided it employs more than 20 and fewer than 100 employees on an indefinite-term basis; (ii) no fewer than 10% of its employees, provided it employs no fewer than 100 and no more than 300 employees on an indefinite-term basis; or (iii) at least 30 of its employees, provided it employs more than 300 employees on an indefinite-term basis. A programme is also required in the event that the employer plans to terminate at least 20 of its employees within a period of 90 days, due to technological, economic or organisational change, regardless of the total number of its workforce.

The purpose of the redundancy programme is to mitigate the effects of collective dismissal. The Labour Act imposes a strictly formal procedure for collective dismissal, which requires compliance with certain steps and cooperation with NES and the representative trade union(s). In case that the prescribed thresholds which trigger the obligation to enact the redundancy programme are not met, a simpler procedure applies.

In any case, the severance is payable before termination of employment. The statutory minimum of severance is calculated as the sum of one third (1/3) of employee's reference salary (average gross salary for the three months preceding the month in which severance is paid) for each full year of the employee's employment service completed at: (i) the employer; plus (ii) any legal predecessor of the employer (in case it had undergone a status change, e.g. merger, split off, spin off); plus (iii) any other party related to the employer within the meaning of the Companies' Act.

Also, in case of redundancy, the employer may not employ another person to perform the same job as performed by the redundant employee before he was proclaimed redundant for a period of three months from the day of termination of employment. Should it be necessary, priority has to be given to the employee who had been terminated.

[11] *These include: (i) transfer to another suitable work post; (ii) relocation to another place of work at the same employer; (iii) assignment of employee to work at another employer; (iv) providing of employment measure in case of redundancy, and (v) the change of the agreed amount of salary, elements for determining of work performance or other earnings arising from employment.*

(d) In other cases of employment termination, employer is not obliged to conduct any procedure or steps prior to enactment of resolution on termination and its service on the employee, unless circumstances of the specific case require otherwise.

(e) **Service of termination documents** - Both a decision on termination of employment (in all cases of termination) and a written notice(s) referred to under (a) and (b) have served on the employee personally on employer's premises, or via registered mail with return receipt (in Serbian: *preporučenom pošiljkom sa povratnicom*) to the employee's address. If personal service fails, the employer has to draft an official note on the service failure and place it together with the written notice/decision of employment on termination on the company notice board. The written notice/resolution on termination would be deemed delivered upon the expiry of eight days from its publication on the notice board.

(f) **Statute of limitation** - Employment cannot be terminated for incompetence/underperformance, breach of work duty, and / or work discipline if: (i) more than six months have passed since the employer became aware of the termination reason, or (ii) more than 12 months have passed from the occurrence of the termination reason. When the employee is terminated for incompetence/underperformance, this deadline starts running once the cure period expires. Termination due to conviction of the employee for an employment-related criminal offence is not possible after the expiry of the statute of limitation period imposed by the Criminal Code for the specific criminal offence.

(g) **Notice period** - The Labour Act imposes mandatory termination notice period only in the event of termination of employment for professional incompetence or underperformance. The duration of the notice period is between eight days and 30 days, depending on the employee's years of insured service.

(h) **Remedies in the event of wrongful dismissal** - The employee may initiate litigation for wrongful dismissal within 60 days from the date of delivery of the decision on termination of employment. The main remedy available to the employee is reinstatement but the employee may claim damages instead. In the event the court finds wrongful dismissal, the employee is also entitled to compensation of salary and other lost remuneration. Pending the dispute, the employee may ask the Labour Inspectorate to render a provisional measure of reinstatement.

11.5 Mutual agreement on termination

The employer and the employee may agree to terminate employment at any time. No severance payment is mandatory in case of termination by agreement, but stimulative compensation packages are often agreed in practice. Any such compensation is subject to payroll tax and mandatory social contributions.

12. Non-compete

A non-compete clause must be part of the employment agreement (it cannot be a standalone agreement) and is permitted only if the employee works on a position which enables him to acquire new, highly important technological knowledge, a wide circle of business partners, or important business information and secrets. A non-compete clause must also specify the types of activities in which the employee may not be engaged without the employer's consent, as well as its territorial application. Post-termination non-compete undertaking cannot be longer than two years following the termination of employment. In order for a post-termination non-compete undertaking to be enforceable, the employer must promise to pay to the employee adequate compensation (the law does not prescribe the minimum amount, but the market practice is approximately 50% of the agreed salary).

13. Global policies and procedures of employer

Group policies and procedures (e.g. Code of conduct) do not automatically apply in Serbia. In order to be binding upon the employees of the Serbian subsidiary, those policies and procedures have to be (i) harmonized with Serbian law, (ii) and adopted on the local level (i.e. signed by the representative(s) of the Serbian subsidiary), and (iii) made available to all employees in the language they understand.

14. Employment and mergers and acquisitions

The Labour Act imposes certain obligations in case of a "change of employer", both for the predecessor and successor employer. By virtue of an explicit provision of law, "change of employer" encompasses only status changes, e.g. mergers and spin-offs. Serbia has still not adopted EU regulations regarding the transfer of undertakings, nor has enacted any local legislation regulating this area. Therefore, transfer (including sale or lease) of assets does not lead to automatic transfer of employees.

In case of a "change of employer", the Labour Act requires that the predecessor and successor employers jointly notify the representative trade union(s) in the company at least 15 days prior to the change about: (i) the date of the change, (ii) the reason for the change, and (iii) the legal, economic and social consequences of the change to employees' status, and the measures for mitigating any negative consequences for employees.

The law further provides that the ICA or, as the case may be, the Work Rules of the company must continue to apply for at least one year following the change, unless they expire earlier under

their own terms or should the trade union(s) agree to enter into a new ICA with the company. Finally, the Labour Act requires the predecessor employer to notify, prior to the completion of the change, the employees in writing about the transfer of their employment agreements to the successor employer. If an employee fails to accept the transfer or respond within five working days from receipt of the notification, the predecessor employer is entitled to terminate their employment agreement.

15. Industrial relations

The Serbian Constitution and the Labour Act guarantee the freedom of trade union association. The Labour Act recognises two types of workers' organisations: trade unions and workers' councils. An employers' association may be established by employers who employ a minimum of 5% of the total number of employees in a specific industry or territorial unit.

The most common form of employee representation is a trade union. Trade unions are defined by law as autonomous, democratic and independent organisations of employees, based on freedom of membership, that represent, advocate, promote and protect professional, labour, economic, social, cultural and other individual and collective interests of employees. The influence of trade unions depends on the size of their membership, since only representative trade unions may be involved in collective bargaining. Also, the size of a trade union can be relevant for the scope of a potential strike, organised by a trade union within a company. Employees may also organize in workers' councils (within an organisation with more than 50 employees). However, this type of employee body exists only on paper and virtually does not exist in practice.

16. Employment and intellectual property

In relation to a work of authorship created in the course of employment, the employer has exclusive economic rights to exploit the work in relation to his business activity, for the period of five years following the completion of the work, unless a general enactment or employment agreement provides otherwise. The employee (the author) is entitled to special remuneration from the employer, in proportion to the effects of the commercial use of the work. As for a computer program or database developed in the course of employment, the permanent holder of all exclusive economic rights is the employer, unless an agreement provides otherwise. The author is entitled to special remuneration if it is stipulated by an agreement.

Under the Patent Act[12], the default rule is that employer has the right to patent protection with regard to the following groups of inventions: (1) those made in the course of the employee's performance of work tasks; (2) those made in accordance with employer's special act regulating research and development; and (3) those made during the employment agreement or during the period of one year after the termination of employment agreement, if such inventions are made (a) in connection with employer's activities, or (b) using material and technical facilities, information and other conditions provided by the employer, or (c) as a consequence of professional training provided by the employer. The employer and the employee may agree that the right belongs to the employee. The employee (i.e. inventor) is entitled to remuneration from the employer. The rules concerning patent apply *mutatis mutandis* to any industrial design created in the course of employment.

17. Discrimination and mobbing

Serbian regulations prohibit any type of discrimination, either direct or indirect, towards employees or persons seeking employment, based on their: gender, origin, language, race, colour, age, pregnancy, health condition or disability, national origin, religion, marital status, family responsibilities, sexual orientation, political or other opinion, social origin, property status, membership in political organizations, trade unions or any other personal characteristic. Discrimination is prohibited in relation to: the conditions for recruitment and selection of candidates; work conditions and employment-related rights; education, training and professional development; promotion at work; termination of employment.

Making a preference or exclusion in respect of a particular job based on some personal characteristic, shall not be considered discrimination only if that personal characteristic represents a real and decisive condition for performance of particular job, and if the purpose of such unequal treatment is reasonable (e.g. employing only persons without physical disability for the position of security officer). Harassment at work (mobbing) and sexual harassment are also strictly forbidden. In accordance with the Act on Prevention of Harassment at Work[13], the employer is responsible tofor organizing work and providing working conditions in such way that its employees are not exposed to harassment (mobbing) or sexual harassment. Also, the employer is obliged to serve on all its employees (as well as on other staff engaged out of employment) a written notification on prohibition of mobbing, which specifically includes information on: (i) which behaviours are regarded as mobbing and sexual harassment; (ii) that mobbing and sexual harassment is forbidden by law; (iii) that the employees may seek protection from mobbing and sexual harassment from the employer, as well as before a competent court; (iv) the contact person at the employer to whom the employees may report mobbing and sexual harassment; (v) other information in accordance with the law.

[12] *Official Gazette of the Republic of Serbia, Nos. 99/2011,113/2017, 95/2018 and 66/2019.*
[13] *Official Gazette of the Republic of Serbia, Nos. 36/2010.*
[14] *Official Gazette of the Republic of Serbia, No. 87/2018.*

18. Employment and personal data protection

18.1 Legal framework

Processing of personal data is governed by the Personal Data Protection Act[14] ("DP Act"), in application from August 2019. The DP Act for the most part copies the provisions of the EU General Data Protection Regulation ("GDPR"). Several other laws, including the Labour Act and the Employment Records Act[15] also contain provisions on the processing of employee personal data.

18.2 Core principles

Under the DP Act, when data controller (such as an employer) processes personal data of the data subjects (employees), the processing must be lawful, fair and transparent, performed for a specified, explicit, legitimate and lawful purpose, and limited to the data necessary to fulfil that purpose. Also, personal data must be accurate and, where necessary, kept up to date. The data must be kept in a form that permits identification of data subjects for no longer than it is necessary for the purposes of processing to be fulfilled. Processing must be performed in a manner that ensures the appropriate security of personal data.

The processing needs to be lawful in the sense that it is based on one of the legal bases specified under the DP Act. Legal bases relevant in the employment context include:

(a) complying with a legal obligation - when a law explicitly prescribes the processing of personal data (e.g. keeping records in accordance with the Employment Records Act), or such processing is necessary in order for the employer to satisfy legal obligation (e.g. processing the data on whether the employee meets special medical conditions set under the Occupational Health and Safety Act which are necessary in order to perform high-risk jobs);

(b) execution of employment agreement (e.g. processing the payroll data) or taking steps at the request of a job candidate prior to entering into an employment agreement (e.g. processing personal data from the job candidate's CV);

(c) the legitimate interest of:

i. the employer (e.g. video surveillance, monitoring electronic communications to the extent it is permitted); or

ii. a third party (e.g. providing the employer's parent company with data on the employees' work performance).

