

Legal News

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I. Constitutional Court resolves on suspension of the Law no. 99/2015 “On some amendments in the Law no. 9920, dated 19.05.2008 “On Tax Procedures in the Republic of Albania”

Following the discussions related to the approval and implementation of the Law no. 99/2015 “On some amendments in the Law no. 9920, dated 19.05.2008 “On Tax Procedures in the Republic of Albania” (“Law 99/2015”) summarized in the following links: ([Tax News of October](#) – the Law 99/2015; [Tax News of November](#) – On some amendments to Instruction no. 24, dated 02.09.2008 “On tax Procedures in the Republic of Albania”), the Association of Entrepreneurs and Market Protection filed a request with the Constitutional Court, claiming the declaration as unconstitutional of articles 5, 7, 11, 13, 14, 15, 16, 17, 18, 19, and 20 of the Law 99/2015 and the suspension of such law until final verdict.

On 23.12.2015 the Constitutional Court of the Republic of Albania through an intermediary decision decided the suspension of the Law 99/2015 until a final decision on the merits of the case. A special news edition on the final verdict of the Constitutional Court, will be circulated as soon as the decision is announced.

II. The Law on Amendment to the Labor Code

The Albanian Parliament approved on 05.12.2015 the Law no. 136/2015 “On some additions and amendments to Law no. 7961, dated 12.07.1995, “The Labor Code of the Republic of Albania”, as amended.

The law on the amendment to the Labor Code (hereinafter, the “Amending Law”), provides for several novelties. In particular, we would emphasize the following:



- The temporary employment of foreign employees shall be governed by the provision of the Labor Code. This provision is applicable to the cases when the foreign company:

- (i) transfers its employee(s), for a period not longer than 12 (twelve) months, to an Albanian company, in virtue of an agreement entered into between them, provided that during the transfer period there is an employment relationship, between the transferee and the foreign company, in place;

- (ii) transfers its employee at an Albanian controlled company, provided that during the transfer period there is an employment relationship, between the transferee and the foreign company, in place; and

- (iii) being a temporary work agency, hires a foreign employee for an Albanian company/Albanian branch of a foreign company, provided that during the transfer period there is an employment relationship, between the said agency and the employee, in place.

Additionally, the Amending Law provides that the abovementioned employment relationships shall be governed by the provisions of the Albanian legislation (i.e. except when the legislation of the country of origin contains more favorable conditions) regarding the maximum working time and the minimum time off/break; the minimum duration of the annual leave; level of the minimum salary; conditions on the temporary work agency; health, safety and hygiene at work; employment or work conditions for pregnant women or breastfeeding mothers, for underage employees; principle of equal treatment, including the provisions of the collective agreement.

The foregoing provisions are not applicable in case of specialized expats that are being transferred in Albania, for a period not exceeding 8 calendar days, regarding the erection or initial instalment services of equipment, if such services form integral part of the supply agreement and this is necessary for putting the equipment into operation.

- The Amending Law provides for a wider definition of discrimination and contains the “guidelines” on distinguishing the discriminatory and non-discriminatory situations related to employment and profession. In case of controversy brought before court, subject to relevant discrimination-based claims, as per the facts presented by the plaintiff in this regard, the Amending Law sets out that the defendant shall bear the burden of proof.

- In virtue of the novelties of the Amending Law, the employer should inform the part-time employees on

eventual vacancies and provide them equal chances/opportunities, as to other jobseekers, for being employed on full-time basis. The same obligation applies in case of full-time employees who might want to switch to part-time employment.

- Besides the homework, the Amending Law introduces also the concept of telework. The relevant provisions stipulate, inter alia, the obligation of the employer to provide to homeworkers and/or teleworkers work conditions that are not less favorable than those of other employees carrying your same or comparable work.

