

## Effects of COVID-19 on Legal Relations in Georgia

28 April, 2020



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# Contents

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# 1. Labour relations during the COVID-19 pandemic

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The parties to labour relations are the employer and the employee. The relations between them are regulated by a labour agreement that can be valid for a definite (up to six months probationary period, less than one year or more than one year) or an indefinite term. The expiry of the term can be the grounds for the termination of a definite-term labour agreement.

The Labour Code of Georgia (“LCG”) set outs the grounds for suspending and terminating a labour agreement. Although the financial difficulties faced by some companies in the present situation might justify the termination of certain labour relations, it is necessary to pursue the conditions stipulated by law, which include criteria for the lawful suspension or termination of labour agreements. It is noteworthy that the LCG does not recognize “superior force” or force majeure as grounds to suspend or terminate labour relations directly.

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# 1. Labour relations during the COVID-19 pandemic (continued)

## 1.1. Can an employer force an employee to take unpaid vacation?

Vacation is an employee's right to not come and not work and perform their work duties as set out in the employment agreement for a definite period each year. Pursuant to the LCG, an employee shall be given paid vacation for at least 24 working days, and unpaid vacation for at least 15 calendar days. Taking vacation is an employee's right and can only be done with his/her confirmation.

Reports surfaced that some employers were sending their employees on unpaid leave after the announcement of specific recommendations in Georgia and certain restrictions in activities in response to the COVID-19 outbreak. According to the LCG, the use of vacation (leave) is an employee's right, and an employer cannot decide when the employee will use this right or whether it will be used at all, without the employee's consent. Vacation can be carried over the next year if an employee consents to this, and it is necessary for the course of work. Hence, an employer is not entitled to demand that an employee takes unpaid vacation. Suspension of labour relations based on these grounds can be deemed as forced idle time by the court, and the employer may be obligated to either reimburse the employee for missed payments for the whole period or pay one-off compensation.



# 1. Labour relations during the COVID-19 pandemic (continued)

## 1.2. What is temporary disability?

Temporary disability is a condition caused by the health of the employee when he/she is unable to fulfill labour obligations due to one of the following grounds:

- loss of capacity to work caused by illness or mutilation;
- care for a sick family member;
- quarantine;
- use of prosthesis.

Temporary disability shall not exceed 40 consecutive calendar days or a total of 60 calendar days in any six month period. The employee may be paid for the temporary disability if he/she presents the sick leave certificate to the employer. In this case, the employer shall finalize the payment within ten working days after receiving the sick leave certificate. Notably, the employer is not obliged to issue this payment if the certificate is presented three months after the start of the temporary disability.



## 1. Labour relations during the COVID-19 pandemic (continued)

### 1.3. Should employees be compensated for temporary disability caused by COVID-19 measures?

The Georgian government has introduced new regulations since March 2020 that have imposed prohibitions or restrictions on certain commercial activities. In order for an employee to request compensation for the period of quarantine (self-isolation), the employee must submit the sick leave or an equivalent certificate. For example, if an employee has taken a business trip or vacation outside Georgia, and has been placed under quarantine for two weeks, he/she must notify the employer of this and present an equivalent sick leave certificate in order to receive compensation.

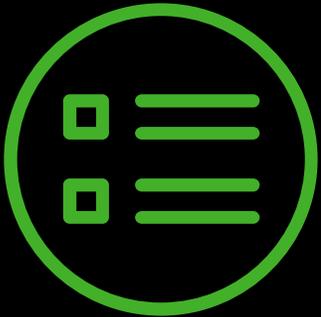
An employer is entitled to terminate the labour agreement if the temporary disability exceeds 40 consecutive calendar days or 60 calendar days in any six month period.



# 1. Labour relations during the COVID-19 pandemic (continued)

## 1.4. Can an employee refuse to come into work due to COVID-19-related health concerns?

Employers are obliged to provide employees with a safe and healthy work environment. According to the recommendations published by the Georgian government, an employer should not request that their employees come into work unless completely necessary and if the work cannot be performed remotely. In case of disputes, each such case will be evaluated individually. For example, in cases provided for by legal acts related to the state of emergency, if an employee working at a professional services company can provide services remotely (such as drafting agreements, preparation of tax documentation and submitting them to tax authorities, etc.), the employer should not ask the employee to come into the office. However, if an employee refuses to fulfill the job duties or go into the office without sufficient grounds, this could constitute legal grounds for the termination of labour relations by the employer.



## 1. Labour relations during the COVID-19 pandemic (continued)

### **1.5. What are the grounds for terminating labour relation per the LCG, and can an employee be dismissed based on COVID-19-related circumstances?**

Article 37 of the LCG defines an exhaustive list of grounds for terminating a labour agreement. Although an employee is authorized to terminate labour relations by their own initiative without reason through notifying the employer 30 days in advance, termination by the employer must always be grounded, and such decisions must be taken as a necessary and extreme measure.