If the employee's rights override the employer's/third party's interests, processing is not allowed; and

(d) employee's consent – due to subordination inherent to the employment relationship, the employee's consent may rarely be considered to be freely given. Only exceptionally, when the employee can refuse to give consent without any adverse consequences, the consent can be used as a legal basis for personal data processing (e.g. processing personal data of the employee's children for the purpose of giving them New Year's presents).

The above applies accordingly to job candidates, as well.

18.3 Notice on the data processing

Pursuant to the transparency principle, the employer needs to notify employees/job candidates on the processing of their personal data.

If the employer collects the data from the employee/job candidate, the employer needs to notify the individual before the commencement of processing. It follows from the DP Act, the notice needs to contain, *inter alia*: the employer's identity and contact details; the purpose of data collection and subsequent processing; the identity or categories of data recipients; the legal basis for the processing; the employee's/job candidate's rights (to withdraw consent to the processing, to request access to and rectification or erasure of the data or restriction of the processing or to object to the processing, the right to data portability, and the right to lodge a complaint with the Serbian Commissioner for Information of Public Importance and Personal Data Protection ("Commissioner")); information that the employer intends to transfer the data to a third country or international organization (if applicable) and the legal basis for the transfer; and the period for which the data will be stored, or if that is not possible, the criteria used to determine that period.

If the employer collects an employee's / job candidate's personal data from a third party, the employer must inform the individual within a specified time and with the inclusion of elements largely resembling those when the employer collects data from the employee/job candidate.

18.4 Reporting data breaches

Employers are obliged to notify the Commissioner when a security breach can result in a risk to the rights and freedoms of employees. The notification has to be submitted without undue delay, and if feasible, not later than 72 hours after becoming aware of the breach. If the breach can result in a high risk to the rights and freedoms of employees, the data controller, as a rule, has to communicate the breach to the data subjects (employees). The duty to notify the Commissioner and to notify the employees' triggers when the breach 'can result' in the relevant risk. This departure from the GDPR's 'is likely to result' standard comes from poor translation of the relevant GDPR provision and probably will not have a bearing in practice.

[15] *Official Gazette of the Federal Republic of Yugoslavia No. 46/96 and Official Gazette of the Republic of Serbia, Nos. 101/2005 and 36/2009.*

18.5 Records of processing activities

Employers are required to establish and maintain records on the processing of employee personal data, which need to contain information on the categories of data, categories of data subjects, purpose of the processing, and data retention periods, among others.

18.6 Employee's rights

Employees have the right to be accurately and fully informed about the processing of their personal data, the right to access the data, the right to obtain a copy of the data, the right to have the data rectified or erased, and the right to restriction of the processing.

The employee also has the right to data portability (transmitting the data to another data controller) and to object to data processing, provided the legal basis for the processing is either the data controller's or a third party's legitimate interest or performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller.

18.7 Sharing personal data with third parties

Employers using third parties, such as recruitment agencies or payroll providers, to process employee data will be responsible for ensuring compliance with the requirements from the DP Act. The employer, as the data controller, and the thirty party must have an appropriate agreement in place.

The employer can make lawful cross-border transfers of employee personal data based on the grounds specified under the DP Act. If the transfer is to a country that ensures an adequate level of protection as determined by the European Union and formally confirmed by the Serbian Government, or the data exporter and importer enter into an agreement containing standard contractual clauses adopted by the Commissioner in January 2020, the transfer does not require special approval from the Commissioner. Transfer on the basis of the employee's explicit consent also does not require authorization. The Commissioner's clauses pertain to transfers from a data controller to a data processor, but not to another data controller.

Where none of the above grounds exists, the employer may transfer employee personal data abroad only on the basis of the Commissioner's transfer approval. Such approval is necessary if, for example, the importer and exporter have concluded an agreement that includes standard contractual clauses adopted by the European Commission.

19. Employment in practice

The Serbian authorities tend to be sympathetic towards employees. Therefore, each dismissal should be structured carefully in order to minimise this risk. On the other hand, visits by the labour inspectors are relatively infrequent and fines are rare and not hefty.

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1. General overview

The main piece of employment legislation is the Employment Relationships Act (the **"ZDR-1"**)[1]. Other mayor employment law acts are the following:

- Collective Agreements Act[2];
- Employment, Self-employment and Work of Aliens Act[3];
- Occupational Health and Safety Act[4];
- Minimum Wage Act[5];
- Worker Participation in Management Act[6];
- Vocational Rehabilitation and Employment of Disabled Persons Act[7];
- Labour Market Regulation Act[8];
- Transnational Provision of Services Act[9];
- Foreigners Act[10].

According to Article 9 of the ZDR-1, an employer and an employee are bound by the ZDR-1, other acts, ratified and published international agreements, other legislative regulations as well as collective agreements and internal acts adopted by the employer. In the internal acts of the employer, in employment contract and/or collective agreements an employer and an employee may only determine rights and obligations, which are more favourable for an employee than the regulation in the ZDR-1. The employment contract may not include any less favourable provisions for the employee than those determined in the collective agreements and/or internal acts adopted by the employer.

In Slovenia, currently, there is no generally applicable collective agreement for the commercial sector. There are, however, several branch collective agreements (e.g. Collective Agreement for Slovenia's trade sector, Collective Agreement for Slovenia's Metal Industry, Collective Agreement for Slovenia's Electrical Industry, etc.).

A company may have an individual collective agreement applicable within the company. Those companies which do not have the individual collective agreement usually regulate employment-related issues with internal acts adopted by the employer.

The employment relationship is entered into by conclusion of a written employment contract. However, the employment relationship exists irrespective of non-conclusion of a written employment contract, if the following conditions are met:

(a) an employee is voluntarily included in the working process;

(b) the employee receives payment for his work by the employer;

(c) the work is performed continuously;

(d) the employee performs work personally in accordance with the instructions and under the control of the employer.

The main feature of the Slovenian employment legislation is the protection of employees as weaker parties in employment contracts, especially with respect to termination of employment contract.

2. Hiring

2.1 General

According to the ZDR-1, the employer who intends to employ a new employee, must publicly announce a vacant working position and allow the candidates at least three working days for the submission of their applications. There are several exceptions to such obligation on the part of the employer, for instance, the employment of disabled persons, employment of a trainee for indefinite period of time or a part-time employee for full-time, etc. The employer must not publish a vacancy solely for women or men, unless such a requirement is not objectively necessary for the performance of work. Also, any other direct and indirect discrimination is prohibited. The employment contract must not be entered into with an employee who is less than 15 years old (such employment contract would be deemed void).

2.2 Disabled persons

According to the Vocational Rehabilitation and Employment of Disabled Persons Act, all employers with at least 20 employees, with the exception of foreign diplomatic and consular representations,

[1] *Zakon o delovnih razmerjih, Official Gazette of the Republic of Slovenia (hereinafter "RS"), No. 21/13 as amended.*
[2] *Zakon o kolektivnih pogodbah", the Official Gazette of the RS, No. 43/06 as amended.*
[3] *Zakon o zaposlovanju, samozaposlovanju in delu tujcev, Official Gazette of the RS, No. 47/15 as amended.*
[4] *Zakon o varnosti in zdravju pri delu, Official Gazette of the RS, No. 43/11.*
[5] *Zakon o minimalni placi, Official Gazette of the RS, No. 13/2010 as amended.*
[6] *Zakon o sodelovanju delavcev pri upravljanju, Official Gazette of the RS, No. 42/07 as amended.*
[7] *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov, Official Gazette of the RS, No. 16/07 as amended.*
[8] *Zakon o urejanju trga dela, Official Gazette of the RS, No. 80/10 as amended.*
[9] *Zakon o cezmejnem izvajanju storitev, Official Gazette of the RS, No. 10/17.*
[10] *Zakon o tujcih, Official Gazette of RS, No. 50/2011 as amended.*

social enterprises or employment centres, are obliged to employ a certain number of disabled persons, proportional to the total number of employees (**"quota"**). The quota may differ depending on the registered business activity of the employer, but it cannot be lower than two per cent and not higher than six per cent of the total number of employees. The employer who does not fulfill the quota requirement has to pay a contribution in the amount of 70 per cent of the minimum salary for each disabled person who would have to have been employed by the employer in order to fulfil the quota, into a special fund. Such contribution may be lowered by the employer having the business cooperation agreement concluded with a company employing only disabled employees or an employment center.

2.3 Foreign employees

Employment of foreign nationals is regulated by ZDR-1, by the Foreigners Act and the Employment, Self-employment and Work of Aliens Act. The legislation generally differs between (i) non-EU citizens and (ii) citizens of EU Member States, countries in the European Economic Area ("EEA") and Swiss citizens. According to the above legislation a non-EU citizen may only find work or employment in Slovenia if he has previously obtained a single residence and work permit ("single permit").

A single permit is issued by Slovenian administrative units, the Employment Service of Slovenia approving it beforehand. In certain exceptional cases, instead of the single permit, a work permit, a temporary residence permit or the confirmation of the registration with the Employment Service of Slovenia shall be obtained.

The single permit allows foreign nationals from third countries to enter Slovenia and find residence, employment and work in Slovenia.

The first single permit shall be issued to a foreigner for the duration of the employment contract, but not longer than one year.

Applicants (i.e. foreigner or the employer) have to submit their single permit application at an administrative unit or consular office of the Republic of Slovenia in their home country. The single permit procedure, managed by administrative units, requires the Employment Service of Slovenia's approval, which is granted - provided that the legal requirements for that particular approval are met. The procedure for issuing approval is launched ex officio based on an administrative unit's request.

The Employment Service of Slovenia issues the approval after it reviews compliance with the conditions determined in the Employment, Self-employment and Work of Aliens Act. During the review, the Employment Service of Slovenia verifies *inter alia* that there is no suitable unemployed person in their records, that the employer complies with the conditions determined in the law (duly registered, no bankruptcy, etc.), complies with tax requirements, and that the annual quota of approvals has not yet been reached, etc.

The Foreigners Act and the Employment, Self-employment and Work of Aliens Act further provide certain "special" categories of foreigners who may apply for the single permit for whom certain different conditions apply, such as foreigner who wants to be self-employed, highly qualified foreigners (their permit is called "EU Blue Card"), posted foreign employees and persons transferred within the company, seasonal employees, representatives of the companies, etc.

Notwithstanding the above, work permits, issued by Employment Service of Slovenia, continue to be necessary for:

(a) the employment of citizens from Bosnia and Herzegovina (pursuant to the Agreement on the Employment of Citizens of Bosnia and Herzegovina in Slovenia) and

(b) the employment of citizens from the Republic of Serbia (pursuant to the Agreement on the Employment of Serbian Citizens in Slovenia, which has been implemented since 1 September 2019).

Certain categories of foreign nationals have the right to free access to the Slovenian labour market. This means they are able to work, find employment and become self-employed without a single permit. This right applies to citizens of EU Member States, countries in the EEA and Swiss citizens.

Citizens of the United Kingdom who were not living and working in the Republic of Slovenia until the end of the year 2020 and will enter the Republic of Slovenia only after 1 January 2021 will be considered as non-EU citizens. For those living and working in the Republic of Slovenia before the end of the year 2020, certain special rules will apply, depending on the circumstances of the case. This applies also to posting abroad (Section 2.4 below).

2.4 Posting abroad

Posting employees abroad is regulated by the ZDR-1, the Foreigners Act, the Employment, Self-employment and Work of Aliens Act and the Transnational Provision of Services Act.