- The Amending Law introduces for the first time the concept of temporary work agency (the “Agency”), as provided for under the EU Temporary Agency Work Directive (2008/104/EC). The provisions on the Agency apply to employees being under employment contract with the Agency and who are assigned to a company/host employer to work temporarily under its supervision and direction. The Agency’s employees cannot perform the same job, for the same host employer, for longer than 2 (two) years. The Amending Law contains also the separate and/or mutual obligations of the Agency and of the host employer, the specific conditions regarding the mutual agreement to be entered into between them, as well as the basic working and employment conditions that should be guaranteed to the assigned employees.

- The employment contract must be entered into in writing and contain the mandatory elements (i.e. to which has been added the “probationary period” and the “types and procedures of disciplinary measures”). In justified cases, if the employee has not been employed through a written employment contract and/or the latter does not contain the mandatory elements thereof, the employer must comply therewith within 7 (seven) calendar days following the employment date.

Additionally, in case the employee will be assigned to work abroad, for a period longer than 1 (one) month, the employer should obtain the consent of the employee and provide the latter with a written document that contains at least the mandatory elements of the employment contract, as well as (i) the duration of the assignment abroad; (ii) the payment currency; (iii) if necessary, the benefits, in money or in kind, for the work carried out abroad; and (iv) if necessary, the conditions dealing with the employee’s comeback.

- With regard to the general obligation of the employer, the Amending Law, besides the employee’s personality, widens the range of protection also for employee’s rights, dignity, (physical and/or mental) health, professional future and sexual integrity (i.e. the Amending

Law improves the current definition of the sexual harassment) against employer's actions.

Moreover, a new separate article (i.e. 33/1) deals with the terms and procedures on exchange of information and performance of consultations between the employer and the employees (i.e. employees' representatives). Pursuant to these new provisions, the employer should, inter alia, inform the employees' representatives and consult them regularly, at least once a year, regarding the current and future activities of the company, the economic situation and the state of the employment relationships.

The employer might reject the request on holding consultancy meetings (i.e. if they would seriously damage the company and its operation) or providing the requested information (i.e. consisting of commercial, industrial or professional secrets). In such case the employees' representatives are entitled to appeal this decision before court within 6 (six) days.

- In case of application of disciplinary measures, the applicable procedure must guarantee the right of the employee to participate in hearings, protect its position and present the facts and proofs, within a reasonable term.
- The Amending Law adds to the current list of documents that the employer should present to the work inspector (if requested), as indicated under article 42 of the Labor Code, the "Document on risk evaluation for any work place, accompanied with the precautionary measures".
- In case the employee works more than 6 (six) hours per day without interruption, he/she is entitled to an unpaid break of at least 20 (twenty) minutes, to be granted after 3 (three) hours, but not later than 6 (six) hours of continuous work. An additional break of 20 (twenty) minutes should be granted to the employee working continuously 9 (nine) hours per day. For pregnant employees the break of at least 30 (thirty) minutes should be granted every 3 (three) hours.
- In the ambit of the precautionary measures to be taken by the employer regarding the protection against fire and/or explosions, the Amending Law provides a clear definition to the explosive environment that might trigger them.
- The duration of the work will include also the time of, inter alia, on-job-training/retraining ordered by the Employer.
- Concerning the work during the night, the Amending Law states that night working employees are those who work at least 3 (three) hours of their daily work,

as normal workflow, during the night, or that might carry out a certain part of their annual work duration during the night. The definition of the work shifts represents another novelty in this regard.

- The work carried out during the national holiday shall be compensated with an addition to the salary not less than 25% thereof and with a paid time-off equal to the duration of the work effectuated. While the compensation of the work carried out during the weekend shall not change.
- If the required by the situation, the employer might order the employee to carry out overtime, to the extent it is possible and necessary, as well as by taking into consideration the personal and familiar conditions of the employee.

The number of overtime hours that the employer might, unilaterally, order must not exceed 200 (two hundred) hours per year. Additionally, the employee cannot be required to effectuate overtime work, if the latter has worked 48 (forty eight) hours within a week.