One of the grounds for terminating labour relations is economic circumstances, technological or organizational changes requiring downsizing. In practice, labour relations can be terminated on these grounds during the reorganization of an enterprise, a change in economic policy, or other similar events. In view of the legal challenges or financial difficulties caused by the COVID-19 outbreak, there should be sufficient grounds for the employer to terminate labour agreements. In such a case, it is essential to safeguard equal treatment obligations and, if the workforce needs to be downsized for financial reasons, a solid argumentation must be presented, proving why a particular employee was dismissed while labour relations with a person working in a similar position is being continued.



# 1. Labour relations during the COVID-19 pandemic (continued)

## 1.5. What are the grounds for terminating labour relation per the LCG, and can an employee be dismissed based on COVID-19-related circumstances? (continued)

For instance, if the management of a grocery store decides to dismiss one of its sales clerks to downsize its workforce, the burden of proof to explain why the labour agreement was terminated with this particular clerk while it was kept in force with another clerk.

According to the LCG, labour relations can be terminated due to other objective circumstances justifying the termination of a labour agreement. As the application of the clause mentioned above will be evaluated on a case-by-case basis, an employer is entitled to justify the termination of a labour agreement by referring to this clause.

It is worth noting that in both of the events described above (economic circumstances, technological or organizational changes, or other objective circumstance), the employer is obliged to:

- either notify an employee about this at least 30 calendar days in advance and provide severance pay amounting one month of salary in addition to the salary of the last working month; or
- notify an employee about this at least three calendar days in advance and provide severance pay amounting two months of salary;

## 1. Labour relations during the COVID-19 pandemic (continued)

### 1.5. What are the grounds for terminating labour relation per the LCG, and can an employee be dismissed based on COVID-19-related circumstances? (continued)

In the case of a dispute, if the grounds described above are unfounded or if procedures are not followed, the termination of labour relations may be deemed unlawful by the court and the employer may be forced to restore the employee on his/her position and compensate missed payments for the whole period or pay a one-off compensation.

The best outcomes when suspending or terminating labour relations can be reached with the mutual agreement of both parties. An employer and an employee are authorized to agree upon any conditions grounded on the existing circumstances, which will avoid any possible dispute between them. It is important to note that a reduction of the employee's salary is an alteration of an essential term of the agreement and requires the mutual agreement of both parties. Thus, if an employer reduces an employee's salary without mutual agreement, this will be interpreted as a termination of the existing labour agreement. In case of a dispute, clauses regulating the termination of a labour agreement will apply.



## 2. How does the COVID-19 affect general contractual relations?

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The declaration of a state of emergency on 21 March 2020 and issuance of respective legal acts have prohibited (or, in some cases restricted) the performance of various economic activities for the duration of the state of emergency. This may make it difficult for companies and individuals to fulfill certain contractual obligations.

According to Article 361.2 of the Civil Code of Georgia (“CCG”), an obligation must be performed duly, in good faith, and at the time and place determined. Breaches in execution or improper performance by an obligor may be a cause for the termination of an agreement. Additionally, the infringing party may be obliged to pay the penalty, reimburse actual damages, and/or lost income.

The law provides different definitions for the hardship of fulfillment and inability of performance due to force majeure circumstances.

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## 2. How does the COVID-19 affect general contractual relations? (continued)

### 2.1. What does hardship of fulfillment mean?

The hardship of fulfillment of an obligation means that altered circumstances puts the performance of obligations under extremely difficult conditions, but does not preclude their performance. In such an event, objective, as well as subjective grounds, shall be considered. In the case of the hardship of fulfillment, the CCG proposes that parties adapt the contract to the altered circumstances in accordance with Article 398. This article stipulates that if the circumstances that were the grounds for the conclusion of a contract have evidently changed after conclusion of the contract, and the parties, had they taken the changes into account, would not have executed the contract or would have executed it with different contents, then it may be demanded that the contract be adapted to the changed circumstances. Therefore, changed circumstances, e.g., the prohibition or restriction of economic activities, significant rise in the price of products or other circumstances, caused by no fault of the obligor, can lead to the alteration of an agreement, or a breach of obligations without a just cause and termination based on this ground.



## 2. How does the COVID-19 affect general contractual relations? (continued)

### 2.1. What does hardship of fulfillment mean? (continued)

Article 398 of the CCG can be applied for the hardship of fulfillment if the following conditions exist: 1. the changed circumstances must significantly complicate the fulfillment of obligations; 2. The circumstances must have changed clearly after the agreement was made; 3. it must have been impossible to reasonably foresee a change of circumstances when the agreement was made (the changed circumstances must be beyond the control of the affected party); 4. the risk concerning the change of circumstances must not be imposed on the affected party by the agreement; 5. the hardship of fulfillment of the agreement must be evidently caused by the changed circumstances, i.e., a causal relationship must exist. For instance, a sales agreement obliged a seller to deliver a certain product. Due to price increases by a foreign supplier, it is now uneconomical for the seller to sell the product at the agreed price. In such a case, the parties can either agree on a new price or terminate the agreement.