The legislation differentiates between (i) foreign employees posted to work in Slovenia or transferred within the company by foreign employers (non-EU Member States), (ii) citizens of EU Member States, countries in the EEA and Swiss citizens posted to work in Slovenia and (iii) Slovenian employees posted to work abroad.

(a) Employees posted to work in Slovenia by foreign employers

A single permit for posted employee may be granted to a foreign employee who is posted to work in the Republic of Slovenia for a limited period of time, by a foreign employer for the purpose of providing cross-border services or training in a company.

A foreign employer may post its employees to work in the Republic of Slovenia for:

(i) the provision of cross-border services on the basis of a contract for services concluded directly with a client from EU Member States, the EEA or the Swiss Confederation, or on the basis of

a contract for services concluded with a service provider who has concluded a contract with a client from a Member State of the EU, EEA or Swiss Confederation (cross-¬border services);

(ii) performing certain tasks in the host entity to which it is related (foreign employees transferred within the company); or

(iii) training in a company established in the Republic of Slovenia with which it is linked (foreign employees transferred within the group on training).

The foreign employer must ensure foreign employee rights according to the provisions of the Republic of Slovenia and according to the provisions of the applicable collective agreements, regulating working time, breaks and rests, night work, minimum annual leave, wage, safety and health at work, special protection of employees and equal treatment, if these are more favourable to the employee than the regulation in accordance with the foreign law.

(b) Citizens of EU Member States, countries in the EEA and Swiss citizens posted to work in Slovenia

The Transnational Provision of Services Act determines the conditions under which legal and natural persons registered in the Republic of Slovenia may temporarily provide services in another EU Member State as well as the conditions under which legal and physical persons registered in another EU Member State may temporarily provide services in the Republic of Slovenia. The employer from another EU Member State may temporarily post employees to perform cross-border services in the Republic of Slovenia if:

(i) it normally performs an activity in the country of employment;

(ii) the posted employee does not normally perform work in the Republic of Slovenia;

(iii) it does not violate the relevant provisions of labour law relating to the rights of the posted employee;

(iv) the service is provided in the context of activities for which the foreign employer is registered in the country of employment, except in the case of the posting of an employee into an associated company; and

(v) the service is carried out in one of the ways, specifically determined in the law.

The employer from another EU Member State shall obtain the A1 certificate for the posted employee from the competent authorities in its country (in Slovenia it is the Health Insurance Institute of Slovenia), which certifies that the social security regulations of the EU Member State where the employer is registered will continue to be applicable for the posted employee also during the temporary performance of cross-border services. Before starting the cross-border service, a foreign employer should register the cross-border services with the Employment Service of Slovenia and obtain its confirmation. A1 certificate shall be submitted within the registration.

During the period of posting, the employer has to keep a record of all documents relating to the posted employee for potential inspection proceedings.

(c) Slovenian citizens posted to work abroad

The Slovenian employer may temporarily post an employee to perform work abroad on the basis of an employment contract. Should the employment contract not foresee the possibility of work abroad, an employer and an employee would have to enter into a new employment contract, regulating the work abroad. The contract may be concluded for a period of completion of the project or for a period of completion of work, which the posted employee performs abroad.

The law enlists cases in which the employee may refuse the posting abroad. These include *inter alia* pregnancy, care of a child under the age of seven, health reasons as well as any other reasons provided by the employment contract and/ or the collective agreement, which directly binds the employer.

If an employee is temporarily posted to work abroad, the employment contract must include, in addition to the obligatory information, also the provisions on the duration of work abroad, breaks, rests and minimum annual leave. It also has to include conditions of return of the posted employee to Slovenia.

The procedure for posting employees abroad depends upon the fact whether the employee is posted within EU (in this case Transnational Provision of Services Act applies, the procedure is similar to the procedure of posting from EU to Slovenia) or the employee is posted outside EU. In any case, national provisions of each country where the employee is posted have to be taken into consideration as well.

3. Types of contracts

3.1 Employment

Traditional employment relationship is the most usual manner for engaging personnel in Slovenia. There are two types of employment relationships, depending on the duration. As a rule, the employment relationship is entered into for unlimited period of time. In exceptional circumstances the employment contract can be entered into for a limited period of time (fixed- term) for up to two years, such as seasonal work, work on a specific project or due to temporary increase of work, etc. In certain cases, specifically stated in the law, the fixed-term employment contract may be entered into for more than the two- year period (e.g. employee replacing an absent employee, employment contract of the general manager, etc.).

According to the general rule in the ZDR-1, in case of expiry of the fixed-term employment contract (save for some cases, specifically stated in the law), the employee shall be entitled to a severance payment.

3.2 Engagement outside employment

Personnel may also be engaged outside employment relationship on the basis of civil law agreements but only in exceptional cases (i.e. economically dependent persons). Thus, should a relationship entered into on the basis of such civil law contract meet the conditions determined as conditions of an employment relationship (mentioned under Section 1 above), such a relationship would be considered as an employment relationship, and would have to meet all the requirements of the ZDR-1, applicable collective agreements and other mandatory regulations, notwithstanding the fact that the employment contract was not entered into.

The employer may also hire temporary agency workers employed by agencies which provide workers to other employers. The ZDR-1 limits the maximum number of the agency workers with a particular employer. It further enlists cases in which the employer may not use the agency workers (such as replacement of employees who are on strike, collective dismissals in the past 12 months, etc.).

3.3 Engagement of managing directors

Persons serving as managing directors may be employed on the basis of an employment contract (permanently or for a limited period of time equal to the duration of the mandate), or they may be engaged on the basis of a management agreement (which is a civil law agreement).

3.4 Teleworking arrangement

The ZDR-1 defines and regulates the so-called "work at home". As work at home is considered to be work performed by an employee at his home or on premises of his choice that are outside the employer's work premises. Work at home is also considered to be work performed by an employee using information technology on distance.

The work at home shall be agreed upon in the employment contract (as the place of work is a mandatory provision of each employment contract). With the employment contract, the employer and the employee may agree that the employee will perform work at home for the entire duration or only part of the employee's working time. In the employment contract, the employee and the employer must also agree on the rights, obligations and conditions that depend on the nature of work at home and the amount of compensation that the employee is entitled to receive for the use of the work assets for performing work at home (such as computer, telephone, electricity etc.).

It is advised for the employee and the employer to agree also on the method of performing work at home, e.g. how the employer will control that the employee is really working, when the employee will be available to the employer, method of keeping records of the working hours of the employee working from home, possible data protection measures, etc.

According to the ZDR-1, an employee who works at home or premises of his choice has the same rights as an employee who works at the employer's premises, including the right to participate in management and trade union organization. The ZDR-1 however explicitly regulates certain exceptions. For example, during the work at home, the employee is not entitled to reimbursement of transportation costs but is entitled to the reimbursement for costs for meal(s) in line with the ZDR-1.

The employer is obliged to inform the Labour Inspectorate of the Republic of Slovenia about the intended organisation of work at home before the start of the employee's work. The latter is informed by an online form.

In addition to the above, the employer is also obliged to ensure and provide the employee with safe working conditions also when performing work at home. In accordance with the provisions of the Occupational Health and Safety Act and ZDR-1, the premises where work will be performed at home must be inspected by an expert in the field of occupational safety and health at the employer before an employment contract for work at home is concluded. The named expert determines whether the premises are suitable and confirms that the conditions for safe and healthy work are met in accordance with the regulations on safety and health at work. The ZDR-1 also foresees the possibility for the employer to unilaterally order the employee to perform work in another location temporarily due to exceptional circumstances (for example temporary work at home). It is important to point out that generally, in line with the ZDR-1, for a permanent change of the employee's location of work, consent of the employee and the employer is required, therefore a new employment contract must be concluded (annex shall not suffice). However, in such case, a simplified temporary ordering of performance of work in another location (at home) due to exceptional circumstances such as natural or other disasters, in cases where human life and health or the employer's assets are at risk, shall suffice and no new employment contract shall be concluded. Such change of the place of work shall last only for the time/duration when exceptional circumstances exist. A written notice/order where the employer orders temporary work from home shall be delivered to each employee and the Labour Inspectorate of the Republic of Slovenia shall be informed of the work at home.

4. Salary and other payments and benefits

4.1 Salary

The salary is composed of basic salary, part of the salary for employee's work performance and additional payments. A further constituent element of the salary is remuneration for business performance if so laid down in the collective agreement or employment contract. The daily break is part of the working time for which an employee is entitled to be paid as if he was working.

(a) Basic salary

Basic salary is a salary for performance of work, agreed upon in the employment agreement. In accordance with the Minimum Wage Act, the gross minimum salary, as of January 2021, is calculated in accordance with a new formula. The minimum wage for full-time work shall exceed the calculated minimum cost of living by 20 per cent but at the same time is also limited upwards and it may exceed the calculated minimum cost of living by a maximum of 40 per cent. The minimum wage shall be determined by the Minister of labour by the end of January of the current year.

(b) Salary for employee's work performance

Part of the salary for the employee's work performance is a mandatory element of the salary, which is paid to an employee if he performs work successfully. The employee's work performance has to be measured in accordance with previously determined measures, taking into account economy, quality and quantity of employee's work performance.

(c) Additional payments

Additional payments are mandatory elements of the salary which have to be paid to employees, who work in special working conditions, for instance for night work, overtime work, work on Sundays and holidays and on other free working days, adverse environmental or dangerous working conditions, determined in the ZDR-1 or in applicable collective agreements. Employees are also entitled to additional payments proportionally to their years of service.

(d) Other payments

Employees are also entitled to other payments, such as:

(i) compensation of costs for meals during working time, travel expenses (compensation for costs of commuting to and from work and other travel expenses), expenses necessary for work performance and for performance of working tasks on a business trip;

(ii) annual leave payment;

(iii) severance payment in the case of retirement;

(iv) severance payment in the case of termination of the employment contract due to business reasons or for reason of incapacity by an employer or in case of expiry of a fixed- term employment contract.

5. Salary tax and mandatory social contributors

Salary is subject to income tax and mandatory pension, disability, health, and unemployment insurance contributions (together, **"mandatory social security contributions"**).

5.1 Social security contributions

The mandatory social security contributions are paid by employers and employees in accordance with the following laws which regulate the social security contributions:

(a) Social Security Contributions Act[11];

(b) Pension and Disability Insurance Act[12];

(c) Health Care and Health Insurance Act[13];

(d) Parental Protection and Family Benefits Act[14];

(e) Labour Market Regulation Act[15].

The basis for calculations of mandatory social security contributions is the gross salary as determined in the employment contract (or a gross compensation of salary for the time of absence from work in accordance with the ZDR-1).