In particular cases, but for not longer than up to 4 (four) months, the employee might effectuate overtime work beyond the said threshold (i.e. 48 (forty eight) hours per week), provided that the average weekly working time, during the entire period, should not be more than 48 (forty eight) hours. The effectuation of overtime by pregnant women and breastfeeding mothers (i.e. having a child not older than 1 (one) year of age) is prohibited.

- The Amending Law sets out clearly that in case the national holiday falls in the period of the paid annual leave, the latter will be postponed. Moreover, the annual leave will be postponed also in case of illness or accident of the employee (i.e. whether treated through hospitalization or at home) occurred during the annual leave period, as certified by a medical report.

Additionally, the right of the employee for paid annual leave, not granted by the employer, shall be prescribed within 3 (three) years following the date of entitlement thereto.

The annual leave cannot be compensated in money, except if paid as severance payment (i.e. not used accrued annual leave) in case of termination of the employment relationship.

- The registry held by the employer with the monthly records of salaries and the payment of social security and health contributions shall be subject to

inspections, by both, labor inspectors and/or authorized inspectors of tax authorities.

- The Amending Law adds the life-partners of the employee to the list of current persons (i.e. spouse, direct ancestors or descendants) for whose death the latter is entitled to 5 (five) days paid leave; while the family members and life-partners are added to the list of persons (i.e. direct ancestors or descendants) for whose illness (i.e. as certified by the relevant medical report) the employee is entitled to 30 (thirty) days unpaid leave.

Additionally, in case of childbirth the male employee (i.e. spouse/life-partner) is entitled to 3 (three) days paid leave. Another significant novelty of the Amending Law is the entitlement of the male employees to benefit parental leave in case of child adoption.

- The Amending Law prohibits the hiring of children younger than 16 (sixteen) years of age (i.e. children from between 15 and 16 years of age might be employed, during school holidays, to perform slight work, which, inter alia, does not harm their health or formation).

- The Amending Law increases the mandatory leave period, of female employee after childbirth, from 42 (forty-two) to 63 (sixty-three) days. Should the female employee decide to come back to work following the expiry of the 63 (sixty three) days mandatory leave, the employer, in accordance with the legislation on health and safety at work, shall be obliged to adapt the workplace to the benefit of such employee, or transfer the latter to a similar workplace, which is appropriate for her conditions. Additionally, the relevant employee may opt (i.e. up to the time when the child becomes 1 (one) year of age) for (i) a paid leave of 2 (two) hours, within the normal working time; or (ii) a reduced working time with 2 (two) hours, by obtaining the same salary as if having effectuated the normal daily working time.

Furthermore, during the pregnancy period the employee is entitled, in mutual agreement with the employer, to paid leaves for carrying out the relevant medical examinations, when these are necessary to be done during the working time.

The Amending Law impedes the employer to order the pregnant employees, or breastfeeding ones (i.e. until the relevant child becomes 1 (one) year of age) to carry out night work, if such engagement is harmful for their health, as per the relevant medical report. Additionally, several other provisions deal with the protection of this category of employees.

- With regard to equal remuneration between female and male employee, the Amending Law improves the existing provisions of the Labor Code dealing therewith, by providing, inter alia, a clear definition of the salary and the measurement thereof, in order to avoid the eventual discriminatory situations.

- The salary of the employee should be granted only through the bank system; while the amount of the salary to be granted in kind should not exceed 20% of the monthly salary.

Additionally, in case of insolvency of the employer, its obligations toward the employee prevail those due to creditors, even when the latter are guaranteed through movable and/or immovable property. The obligations toward the employee cover (i) all salary claims of, at least, the last 3 (three) months prior to the termination of the employment; (ii) the payment of the accrued annual leave; and (iii) the other severance payments pertaining to the employee due to the termination of the employment.

- Pursuant to the Amending Law, any employee (despite their gender), who has worked more than 1 (one) year without interruption for the same employer, is entitled to benefit an unpaid parental leave of at least 4 (four) months, until the 6th year of age of the child under custody.

In case of child adoption, this parental leave shall be granted within 6 (six) years from the adoption date, but not later than the 12th year of age of the adopted child. It might be granted in separate periods that, in any case, they must be not shorter than 1 (one) week per year. The duration of the parental leave shall be determined in mutual written agreement between the employer and the employee.