## 2. How does the COVID-19 affect general contractual relations? (continued)

### 2.2. What does the inability of performance mean?

The inability of performance means a situation when, due to objective or subjective reasons, the obligor is unable to fulfill his/her obligations. This regulation, set out in Article 401 of the CCG, excludes the responsibility of the obligor and, to some extent, serves as a legal declaration of a force majeure situation with the term "inability of performance". According to the interpretation of the Supreme Court of Georgia, "during the inability of performance, it is fully impossible to fulfill an obligation, i.e., in such case there are subjective or objective circumstances, preventing the possibility of fulfillment of obligations".

The following elements must exist for the inability of performance: 1. an unforeseen circumstance, not known to the parties when the agreement was concluded; 2. the circumstance (obstacle) must be unavoidable superior force; 3. the circumstance must make the fulfillment of the obligation impossible. If failing to fulfill an obligation is due to a force majeure, the party can be released from liability and the damages incurred, which, on the other hand, does not necessarily happen in the case of the hardship of fulfillment. For example, if the parties stipulated in a lease agreement that the lessee would use the facility to trade toys but the Georgian government prohibited this economic activity for the duration of the state of emergency, the lessee can notify the lessor about the prohibition of its economic activities to be released from the liability for the duration of the state of emergency or to be able to reduce the lease fee for the same period.



## 2. How does the COVID-19 affect general contractual relations? (continued)

### 2.2. What does the inability of performance mean? (continued)

It is important to remember that in cases of the hardship of fulfillment or inability of performance, the obligor must prove the existence of the respective circumstances and a causal relationship with the breach of obligations with corresponding evidence.

Sometimes, parties stipulate specific provisions concerning force majeure in contractual relationships. Such provisions can be found in the standard terms of agreements of commercial banks and insurance companies, for example. Provisions relating force majeure and a proper description of procedures in such events would significantly simplify the ability to prove certain circumstances, in accordance with the agreed criteria, as well as serving as a settled communication process between the parties.

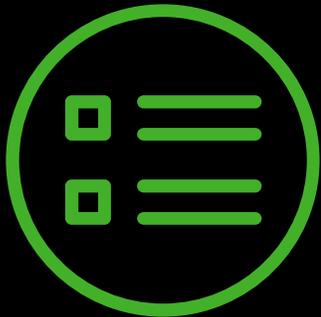


## 2. How does the COVID-19 affect general contractual relations? (continued)

### 2.3. How does force majeure affect the period of limitation?

In civil law, the right to demand that another person performs certain actions shall be subject to a period of limitation. A period of limitation is the term determined by law during which the initiation of a request can be valid. The obligor is entitled to refuse to fulfill the action after the period of limitation has expired. The general period of limitation for contractual obligations is three years commencing from the moment at which the claim arises; however, there are various periods of limitation that are determined for specific legal relationships.

The CCG allows for the period of limitation to be suspended. The time during which the period of limitation is suspended is included when calculating the period of limitation. According to the law, the period of limitation must be suspended if a claim cannot be filed due to an extraordinary and unavoidable force majeure. The period of limitation towards an obligor can be suspended in the case of objective circumstances based on legal restrictions/prohibitions due to the COVID-19. For example, a loan agreement was commenced between two persons on 15 March 2017 under which the term for paying the loan and interest was 15 April 2017. The creditor had been outside of Georgia until 5 April 2020, and he/she was placed under quarantine upon returning for two weeks. In such a case, the period of limitation can be suspended from 5 April 2020 for two weeks, and a lawsuit can be filed to satisfy the claim within ten days of the creditor being released from quarantine.



### 3. How does the current situation affect litigation, enforcement, and notarial actions?

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According to civil procedure law, the procedural terms are split into two groups: terms determined by the law and those determined by the court. The terms defined by law, which in relation to litigation are mainly envisaged by the Civil Procedure Code, are not subject to restoration. For example, if the Tbilisi City Court issued a resolution on a dispute on 15 March 2020, the parties are entitled to appeal the decision within 14 calendar days, which cannot be restored, and if this term expires, the decision becomes final. In reference to the terms determined by the court against a party, it can be restored in the event of objective or subjective grounds that prevent the party from conducting certain procedural actions within the defined period. For example, the court ordered a party to present the financial documentation within 30 days on 15 March 2020. On 10 April 2020, due to the discovery of coronavirus infection at the party's facility, the enterprise has been put under quarantine, and entry has been prohibited. In this case, the party is authorized to notify the court in writing and ask it to postpone the submission deadline for the evidences.