The levels of mandatory social security contributions are as follows:

(i) Paid by employees	
Pension and disability insurance contributions	15.50%
Health insurance contributions	6.36%
Parental care insurance contributions	0.10%
Unemployment insurance contributions	0.14%
Total	22.10%

(ii) Paid by employers	
Pension and disability insurance contributions	8.85%
Health insurance contributions	6.56%
Occupational illness or injury incurred at work insurance contributions	0.53%
Parental care insurance contributions	0.10%
Unemployment insurance contributions	0.06%
Total	16.10%

[11] *Zakon o prispevkih za socialno varnost, Official Gazette of the RS, No. 5/96 as amended.*
[12] *Zakon o pokojninskem in invalidskem zavarovanju, Official Gazette of the RS, No. 96/2012, as amended.*
[13] *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, Official Gazette of the RS, No. 72/06 as amended.*
[14] *Zakon o starsevskem varstvu in druzinskih prejemkih, Official Gazette of the RS, No. 26/14 as amended.*
[15] *Zakon o urejanju trga dela, Official Gazette of the RS, No. 80/10 as amended.*

5.2 Taxation

The incomes from work (including salaries, compensation of salaries, any other payment for work performance, annual leave payment) are subject to personal income tax in accordance with the Personal Income Tax Act - 2[16]. Some payments arising from the employment relationship, such as reimbursement of costs incurred in connection to the employment relationship (costs for meals during working time, for travel expenses, etc.), severance payment in the event of retirement, etc., are not subject to personal income tax up to an amount determined in a regulation issued by the government of the RS. The employer has the obligation to withhold the income tax at source monthly from the employee's salary.

6. Working hours

The ZDR-1 determines that full working time amounts to 40 hours per week. As a rule, the working week lasts five days, but the maximum of 40 hours per week may also be organised over a longer period, depending on the employer's business needs (e.g., a six-day working week). A 30-minute break is a statutory obligation and is included in the full-time working hours. In practical terms this means that in normal cases a working day consists of eight hours, i.e., seven and a half working hours, plus a 30-minute break. Work in excess of full working time is deemed overtime work and is subject to additional payment.

Certain categories of employees are specially protected and therefore, special regulations in the ZDR-1 apply to working time, night, and overtime work for such employees (i.e., older employees, parents, pregnant employees, and employees while breastfeeding a child, employees younger than 18 years old).

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual leave

Employees are entitled to annual leave for the minimum duration of four weeks. The total amount of minimum annual leave depends on the number of working days in a week, for instance in case an employee works five days a week, he is entitled to 20 days of annual leave at least. Collective agreements or internal acts adopted by the employer may determine more days of minimum annual leave. The employee is entitled to take annual leave in several parts, whereby one part should consist of at least two weeks. The employee must take two weeks of annual leave by the end of the current calendar year, and the remainder by 30 June of the following year. The employee shall have the right to use the entire annual leave not used in the current calendar year or by 30 June of the following year for reasons of his absence due to illness or injury, parental leave or childcare leave by 31 December of the following year. Otherwise, the unused annual leave expires after the above-mentioned deadlines.

7.2 Paid leave

According to the ZDR-1, employees are entitled to compensation of salary for time within which they do not perform work in the following cases: absence from work due to use of the annual leave, absence due to personal circumstances determined in collective agreements (for instance marriage, birth of a child, etc.), education, statutory holidays and other work free days and when the employees do not perform their work due to reasons on the part of the employer. Unless stipulated otherwise by the law or special regulation, employees are entitled to the salary compensation in the amount of the employee's average monthly salary during the past three months.

7.3 Sick leave

In the event of sick leave, employees are entitled to compensation of salary. In the cases of the employee's incapacity to work due to illness or injury, which is not related to work, the employer is obligated to pay compensation of the salary for the period up to 30 working days for individual absence from work but no more than for 120 working days in a calendar year. In cases of an employee's incapacity to work due to an occupational disease or injury incurred at work, the employer is obliged to pay compensation of the salary for the period up to 30 working days for each individual absence from work. In the event of absence from work exceeding the above-mentioned periods, the employer is obliged to pay compensation of the salary but is entitled to reimbursement from the Health Insurance Institute of the RS.

Within the above-mentioned periods, the employer is obliged to pay the compensation of the salary in the following amounts:

(a) 80 per cent of the employee's salary for full working time in the previous month in the event of absence from work due to an illness or injury not related to work;

(b) 100 per cent of employee's average salary for full working time calculated over the period of three months preceding the leave in the event of absence from work due to professional illness or injury.

7.4 Unpaid leave

According to the ZDR-1, employees who are educating themselves in their own interest (i.e. the education is not in the interest of the employer), are entitled to unpaid leave on the days when they are taking each exam for the first time. The individual or collective agreements may provide for longer periods of unpaid leave or other situations, in which the employer may grant to the employee unpaid leave. There is no other provision with regard to the unpaid leave in the Slovenian ZDR-1.

[16] *Zakon o dohodnini - 2, Official Gazette of the RS, No. 13/11 as amended.*

7.5 Employment standstill

According to the ZDR-1, employees who do not perform work due to reasons on the part of the employer are entitled to the compensation of the salary equivalent to the amount of the average monthly salary received by the employee within the last three months prior to the employment standstill.

A special kind of employment standstill is suspension of the employment contract. According to the ZDR-1, the employment contract is suspended when an employee temporarily stops working due to the reasons explicitly stated in the ZDR-1 (such as serving a prison for six months or less, training for performing tasks in the police reserve, etc.).

During the period of suspension, the employment contract does not cease to be valid, and the employer must not terminate it, unless in the cases determined by the law. Contractual and other rights and obligations arising from employment relationship, which are directly related to work, are suspended.

The employee is entitled and obliged to return to work within five days at the latest after the grounds for suspension of the contract cease to exist. On that day the suspension of the contract ends.

8. E.S.O.P.

The Slovenian legislation does not regulate Employee Stock Ownership Plan models. Similar profit-sharing plans are regulated by the Financial Participation Act[17]. In order to establish the participation of employees in the company's profit, the contract may be entered into between the management of the company, representing the company and the employees' representatives on the other side. Such a contract has to be registered with the Ministry of the Economy of the RS. The conclusion of the contract is voluntary. In the event that contract is entered into, it is equally valid for all the employees in the company. However, each employee may decide not to participate in the company's profit. The Financial Participation Act provides for the maximum amounts of the employee's participation which are subject to tax and social security contribution benefits for employers and employees.

8. Health and safety at work

The area of health and safety at work is regulated by the Occupational Health and Safety Act. All employers and employees are obliged to adhere to specific obligations introduced by this law. The main obligations of the employer are the following:

(a) the employer must adopt a safety statement in a written form, containing a description of the evaluated risk attached to each employment position and identification of measures for the removal of such risks and ensuring health and safety at work;

(b) appoint a professional to conduct measures to ensure safety at work and hire an authorised doctor to implement measures to ensure health at work;

(c) provide measures to ensure fire safety, first aid and evacuation in case of danger;

(d) inform employees about the implementation of new technologies, working equipment and about dangers for injuries related to them and issue instructions for safe work;

(e) provide the education and training of employees for safe work;

(f) provide employees with equipment for personal safety at work and their use if the working equipment does not ensure health and safety at work despite safety measures;

(g) provide periodic examinations of working environment and periodic examinations and tests of working equipment;

(h) ensure health checks for employees.

10. Amendment of the employment agreement

In accordance with the ZDR-1, a change of employment contract or conclusion of a new employment contract can be proposed by any contracting party. A new employment contract (and not merely an annex to the existing contract) has to be entered into if the following provisions are intended to be changed:

(a) working position of an employee;

(b) the place of performance of work;

(c) the time for which the employment contract is entered into;

(d) working time (full/shorter working time).

A contract shall be changed and/or a new contract shall be valid if the other party agrees (unilateral changes of the employment contract are not valid).

11. Termination of employment

The employment contract terminates in the following cases:

(a) upon expiration of the period for which it was concluded;

(b) upon the death of an employee or an employer-natural person;

[17] *Zakon o udelezbi delavcev pri dobicku, Official Gazette of the RS, No. 25/2008.*

(c) by conclusion of a mutual agreement between the employer and the employee;

(d) by ordinary or extraordinary termination of the employment contract by the employer or by the employee;

(e) by a court judgment;

(f) by law, in cases stipulated by the ZDR-1;

(g) in other cases, determined by law.

11.1 Termination by an employee

An employee may terminate an employment contract with a notice period and without specifying reason (ordinary termination of employment contract) or without a notice period and specifying termination reason (extraordinary termination of employment contract).

If an employee ordinary terminates the employment contract, the duration of the notice period depends on the employee's years of service with the employer (15 days up to one year employment, 30 days if more than one year employment). A longer notice period but not more than 60 days may be agreed in the employee's employment contract or collective agreement.

The extraordinary termination of the employment contract is only possible in cases when the reasons for termination are substantially serious and, therefore, the employment relationship cannot be continued until the expiration of notice period or until the expiration of the time for which an employment contract is entered into.

11.2 Termination by an employer

An employer may terminate an employment contract with a notice period (ordinary termination of employment contract) or without a notice period (extraordinary termination of employment contract). An employer may terminate the employment contract only due to reasons determined in the ZDR-1. The reasons for the termination of the employment contract must be justified, whereby due to occurrence of such reasons further continuation of the employment relationship is not possible.

Certain categories of employees are specially protected and, therefore, special regulation in the ZDR-1 applies to termination of employment contracts of such employees (i.e., older employees, parents, pregnant employees and employees while breastfeeding a child, disabled persons, employees absent from work due to illness or disease, worker's representatives).

(a) Ordinary termination

The ZDR-1 determines the following reasons for ordinary termination of an employment contract by an employer:

(i) business reason: cessation of the needs to carry out certain work under conditions pursuant to the employment contract, due to economic, organisational, technological, structural or similar reasons on the employer's side;

(ii) incapacity reason: an employee does not meet the anticipated working results, i.e. does not perform work in due time and/or his work lacks quality and/or is performed unprofessionally or the employee fails to fulfil the statutory requirements (determined by laws and other regulations issued on the basis of a law) for performance of work, and therefore fails to or is unable to perform his contractual and other obligations arising from his employment relationship;

(iii) fault reason: violation of the contractual obligation or any other obligation arising from the employment relationship;

(iv) disability reason: disability for work performance under the conditions set out in the employment contract due to occurrence of disability;

(v) unsuccessfully performed probationary work.

The reasons for the ordinary termination of the employment contract must be justified, whereby due to the occurrence of such reasons further continuation of the employment relationship is not possible under the condition from the employment contract. Notwithstanding the written, the employer may terminate the employee's employment contract without stating the justified reason and with a notice period of 60 days, if the employee meets the conditions for acquiring the right to an old-age pension / retirement in line with the legislation.

(b) Collective dismissals

The special procedure for termination of employment contracts shall be applied in cases of collective dismissal, i.e. when the employer establishes that due to business reasons within the period of 30 days, the work of a number of employees exceeding a certain number (please see below) as stipulated by the ZDR-1 shall be made redundant. The number varies depending on the size of the employer's enterprise:

Number of Employees Enterprise	Size of Employer's
10 or more employees	20 - 100 employees
10 per cent of employees or more	100 - 299 employees
30 or more employees	300 or more employees

The valid legal ground for collective redundancies is also the initiation of the procedure for the termination of the employer (bankruptcy, liquidation). The ZDR-1 contains also special rules regarding the collective dismissals applying in case of compulsory settlement.