- The Amending Law attempts to provide a better definition to the transfer of undertaking. Additionally, the termination of the employment relationship by the employee related to the changes of substantial working conditions, to the detriment of the latter, due to the transfer of undertaking, shall be considered as termination of the employment without justified cause on the part of the employer.

- The Amending Law states more clearly the imperative that the employment contract should be entered into with indefinite duration, except when its conclusion with definite duration is justified by objective reasons, related to the temporary nature of the task for which the employee is being employed. To this effect, if the employer fails to comply with such provision (i.e. justify its decision to enter into employment contract with definite duration) it runs the risk of being subject to a penalty

amounting up to 30 (thirty) times the applicable minimum salary.

The termination notice, following the probationary period shall be:

- 2 (two) weeks, for the period up to 6 (six) months of employment;
- 1 (one) month, for the period over 6 (six) months up to 2 (two) years of employment;
- 2 (two) months, for the period over 2 (two) years up to 5 (five) years of employment; and
- 3 (three) months, for the period over 5 (five) years of employment.

Moreover, during the notice period, the employee shall benefit at least 20 (twenty) hours paid leave per week, in order to seek another job.

- The Amending Law obliges the employer to define the reasons on termination (i.e. such as the skills and/or behavior at work of the employee and/or operational requirements of the undertaking/employer) of the employment contract in the termination notice addressed to the dismissed employee.

- According to the Amending Law, the maximum threshold regarding the collective dismissals shall be 20 (twenty) employees for companies having more than 200 (two hundred) employees.

The periods of consultation and notification (i.e. as provided for under paragraph 3 and 4 of article 148 of the Labor Code) shall be 30 (thirty) days each.

- The termination procedure as indicated under article 144 of the Labor Code is explicitly included also with regard to termination of the employment contract with definite duration, prior to the relevant expiry date.

The Amending Law provides for the obligation of the employer to inform the employees, hired for definite duration, about the eventual vacancies and provide them equal chances/opportunities, as to other jobseekers, for being employed for indefinite duration. The employer should treat such employees equally as those employed for indefinite duration, with regard to employment conditions, training and career opportunities.

Additionally, consecutive stipulation (i.e. for not less than 3 (three) years) of employment contracts with definite duration, as provided for under article 151 of the Labor Code, will not be affected by short periods of interruption, in between them, which do not exceed 3 (three) months.

- The Amending Law sets out that the termination of the employment contract by the employer, if proved that the employee does not appear at work place defined under the employment contract, or the abandons it immediately, without reasonable cause, and without having notified in writing the employer within 7 (seven) calendar days in relation thereto, will be deemed as unjustified termination of the employment relationship on the part of the employee.

- With regard to collective employment agreement the Amending Law provides, inter alia, for the right of the trade unions to be provided within 1 (one) week with the relevant information related to the all negotiation matters on stipulation of/amendment to such agreement.

The employer should consult the employee's representative regarding the details and organization forms of the plans on night work, prior to the approval thereof. Such consulting should be held regularly in the companies where night work is being effectuated.

- The Amending Law pays adequate attention to the protection of the trade union's representative, by stating, inter alia, that such protection shall be effective at least up to 1 (one) year following the termination of the office term and, also, provides for a strict procedure on termination of the employment with such representative.

- Other novelties relate, inter alia, to the terms and procedures of mediation and/or arbitration of the collective employment conflicts, procedures and lawfulness of the solidarity action and general strike, as well as the establishment, in any county, of the Regional Trilateral Consultative Council (i.e. composed of the representatives of the employers' organizations, representatives of trade unions and representatives of the relevant local government). This Council shall examine the matters of common interest for the employers' organizations and trade unions, in order to achieve acceptable solutions on regional level.

The Amending Law shall enter into force 6 (six) months after its publication with the Official Gazette (i.e. publication date 22.12.2015, Official Gazette no. 220).

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