With respect to the operation of the National Bureau of Enforcement, given the current situation, enforcement actions will be conducted without original documents, through a remote submission. Current regulations permit all enforcement actions with the exception of attachment of movable property located in the living quarters, withdrawing/takeout of attached things, proceedings started for statement of facts, eviction (moving out) of debtors.

Restrictions were placed on all notary bureaus on 31 March 2020. Notarial services are being conducted with the rule of rotation, between Monday-Friday (except holidays), from 08:00 to 14:00 hours, in temporary notary bureaus, which are located at the following addresses: 1 Vazha-Pshavela Avenue, Tbilisi; 2 Sanapiro Street, Tbilisi; 2 Uznadze Street, Tbilisi; 70 Javakhishvili Street, Batumi; 20 Irakli Abashidze Street Kutaisi; 2 Theatris Street, Zugdidi.

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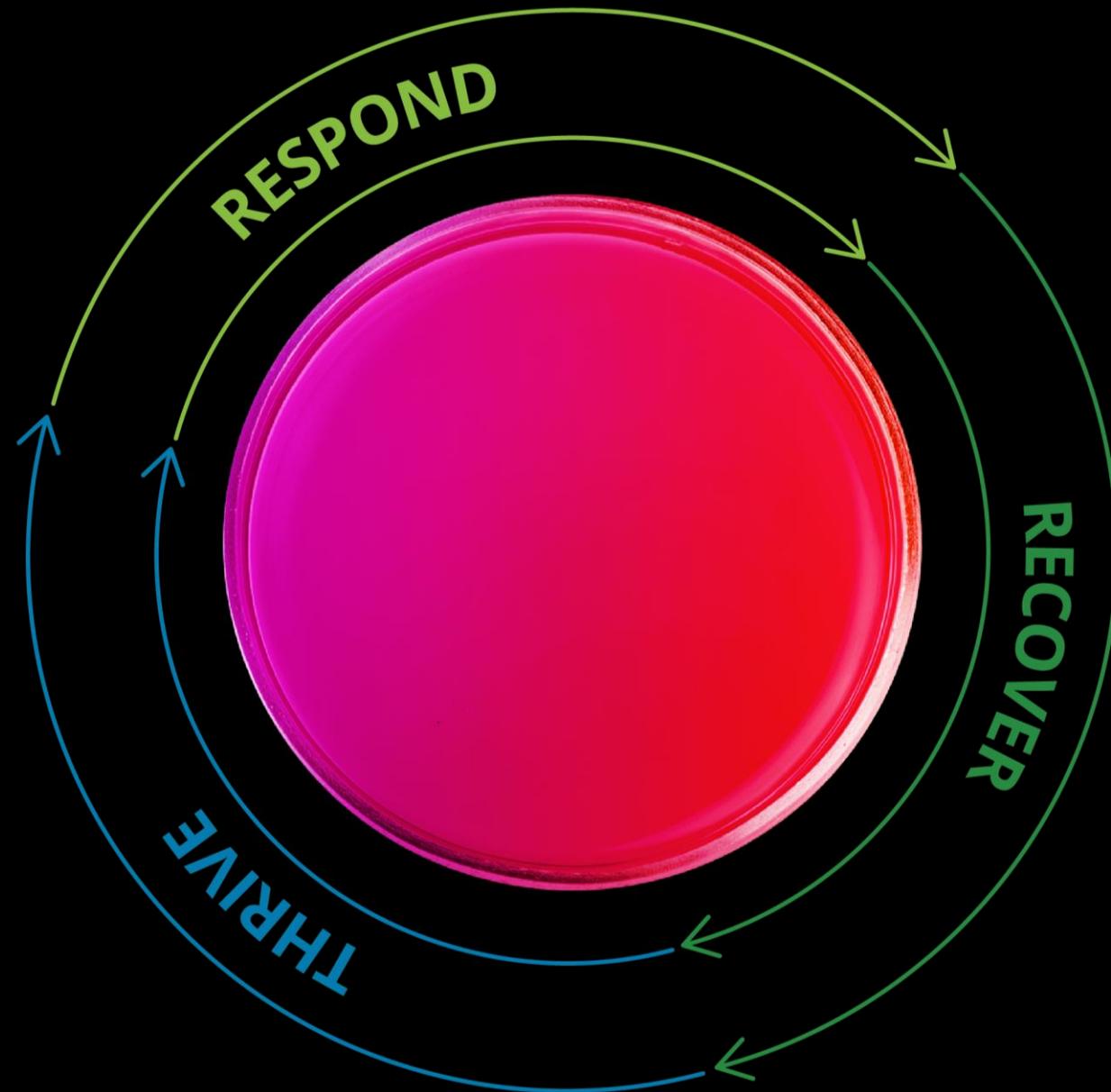
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