(c) Extraordinary termination

The extraordinary termination of the employment contract is only possible in cases when the reasons for termination are substantially serious and, therefore, the employment relationship cannot be continued until the expiry of the notice period or until the expiration of the time for which an employment contract is entered into. Extraordinary termination is possible only in case one of the below listed reasons for termination exists:

(i) violation of contractual or any other obligations arising from the employment relationship, which has all characteristics of a criminal offence;

(ii) violation of the contractual or any other obligations arising from the employment relationship performed intentionally or by gross negligence;

(iii) an employee has submitted false information or proofs on job requirements as a candidate in a selection procedure;

(iv) an employee does not come to work for at least five continuous days and does not inform the employer of the reasons for his absence, although he should have done so and is able to do that;

(v) an employee is prohibited by an official decision to carry out certain tasks in the employment relationship or if he is the subject of an educational, safety or protection measure on the basis of which he cannot carry out work for longer than six months, or if due to serving a prison sentence he must be absent from work for longer than six months;

(vi) an employee refuses the transfer and the actual performance of work with the new employer (transferee);

(vii) an employee unjustifiably fails to return to work within five working days after the cessation of reasons for the suspension of the employment contract;

(viii) during the period of absence from work due to illness or injury, an employee fails to respect the instructions of the competent doctor and/or of the competent medical commission, or if he in this period carries out gainful work or leaves his residence without the approval of the competent doctor and/or by the competent medical commission.

11.3 Procedure for ordinary termination by employer

Once the employer establishes the existence of a termination reason, it may proceed with the termination of the employment contract. The termination procedure varies depending upon the termination reason. Certain termination reasons require additional steps that have to be followed by the employer in order to validly terminate the employment contract.

In case of termination of the employment contract due to incapacity or fault reason, the employer has to (before delivery of the termination letter) deliver to the employee a written invitation to a defence hearing, including well-grounded reasons for the intended termination of the employment contract and enable the employee to defend himself in a reasonable deadline (not shorter than three working days).

The Trade Union, works council and/or worker representative (if involved on the basis of the employee's request) has the right to provide its opinion on the foreseen termination of the employment contract and may also participate on the defence hearing.

If the employer still believes that the termination reason exists, it may in the next step deliver to the employee termination letter, which has to be in writing and has to contain a description of the termination reason as well as some other content determined in the law.

Depending upon the termination reason, the employer has to perform the termination procedure within the deadlines set in the law (30/60 days subjective deadline, six months objective deadline).

In case of business reason and incapacity, the employee is entitled to severance payment, the amount of which depends upon years of service of the employer and amount of salary.

The notice period depends upon the years of service as well as the termination reason.

It is worth mentioning that the law obliges the employer to provide education and/or training if education and/or training may prevent the termination of the employment contract due to the incapacity reason.

There are certain specifics related to a particular termination reason. For example, in case of a business reason, the employer is not bound to perform a defence hearing neither is bound by any deadlines in which the termination letter has to be delivered.

Furthermore, in case of the fault reason, the termination procedure may only be initiated after the employee was initially warned (in writing) about the breach and also warned that if the employee repeats the breach within the deadline set in the law of collective agreement, this may lead into termination of the employment contract.

(a) Specifics with respect to disability reason

In the event that an employee becomes disabled, the employer is obliged to check whether it is possible to employ the employee under changed conditions or in another employment position, and/or whether it is possible to train the employee for the work the employee carries out, or retrain the employee for another work, or offer the employee a new employment contract under the changed conditions.

In case that the employer reasonably cannot offer a new suitable employment contract to the disabled employee, the employer shall submit an application to the Commission authorised to establish a basis for termination of employment contract (the "Commission"), which issues an opinion on whether the employer is justifiably unable to offer a new employment contract to the disabled employee or not. The Commission's opinion represents the procedural precondition for a lawful termination of the employment contract with the disabled employee by the employer. This means that the employer may only terminate the employment contract with a disabled employee after it has obtained a prior opinion of the Commission.

(b) Extraordinary termination of the employment contract

The extraordinary termination applies only if one of the reasons specifically stated in the law exists (please see Section 11.2 above), which is so severe that continuation of the employment relationship until the expiry of the notice period is not possible.

In the termination procedure the employer has to invite in writing the employee to a defence hearing by explaining the reasons. Procedure for the defence hearing is the same as in case of ordinary termination due to fault or incapacity (please see above). Also, in this case the employee's representatives, based on the employee's request, may involve in the termination proceedings.

The written termination letter (with a well-grounded termination reason) must be issued within 30 days of the day of identifying the reasons for termination and within six months following the occurrence of the reason at the latest and delivered to the employee.

The employee is not entitled to a notice period or to the severance payment. The employment contract terminates on the day following the delivery of the written termination letter to the employee.

(c) Remedies in the event of wrongful dismissal

The employee may initiate litigation due to illegal dismissal within 30 days following the day of delivery of a written termination letter. The main remedy available to the employee is reinstatement. In the event that the court declares a dismissal illegal, the employee is also entitled to compensation of salary and other lost remuneration. The courts often show benevolence towards dismissed employees. Bearing that in mind, each case of termination should be conducted very carefully, in order to minimise the risk of negative outcome and dispute.

12. Non-compete

According to the ZDR-1, during the employment relationship, the employee may not at his own account or at the account of third persons carry out work or conclude business covered by the activity which is actually carried out by the employer and represents or might represent competition to the employer, without the employer's written consent. The employer may demand compensation for the damage caused as a result of the employee's actions within three months from the day of establishment of the performance of such work or conclusion of such business, and/or within three years after the work was completed or the business was concluded.

If the employee acquires technical, production or business knowledge and business links while carrying out the work or in relation to the work, the employee and the employer may agree in the employment contract on the prohibition of competition after the termination of the employment relationship (the competition clause). The competition clause may be agreed for a period not longer than two years after the termination of the employment contract and only in cases where the employment contract is terminated by employee's fault or guilt.

The competition clause must not exclude the possibility of appropriate employment for the employee. If the competition clause is not set out in writing, it shall be assumed not to be agreed upon.

If respecting the competition clause prevents the employee from gaining earnings comparable to his previous salary, the employer must pay him monthly compensation during the whole period of respecting the prohibition. The compensation has to be agreed upon in the employment contract and shall on a monthly basis amount to at least a third of the average employee's salary during the past three months prior to the termination of the employment contract. If the compensation is not set out in the employment contract, the competition clause shall be regarded as invalid.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level could be applicable in Slovenia, provided that such policies and procedures are fully in compliance with the Slovenian legislation and are adopted by the employer in Slovenia in the appropriate form.

According to the ZDR-1, rights and obligations of employees may be regulated in collective agreements, internal acts of the employer and/or employment agreements. The internal acts of the employer and employment agreements may only regulate rights and obligations of the employer in such manner that they are more favourable for employees than the regulation in the ZDR- 1 or in the collective agreements, which bind the employer.

According to the Public Use of the Slovenian Language Act[18], all general acts of the employers, including those which regulate the employment policies, as well as employment contracts, have to be in the Slovenian language. The provision on the basic salary of an employee has to be determined in the currency applicable in RS.

14. Employment and mergers and acquisitions

According to the ZDR-1, in cases of a legal transfer from an employment law perspective (and irrespective of the way of the

[18] *Zakon o javni rabi slovenscine, Official Gazette of the RS, No. 86/2004 as amended.*

legal transfer from the corporate law perspective), the employees should keep the same contractual and other rights and obligations arising from the employment relationship, which were valid on the day of the legal transfer from the current employer (i.e., the transferor) to the new employer (i.e. the transferee).

According to the ZDR-1, the employees directly or the Trade Union, if organised at the transferor, should be informed about the intended legal transfer (about the date and the reasons of the legal transfer, the legal, economic and social consequences of the transfer and the measures intended to be taken for the employees), at least 30 days prior to the date of the legal transfer and an effort to achieve the consent on the legal transfer should be made. Further, the transferor and the transferee, with the intention of achieving an agreement, must consult with the trade unions (if organised at the employer) at least 15 days prior to the transfer about the legal, economic and social implications of the transfer and about the envisaged measures for the employees.

In the event of a legal transfer of a company, the transferee shall not conclude new employment agreements with employees, who were employed with the transferor. The employment relationship with the transferee shall continue on the basis of the employment contracts, concluded between the employees and the transferor, valid on the day of the legal transfer.

Following the legal transfer, the transferee may not change the rights and obligations of an employee in a way, which would be less favourable for the employee. However, the transferee may offer to the employee more rights than determined in the employment agreement and in the collective agreements, which bound the transferor (such collective agreements bind the transferee for at least one year after the legal transfer). In such a case an appropriate annex or a new employment agreement, which would in any case have to be more favourable for the employee, would have to be concluded.

Additional consultation procedures may apply pursuant to the Worker Participation in Management Act, which provides for cases and conditions under which the employer has to inform, consult or reach an agreement with works council or worker's representative.

15. Industrial relations

There are two different types of workers' representatives in Slovenia:

(a) Trade unions represent employees in concluding collective agreements, protection of rights arising from the employment relationship and other issues related to the employment relationship, typical of which is a conflict of interests of employers and employees. The trade unions represent interests of their members. Trade unions are organised in different levels (i.e. state level, regional, branch and company level);

(b) Work councils are authorised to represent employees in their participation in management of the company in order to achieve better results at all fields of common interest to employees and employers. Work councils represent the interests of all the employees in the company. If within a company there are not enough employees, instead of a works council, a worker representative may be elected.

The employees may also execute their rights through the assembly of employees and/or through their representatives in the company bodies, if the conditions foreseen by the applicable legislation are met.

16. Employment and intelectual property

According to the Copyrights and Related Rights Act[19], the employer is the exclusive owner of the proprietary (economic) component of the copyright and related rights developed by the employee while performing regular work duties for a period of ten years following the creation of the copyright, unless otherwise provided for in the employment agreement. After the abovementioned ten-year period, the economic component of the copyright reverts to the employee. An exemption applies for software programs. The material copyrights and other author's rights are exclusively and without limit transferred to the employer. However, the employer may request that such rights are exclusively transferred back to it considering that the appropriate remuneration is paid to the employee. In both of the abovementioned cases, the employee remains the owner of the moral component of the copyright.

Employee inventions are regulated under the Employment-Related Industrial Property Rights Act[20] which distinguishes between job-related inventions and independent inventions. Job-related inventions are either direct inventions (i.e., an invention made in the course of implementing the employment contract, at the employer's explicit request) or indirect inventions (i.e., an invention made in the course of exercising an occupation if the invention is mainly the result of the experience gained by the employee at his workplace, or of the assets made available to him by the employer). The Employment-Related Industrial Property Rights Act regulates proceedings with respect to job-related inventions as well as the rights and obligations of employees and employers with respect to such inventions. As a rule, the employer may, under certain conditions, assert a (limited or unlimited) claim over the job-related invention provided that it pays certain compensation to the employee.

In the case of independent inventions, the employer may, under certain conditions, obtain a right to use such invention.

[19] *Zakon o avtorski in sorodnih pravicah, Official Gazette of the RS, No. 16/07 as amended.*
[20] *Zakon o pravicah industrijske lastnine iz delovnega razmerja, Official Gazette of the RS, No. 7/03, official consolidated text.*

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal characteristics is strictly forbidden by the ZDR-1, as well as any ill- treatment and sexual harassment (i.e., mobbing).

According to the ZDR-1, mobbing can be interpreted as any active or passive continuing act against an employee with the purpose or effect of harming personal dignity, respectability, personal or professional integrity, health or status of the affected employee and which causes fear or creates unfriendly, humiliating or insulting environment, deteriorates work conditions for the employee or causes that the employee isolates himself or terminates his employment. The indemnifying employee has the right to request compensation from the employer or employee engaged in mobbing.

The employer is obliged to provide such a working environment in which none of the employees is subject to employer's, superior's or co-employee's harassment of sexual or other nature, including undesired physical, verbal or nonverbal treatment or sexually-based behaviour, which creates intimidating, hostile or humiliating relationships and environment at work and offends the dignity of men and women at work. According to the ZDR-1, the employer is liable for failure to ensure such working environment as well as for its own acts of mobbing. If the employer violates such obligation, it may face a fine. The employer is also liable for damages incurred to an employee in accordance with the general civil law regulation.

If the employer fails to assure equal treatment to the employee and/or the above-described working environment and protection against any ill-treatment and sexual harassment (i.e., mobbing), the employee may extraordinarily terminate the employment contract (before doing so, the employee has to comply with certain procedural requirements). The employee is entitled to severance payment and to compensation equal to the employee's salary, to which he would be entitled to within the notice period in case of regular termination of employment contract.

18. Employment and personal data protection

The area of personal data protection in the employment relationship is regulated within the ZDR-1, in the Personal Data Protection Act[21] and in the Labour and Social Security Registers Act[22]. Slovenia is still in the process of adopting a new Personal Data Protection Act due to entry into force of the GDPR, however, the provisions of the GDPR became directly applicable in Slovenia.

The processing of personal data in the context of employment relationships is subject to the general legal basis for the processing of personal data as set out in Article 6 of the General Data Protection Regulation (the data subject has given consent to the processing of his or her personal data for one or more specific purposes; processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; processing is necessary for compliance with a legal obligation to which the controller is subject; processing is necessary in order to protect the vital interests of the data subject or of another natural person; processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child etc.)

The field of employment law and the personal data of employees is more in detail regulated in the ZDR-1. According to ZDR-1, the employer may process personal data of employees if specifically determined in the law or if processing is necessary for the performance of rights and obligations from the employment relationship. Further on, the Labour and Social Security Registers Act enlists personal data and determines records of personal data of employees which the employer is obliged to keep by the law. The employer must not process any personal data of its employees, which is not connected to the employment relationship unless it obtains the employee's consent. The rejection of the consent shall not anyhow impact the employment relationship nor the position of the employee. It is important that consent is given in line with the GDPR in order for it to be valid. For the purpose of processing sensitive personal data, explicit prior written consent from an employee has to be acquired by the employer. The employer must never process personal data about pregnancy, family planning, marital status of an employee or any other personal data which is not connected to the employment relationship.

All employers are obliged to protect the personal data of the employees in accordance with the Data Protection Act and the GDPR if this is more favourable. Employees whose data is processed have the right of access to the collected data and request information on a number of issues related to its processing, such as where the data is transferred, to whom it is transferred, the purpose of the transfer and the legal grounds for the transfer, etc.

As regards the retention period of personal data, the GDPR generally regulates the retention period of personal data uniformly for all types of personal data. It stipulates that personal data may be stored in a form that allows the identification of data subjects only for as long as is necessary for the purposes for which the personal data are processed. The ZDR-1 stipulates more in detail that that personal data of employees for the collection of which

[21] *Zakon o varstvu osebnih podatkov, Official Gazette of the RS, No. 86/04.*
[22] *Zakon o evidencah na podrocju dela in socialne varnosti, Official Gazette of the RS, No. 40/06.*

there is no longer a legal basis, must be immediately deleted and cease to be used, and the Labour and Social Security Registers Act additionally stipulates those records kept by employers shall be kept for an individual employee from the day when he concludes the employment contract until when his employment contract terminates. Documents with data on the employee for whom the said records cease to be kept and the original documents on the basis of which the data are entered in these records shall be kept as documents of permanent value. This means that even after the termination of employment, the employer necessarily has at its disposal certain databases of personal data on former employees, the so-called documents of permanent value. In addition, the employer may also process other personal data of the employee after the termination of the employment relationship, which is necessary in accordance with the ZDR-1 for the exercise of rights and obligations arising from the employment relationship or in connection with the employment relationship, as long as the parties to the employment relationship can exercise their rights. Once all obligations arising from the employment relationship have been settled, the purpose for which the employee's personal data was collected has been achieved, the employer must delete and stop using all employee data, except for the documents of permanent value and those for which the law foresees that they shall be kept permanently.

19. Employment in practice

COVID-19 epidemic impacted employment in practice. While the majority of the work before COVID-19 epidemic was performed in the business premises of employers, during the spring 2020 epidemic, the majority of work was performed as work from home. The same situation applies since October 2020. Consequently, there have been certain minor amendments in the law resulting in simplification of procedures, but there is still manoeuvre space to simplify the work from home.

The Slovenian judicial authorities tend to be sympathetic to employees and reinstatement of the employment relationship is a frequent outcome of labour disputes. Therefore, each termination of an employment contract by the employer has to be undertaken carefully and all procedural requirements have to be followed with due diligence. Labour inspectors mostly perform the supervision of the employment relationship on the basis of the proposal of the employees. However, they also perform periodical general ex officio supervisions. The violations of employees' rights, determined in the applicable legislation, are in many cases determined as minor offences. The Labour inspectors may issue a mere admonition and order the employer to eliminate the violations within a certain period. However, if the violation is more serious and if the employer is not willing to cooperate, the Labour inspector would impose a fine on the employer in accordance with the applicable legislation. Recently also a lot of labour and tax inspections have been performed in relation to the individuals performing work based on civil law contracts.

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TURKEY

1. General overview

Under Turkish law, the main piece of legislation governing labour relations is the Turkish Labour Law No. 4857 (the **"Labour Law"**). The relevant provisions of the Turkish Code of Obligations No. 6098 (the **"TCO"**) are also applicable to the labour relations, where the Labour Law does not have specific provisions on certain matters (e.g. non-compete) and as long as they do not contradict with the Labour Law to the detriment of the employee. The Labour Law applies to all workplaces (regardless of the business form), employers, employers' representatives and employees in Turkey, other than certain types of employees (e.g. small agricultural businesses, sea-men and certain press members).

2. Hiring

2.1 General

Under the Labour Law, the task of acting as an intermediary between the employees and employers is performed by the Turkish Employment Agency and authorised private recruitment agencies. Nevertheless, employers are free to employ employees through any source (e.g. through the advertisements in newspapers) and choose who they will employ.

2.2 Disabled persons

According to the Labour Law, if there are 50 or more than 50 employees employed in a workplace operating in a private sector, the private sector employer is required to employ disabled employees at a rate of three per cent of the total number of employees. If an employer has more than one workplace located within the same province, the total number of employees in such province shall be taken into consideration in terms of this calculation. When assessing the number of disabled persons employed, no differentiation is made between those employees working under a definite and an indefinite term employment agreement. The employer must recruit disabled employees through the Turkish Employment Agency; however, if the recruitment is conducted by the employer itself, it must notify Turkish Employment Agency within 15 days following the commencement of work.

2.3 Foreign employees

Employment of foreign personnel is regulated under the International Labour Force Law No. 6735. As a general principle, foreigners must obtain a work permit before starting to work in Turkey. However, bilateral or multilateral international agreements may provide an exception to this obligation.

Obtaining a work permit for foreign personnel in Turkey is subject to the permission of the Ministry of Family, Labour and Social Security (the **"Ministry"**). Work permit applications of foreign employees may be filed either with (i) the relevant Turkish embassy/consulate in the country where the applicant permanently resides or has a citizenship; or directly to (ii) the Ministry.

The Ministry prepares an international labour force policy, considering international labour force mobility, regional developments and Migration Committee decisions, developments related to employment and working life, sectoral and economic periodical changes, development plans and programs, bilateral economic, social and cultural relations with the country of foreigners' nationality, public order, public safety and public health. The Ministry receives opinions of the relevant institutions and organizations during preparation of the international labour force policy. Applications for work permit are evaluated in accordance with the mentioned international labour force policy.

There are four types of work permits under Turkish Law:

(a) **Temporary Work Permit:** A temporary work permit grants foreigners the right to reside and work in Turkey during its validity term, one year maximum provided that it does not exceed the term of the employment or service contract. This type of permit is issued for working in a specific workplace and its term may be extended for two years with the first extension application and three years with the following applications for the same workplace. Issuance of a temporary work permit for another workplace is not subject to extension provisions.

(b) **Permanent Work Permit:** A permanent work permit grants the foreigner the right to work in Turkey for an indefinite period and reside as if in possession of long-term residence permit. The foreigner must have either long-term residence permit or work permit for at least eight years to be qualified to apply for a permanent work permit.

(c) **Independent Work Permit:** Independent work permits are granted to the foreigners who intend to establish their own businesses. The Ministry examines the applications for independent work permits based on the applicant's level of education, professional experience, contribution to science and technology, and effect of relevant foreigners' activities and investments on employment and economy in Turkey. Independent work permit is also issued for a definite period of time.

(d) **Turquois Card:** Foreigners whose application is accepted as appropriate with regard to their educational level, professional experience, contribution to science and technology, and contribution to development of the Turkey's economy and employment may be granted Turquoise Card provided that its first three years will be considered as a transition period. In addition, applications will also be examined in line with the recommendations of the International Labour Force Policy Advisory Board and procedures and principles determined by the Ministry. A turquois card grants every right that a permanent work permit grants to the foreigner and also a right of residence of the foreigner's spouse and children.

2.4 Secondments

Under the Labour Law, it is possible to transfer an employee on temporary basis providing that such transfer takes place within the same holding structure or company group by obtaining the employee's written consent at the time of the transfer. Further, if the transfer will not be within the same holding structure or company group, such transfer can only be carried out through private recruitment agencies that are approved by the Turkish Employment Agency. A temporary employment relationship may only be set up for certain types of work and for a certain period of time. Temporary employment relationship cannot be established in the workplaces where a mass layoff has been carried out within the last eight months.

3. Types of contracts

3.1. Employment

An employment agreement is the agreement where one party (the employee) agrees to work dependently and the other party (the employer) undertakes to pay salary. Under the Labour Law, as a general rule, employment agreements are not subject to a specific form requirement in order to be deemed valid and binding. However, the following types of employment agreements must be executed in writing, in order to be valid and binding:

(a) a definite term employment agreement that will remain in effect for at least one year;

(b) an employment agreement with probation period (i.e. maximum for two months);

(c) an employment agreement prescribing a non-compete undertaking;

(d) an employment agreement signed with foreign individuals;

(e) an employment agreement based on work on call;

(f) a temporary employment agreement;

(g) an employment agreement for teleworking; and

(h) a team employment agreement.

In any case, if an employment agreement is not executed in a written form, within the first two months of the employment relationship, the employer must provide the employee with a written document indicating the general and specific working conditions, daily/weekly working hours, salary and side benefits (if any), payment term, term of the agreement (if the employment agreement will be effective for a definite term) and the provisions that the parties must comply with when terminating the agreement.

Under the Labour Law, employment agreements are mainly divided into two categories, namely "definite (fixed) term employment agreements" and "indefinite term employment agreements". Under the Labour Law, there is no legal restriction regarding the duration of an employment agreement. The general principle is to employ an employee through an indefinite term agreement. Definite term agreements are introduced as exceptional cases, if and when the nature of work requires based on objective criteria (e.g. seasonal works). The Labour Law does not allow the renewal of definite term employment agreements on a continuous basis, unless there is a material cause. Agreements that are extended continuously without any material cause will be deemed indefinite term agreements from the very beginning of the employment relationship (retrospectively). Other than the termination process, there is no major difference between the provisions of an employment agreement with a definite term and those of agreement with an indefinite term.

3.2 Engagement outside employment

It is possible to execute service agreements with independent service providers. In principle, this does not create an employment relationship.

3.3 Engagement of managing directors

In terms of the Labour Law, managers of a company who are employed and registered with the social security authority and added to the company's payroll also become employees. Members of the Board of Directors are subject to the TCO. However, in the event that a board member is also appointed as the general manager of a company, then he will also be subject to the Labour Law by virtue of his general manager role.

3.4 Teleworking arrangement

Teleworking is a written employment relationship through which the employee undertakes to perform its duties out of the workplace (e.g. at home) through technological communication devices within the scope of the employer's business organisation.

Employers are still bound up with their main obligations even while their employees continue to perform their works remotely. These obligations include without limitation, the equal treatment obligation, the obligation to provide equipment and opportunities to ensure the performance of the work and liability to protect the employees' health and safety.

As per the Labour Law, parties may agree on a teleworking order by signing a written employment contract that sets forth (i) job description, (ii) working method, (iii) duration and place of the work, (iv) salaries and payment conditions, (v) equipment provided by the employer and obligations concerning thereto, (vi) employer's communication with the employee, and (vii) general and specific work conditions.

4. Salary and other payments and benefits

4.1 Salary

Without discrimination, each employee has a right to demand remuneration for the work they conduct. The amount of salary varies depending on the position of the employee, the nature of the work and market standards. Nevertheless, the salary of an employee cannot be lower than the minimum salary amount (i.e. for 2021 monthly gross TRY 3,577.50, equivalent to approximately EUR 350), which is determined by the government and redefined every two years at most (in practice the amount is redefined on an annual basis).

4.2 Other mandatory payments not considered as salary

Under the Labour Law, there is no provision governing incentive schemes, such as bonus entitlements. In light of the court precedents, these payments may be considered as an established practice in a company, if such company pays these on regular basis and can be considered as part of the salary.

4.3 Other benefits

Side benefits such as private insurance, global/local bonus schemes, stock options, transportation and food allowance, etc. can be introduced under the employment agreements. With the amendments in the Private Pension Savings and Investments System Law No. 4632, it became compulsory for employers to include employees under 45 to the private pension plan. Under the system, if the employer employs more than five employees, it must execute a private pension plan agreement with one or more pension companies and must incorporate its employees, who are younger than the age of 45 in the relevant pension plan(s). The employer must deduct the contribution fee (i.e. three per cent of the gross salary of the employee) from the monthly salaries of their employees and deposit such fees to pension companies.

5. Salary tax and mandatory social contributions

The employer must inform the Social Security Institution ("SSI") about each employee that works in its workplace. Under the social security laws, each employee becomes insured from the first day of work.

The salary can be determined as gross or a net salary. In any event, deductions (i.e. taxes and social security premium) must be made from the gross salary and paid to the related authorities by the employers on employees' behalf.

6. Working hours

An employee's work hours in a week cannot exceed 45 hours. Working hours per day cannot exceed 11 hours (there are several occasions in which the working hour threshold is set as 7.5 hours, such as pregnancy, the first year of maternity and working during nighttime). 45 hours of work time can be distributed unevenly between the days of the week by mutual agreement of the parties (through employment agreements) to the extent that the maximum daily limit of working hours is not exceeded (i.e. 11 hours). Under the employment agreement, shorter working hours may be set.

The working hours exceeding these limits are considered overtime work and must be compensated by an overtime work payment by the employer. If the employees perform overtime work, the employer will be obliged to make an overtime payment per hour amounting to at least 1.5 times the salary amount per hour of the employee. If an employee's weekly working hours are specified as less than 45 hours (e.g. 40 hours) under the employment agreements or by way of workplace practices, the hours exceeding the employee's regular weekly working hours, which reach up to 45 hours (e.g. five hours), shall be regarded as "extended work hours". For extended work hours, the employer will be obliged to pay amounting to at least 1.25 times the hourly salary per hour. The upper limit for overtime work and extended work hours is 270 hours in a year. According to the Court of Appeals, an employee's overtime work entitlements can be included in his/her salary by way of agreement, on the condition that such employee is receiving a monthly fixed salary and his/her salary amount is above the market standards. In such an arrangement, only the overtime work reaching up to 270 hours in a year is covered in the salary.

According to the Court of Appeals' precedent, certain executives (e.g. general managers and CEOs), who can arrange their work schedules without any superior's instruction, are not entitled to receive overtime payment, as their salary is considered to include overtime payment. This is an exceptional practice which is applicable to a limited case where the relevant employee is not bound by any superior's (including the employer or managers/partners abroad) instructions.

Employee's consent is required for overtime work. Employers are required to obtain employees' written consent for overtime either during the execution of the employment contract or whenever it is necessary. Employees have the right to withdraw such consent for overtime by providing 30 days prior written notice to the employer.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

All employees are entitled to have a paid annual leave with the condition of completing minimum one year of service (including trial period, if any) in the workplace. The right of annual leave with pay cannot be waived.

Length of the annual leave changes in accordance with the length of service of the employee:

(a) 14 days for employees with between one year and five years' (including fifth year) service;

(b) 20 days for employees with between five and 15 years' service; and

(c) 26 days for employees who have 15 years' service or more.

These determined minimum annual leave periods can be extended by the employment agreements. Unused annual leave days must be paid to the employee upon termination if claimed within the five years' statute of limitations after the termination.

7.2 Sick leave

Under the Social Security and General Health Insurance Law, temporary disability allowance (sickness allowance) shall be paid for each day of temporary incapacity, as of the third day of the incapacity to work, to insured persons who have paid sickness insurance contributions for a certain time determined under this law. The temporary disability allowance paid by the SSI due to sickness can be deducted from the wage paid to the salaried employee remunerated on a monthly basis.

7.3 Maternity leave

As a general principle, maternity leave is 16 weeks in total; eight of which must be taken before and eight of which must be taken after child birth. In the event of a multiple pregnancy, a further two weeks will be added to the eight weeks period, before the child birth. If necessary, mentioned periods may be extended depending on the health of the employee, on condition that a medical report is provided. In case of adoption of a child under three years old, one of the adoptive parents will also be entitled to eight weeks of adoption leave. If the employee applies for a further leave after maternity leave, the employer is obliged to provide an unpaid leave up to six months, provided that this will not affect the employee's annual leave allowances.

If the mother passes away during delivery or after the birth, the father will be entitled to use the remainder of the maternity leave. After the childbirth, the employee will be entitled for an hour and a half for breastfeeding break (nursing leave) per day until the baby is one year old, which will be counted as paid working hours.

After the end of a maternity leave, if the child is alive, the mother will be entitled to work on a weekly half-time basis for 60 days after the birth of her first child, 120 days after the second birth, and 180 days following any additional births. These periods will be extended for 30 days if the mother gave birth to multiple children during a single delivery. If the child is disabled, this period will be 360 days. During this time period, the mother may not take nursing leave.

7.4 Unpaid leave

Employees may take unpaid leave based on mutual agreement of the employer and the employee unless an exception is stated under the Labour Law.

7.5 Employment standstill

Employees are entitled to take three days of paid leave in the event of (a) their marriage and (b) their adoption of a child and (c) the death of their mother, father, spouse, brother or sister, and child. Further, male employees whose spouse has given birth are entitled to five days' leave of absence with pay.

8. E.S.O.P.

Employee Stock Ownership Plan is not regulated under Turkish Law. However, it is a common practice for multinational companies to offer its employees ESOP as long as the plans are in compliance with the Turkish Commercial Code No. 6102, the TCO and Capital Markets Law No. 6362.

9. Health and safety at work

According to the Law on Occupational Health and Safety No. 6331, employers are obligated to fulfil certain requirements set forth under the Law, in order to devise a safe working environment and protect their employees from occupational diseases and work accidents.

One of the main requirements is hiring an occupational safety specialist, a workplace physician and medical staff or obtaining such services from a "common health and safety unit" that is authorised by the Ministry.

The Law on Occupational Health and Safety provides that administrative fines will be imposed on an employer who does not comply with these rules.

10. Amendment of the employment agreement

Under Turkish Law, any material change by the employer in the working conditions based on the employment agreement (e.g. change of workplace) may be made only after a written notice is served by the employer to the employee. If the employee does not accept the change within six working days in writing, the same change will not be binding for the employee. At this point, the employer may terminate the employment agreement by respecting the notice periods, provided that the employer indicates in a written form that the proposed change is based on a valid reason or there is another valid reason for termination. In this event, the employee may file re-employment lawsuit on grounds that the reason stipulated by the employer is not valid.

11. Termination of employment

11.1 Termination with just cause

Under the Labour Law, just causes that may lead to immediate termination (without waiting for the notice periods) of the employment agreement by the employer are classified under four categories: (i) health reasons; (ii) force majeure; (iii) immoral, dishonourable or malicious conduct (e.g. absence, harassment) or other similar behaviour of the employee; and (iv) imprisonment of the employee for a term longer than the applicable notice period.

Article 25 of the Labour Law lists a number of examples on immoral, dishonourable or malicious conduct of the employee, without being exhaustive. These are breach of confidence, providing inaccurate information during the execution of the employment agreement, sexual harassment, insulting the employer and his family members, disclosing trade secrets and other similar behaviours. Each allegation of a just cause under immoral, dishonourable or malicious conduct of the employee must be assessed on its own merits and circumstances, by taking into account the precedent of the Court of Appeals.

Under Article 26 of the Labour Law, the right to terminate the agreement on the ground of immoral, dishonourable or malicious conduct or similar behaviour must be exercised within six working days from the day on which the employer has discovered malicious conduct of the employee and, in any case, within one year following the occurrence of such conduct. However, the one-year period ceases to apply if the employee gains a material benefit. If the employer does not comply with the period set forth above, the termination would be unjust.

In the event of termination of the employment agreement with a just cause, the benefits and rights of the employee arising from the employment agreement (e.g, an amount equivalent to the accrued but unused annual paid leave days, and any payment arising from workplace practice) and Labour Law, as well as the severance pay[1] (unless terminated on the ground of immoral, dishonourable or malicious conduct or similar behaviour) will be paid.

11.2 Termination with notice period

In the absence of a just cause, an employer can terminate an employment agreement by serving prior notice on the employee in accordance with the notice periods. The Labour Law specifies minimum notice periods based on length of the employment relationship, as below:

Term of Employment	Statutory Notice Period
Less than 6 months	2 weeks
6 months - 18 months	4 weeks
18 months - 3 years	6 weeks
More than 3 years	8 weeks

If an employer wants to terminate the employment agreement without waiting for the end of the statutory notice period, it must make an advance payment that is equal to the sum of the employee's salary for the notice period.

Under the Labour Law, if an employee who has an indefinite term employment agreement is employed in a company with 30 or more employees, and has a minimum seniority of six months, then the labour security provisions of the Labour Law will apply, unless such employee qualifies as an employer's representative, and as a result the termination must be based on a valid reason. The Labour Law does not specifically prescribe what can be considered as a valid reason for termination. However, in practice, most common reasons for terminating the employment agreement with a valid reason are employee's poor performance, negative behaviour and operational requirements of the workplace.

In the event of termination of the employment by the employer, the employer shall pay to the employee (i) notice pay (in lieu of notice), (ii) severance pay, (iii) an amount equivalent to the accrued but unused annual paid leave days, (iv) other accrued benefits (if any) and (v) any payment arising from work place practice.

[1] *The first condition for an employee to become entitled to receive severance pay is to complete one year of service for the employer. As to the calculation of the severance pay, for each complete year of work, the employee must be paid an amount equal to his monthly salary. If, at the time of termination of the employment agreement, the last working year has not been completed, the severance pay for this period will be calculated on a pro rata basis. The Labour Law provides an upper limit for severance pay. Re-gardless of the amount of an employee's last month's salary, the upper limit of severance pay for each year of work is capped at TRY 8.284,51 for the second half of the year 2021. Accordingly, even if the employee's salary for his last month is higher than the mandatory upper limit, the employer is only obligated to pay the severance pay to be calculated as per the upper limit.*

The employee claiming his reemployment must apply to mediation first within one month starting from the termination notice. The parties will not have the right to reassert claims before courts, if these claims have already been settled by mediation. If all or some claims are not settled by mediation, the parties will have the right to initiate a lawsuit before the labour courts within two weeks following the date the last minute was recorded by the mediator. If the employees file a re-employment lawsuit and the court concludes that the termination is not valid, the court will favour the employee by rendering a decision ordering (i) re-employment of the employee within one month and (ii) payment of compensation for the employee's unemployed period, in an amount up to four months' salary. If the employer refrains from re-employing the employee within one month in the same (or similar) position, the employer will be obligated to pay compensation corresponding to four-eight months' salary to the employee as well.

11.3 Settlement of the parties

In addition to the foregoing termination methods, even though it is not defined or regulated under the Labour Law, in practice, the parties to an employment agreement can end their contractual relationship at any time by concluding a settlement agreement.

The Court of Appeals requires the employer to clearly inform the employee relating to the consequences of termination of the employment agreement (e.g. waiver of employee's rights arising from the Labour Law). Given that the employee waives its rights (e.g. severance pay, notice period compensation and etc.) arising from the Labour Law by executing the settlement agreement, the agreement has to provide the employee with better entitlements than that of the employee's receivables by way of ordinary termination. The Court of Appeals evaluates these better entitlements as the "employee's reasonable interest" in entering into the settlement agreement. The Court of Appeals analyses the presence of "reasonable interest" matter on a case-by-case basis and does not specifically define what it means. Nonetheless, according to the precedents of the Court of Appeals, in addition to the severance pay and the notice pay, if the employer provides additional benefits to the employee (e.g. the unemployment compensation), this may strengthen the justification of the "reasonable interest". It should be noted that the additional benefits do not have to be monetary benefits. For example, legal aid, support for finding a new job and extension of the period for the health insurance can also be considered as additional benefits.

12. Non-compete

Non-compete agreements in employment relationships are dealt with under the TCO. Accordingly, parties can agree on a non¬compete undertaking in an employment agreement, provided that (i) the employer's clientele and know-how is accessible to the employee, or (ii) the employment relationship allows the employee to obtain information regarding the employer's business and it is highly likely that the usage of this information will cause significant damages to the employer.

As a non-compete agreement limits an employee's freedom of employment and restricts his prospective income, there are certain limitations that a non-compete clause must comply with, in order to be valid and binding. According to the TCO, a non-compete undertaking (i) must be limited to a certain period of time (i.e. maximum of two years), (ii) must be effective within a specified territory, and (iii) must be in relation to a specific business field.

13. Global policies and procedures of employer

Under Turkish Law, there is no specific regulation regarding the global policies and procedures of employers. However, such policies and procedures may be deemed as internal regulations as long as they are applicable and in accordance with the provisions of the Turkish law.

14. Employment and mergers and acquisitions

When a workplace is wholly or partially transferred to a third party (i.e. business transfer), all employment agreements in such workplace shall be deemed transferred to the transferee, along with all rights and obligations. However, Article 178/1 of Turkish Commercial Code No. 6102 grants an objection right to the employees in the event of such transfer. In this regard, if an employee objects to the transfer, that employee will have the right to terminate the employment agreement at the end of the notice period.

15. Industrial relations

Lines of business in which labour unions may be established are determined under the Law on Unions and Collective Bargaining Agreements No. 6356 and the Regulation on the Lines of Business. In principle, the Ministry determines lines of business of a workplace. These lines of business are then published in the Official Gazette of Republic of Turkey. Employees may only establish or participate in labour unions that are related to their line of business[2]. There are 20 types of business lines (such as banking, finance, insurance, food industry, communication, health and social services, transportation, etc.) set out in the law and unions need to conduct their activities in one of these business lines in line with the main business activity conducted in the workplace.

Employees, who are at least 15 years of age, are entitled to participate in a labour union. Under the Union Law, neither employees nor employers can be members of more than one labour union in the same line of business at the same time. However, the law allows employees to become members in more than one labour union if the employee works for different employers. The application for membership will be deemed approved if it is not rejected by the relevant labour union within 30 days.

Under Turkish Law, a collective bargaining agreement is an agreement executed between (i) an employee's labour union and an employers' labour union, or (ii) an employee's labour union and an employer who is not a member of a union, to regulate matters with respect to execution, content and termination of the employment agreements. Employees do not have a right to conclude collective bargaining agreements by themselves. They need to be a member of a labour union in order to benefit from the provisions of the collective bargaining agreement. Every employee turning 15 years old has a right and freedom to be a member of a labour union and labour unions have a right to act on behalf of the employees and represent them. It is worth emphasising that labour unions are authorised to file a lawsuit and follow the proceedings in a lawsuit on behalf of the employees.

16. Employment and intellectual property

If an employee makes an invention while performing his duties arising from his employment relationship, his invention will be interpreted as a "service invention". Unless otherwise agreed, employers may assert right over the service inventions developed during the working hours by the employees. In this regard, employees are obligated to inform their employers of any service invention and employers may claim full ownership over such inventions within four months following the notification. Accordingly, any industrial property right on such inventions will belong to the employers in return for an appropriate consideration, as agreed between relevant employer and employee. Prior to the employers' such claim, any disposal on relevant service invention will be deemed invalid to the extent it violates the employers' rights.

Per the artistic works, the author of any artistic work, created by employees while performing their duties arising from the employment contract, will be the relevant employee. However, tangible rights (e.g. adaptation, reproduction, distribution, representation, communication to public through signs, voices and/or images) arising from the artistic work created by the employee while performing the work, will be exercised by employers, unless otherwise is agreed or nature of the work requires.

17. Discrimination and mobbing

According to the Labour Law, the employer is obliged to treat the employees who have similar positions/qualifications equally. Differences in treatment may be justifiable only in existence of a just cause such as severance, performance, academic background, specialisation of the employee, etc. Accordingly, the employer cannot make discrimination between the employees and can offer different payments and benefits only on the basis of a just cause. The Labour Law also prohibits discrimination in employment relations on the grounds of language, race, gender, political opinion, religion and sect, or similar reasons. If the employer fails to comply with its equal treatment obligation, the employee subject to discrimination may claim a compensation up to his/her four months' salary together with the entitlements which he/she has been deprived of.

Article 417 of TCO provides that an employer is obligated to (i) preserve the personal rights of its employees, (ii) maintain reliable and fair order within the workplace, (iii) preserve the employees from psychological and sexual harassment, and (iv) take any necessary precautions to preserve employees who have been subject to harassment (e.g. mobbing), from further damages. Article 417 further provides that, if an employee's personal rights are violated or his physical or mental integrity is harmed due to the employer's failure to fulfil the above-listed obligations, the employer will be obligated to compensate the employee's pecuniary and non-pecuniary damages.

18. Employment and personal data protection

Law on Protection of Personal Data No. 6698, which has been published in the Official Gazette of Republic of Turkey on 7 April 2016, governs the details of protection, processing and storage of personal data, and establishes a supervisory body (i.e. Personal Data Protection Board) to inspect the application of the relevant law. Accordingly, personal data should be processed: (i) in accordance with the law, (ii) in good faith, (iii) for definite, clear and legitimate purposes and (iv) in a relevant and measured manner. The processing should be carried out accurately and should be up to date. Personal data must also be stored only for the statutorily permissible period of time (as determined in the relative legislation), and for a proper purpose.

As per the Law, personal data cannot be processed without the explicit consent of the related individual in principle. Personal data may only be processed without explicit consent if:

(a) it is explicitly stipulated under applicable laws;

[2] *Even though the employees are free to affiliate with any union of their choice, in order for a union to gain legal presence in a workplace, the relevant union should be in the same line of business with the employer.*

(b) it is obligatory for an individual who cannot express his consent (due to impossibility), or for an individual whose consent is provided under duress in order to protect his or another person's life or bodily integrity;

(c) the processing of a party's personal data is required for execution or fulfilment of a legal action;

(d) it is obligatory for the data controller to fulfil his legal obligations;

(e) the data owner publicizes his personal data;

(f) the processing of personal data is obligatory for establishment, use or protection of a right; and

(g) it is obligatory for individuals or legal entities (i.e. employers) who establish and administer a personal data recording system to process personal data for legitimate interests, without harming the fundamental rights and freedoms of the related individuals.

According to the Law, data regarding an individual's race, ethnic origin, political or philosophical beliefs, religion, sect, other beliefs, clothing, membership in any association, foundation or union, health, sex life, criminal history, security measures and biometric and genetic data are classified as "special category personal data". In principle, processing this type of data without the relevant individual's explicit consent is prohibited. However, special categories of personal data other than health and sex life can be processed if it is stipulated in law. On the other hand, personal data relating to health and sexual life can only be processed by persons under the obligation of confidentiality or authorised institutions and organisations for the purpose of protecting public health, conducting preventive medicine, medical diagnosis, treatment and care services, planning and managing health services and financing.

Furthermore, personal data cannot be transmitted to foreign countries without the explicit consent of the relevant individual. However, if any of the exceptions stated above apply and adequate protection is provided in the foreign country, to which the data will be transferred, the data subject's explicit consent is not required. A list of the foreign countries which have an adequate level of data protection will be announced by the Personal Data Protection Board; however, such announcement has not been made yet. In the event that a foreign country does not have adequate protection, explicit consent will still not be required, provided that the data controllers in both Turkey and the relevant foreign country undertake in writing to provide such protection and obtain the Personal Data Protection Board's approval for such undertaking.

The Law also requires certain data controllers to determine the purposes and means of processing personal data, to be registered with the Data Controllers Registry (the **"Registry"**). The Registry is an obligatory registration system for certain data controllers to which they must submit information regarding their data processing activities. Application to the Registry and any operations regarding the Registry is carried out through a data processing system called Data Controller Registry Information System (VERBIS) that is accessible via the Internet.

19. Employment in practice

Given that Turkish courts tend to adopt a more employee friendly approach, it is highly possible for a court to accept employee's claims unless the employer proves otherwise in a written form. For this reason, employers are recommended to record all employment related paper work in a written form and follow the procedures stipulated under the Turkish labour legislation together with the precedents of the Court of Appeals. Court of Appeals' precedents are very important in the employment law matters since the practice of the law and regulations are structured based on these.

Authorities are very keen on the employers' compliance with the occupational health and safety rules. Employers' obligations in this respect vary based on the number of employees in the workplace and the classification of the workplace. Workplaces are regularly inspected with respect to their compliance with the relevant rules and regulations. Although the authorities are entitled to impose a sanction upon determination of a violence, the practice is to grant the employers with a certain period to remedy such violations and impose sanctions after the expiry of this period if the violations are not remedied.

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