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Kosovo

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main law governing the employment area in Kosovo is the Law no. 03-L-212 "On Labour" (hereinafter the "Labour Law"), which was published on 1 December 2010 in the Official Gazette no. 90 and entered into force on 15 December 2010.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Pursuant to the Labour Law in Kosovo the following categories of employees shall enjoy special protection: women; persons under the age of eighteen (18); and persons with disabilities. However, all employees are entitled to have the protection of their rights in compliance with the Labour Law.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

According to the Labour Law, an employment contract has to be concluded in written form.

1.4 Are any terms implied into contracts of employment?

The Labour Law determines the following minimum terms that should be implied into the employment contracts:

- data on the employer (designation, residence and business register number);
- data on the employee (name, surname, qualification and dwelling);
- designation, nature and the form of labour and/or services as well as the job description;
- the place of work or a statement that work is performed at various locations;
- working hours and working schedule;
- the date of commencement of work;
- the duration of the employment contract;
- the basic salary and any other allowance or income;
- the vacations period;
- termination of employment relationship; and
- other data that the employer and employee deem important for the regulation of the employment relationship.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Besides the minimum terms that employers have to take into consideration when drafting an employment contract (please refer to question 1.4 above), there are additional terms and conditions that are set down by the Labour Law, such as; the probation period cannot last more than six (6) months, the practical work of an intern with high qualifications (university and/or post-graduate diploma) should not last more than one (1) year, the working week includes forty (40) working hours, overtime shall not exceed eight (8) working hours per week, the employee is entitled to at least four (4) weeks of annual leave within a calendar year, it is forbidden to conclude an employment contract with a person under the age of fifteen (15), etc.

The Labour Law obliges the employer to report the employee at the Kosovo Tax Administration (the "KTA") and the Kosovo Trust Agency (the institution that administrates the obligatory pension schemes).

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

The Labour Law recognises the term of collective agreement, which is an agreement between employers' and employees' organisations regulating the rights, duties and responsibilities deriving from employment relationships on the basis of the agreement reached. The collective agreement may be entered into at state level, branch level or enterprise level. The collective agreement can not include provisions that limit the rights of the employees or that are less favourable than those provided under the Labour Law.

Usually the bargaining takes place at company level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

The Labour Law stipulates that freedom of association and action without undue interference from any other organisation or public body is guaranteed for both employees and employers.

The rights and freedoms of trade union organisations in Kosovo is regulated by the Law no. 04/L-011 "For Organising Trade Unions in Kosovo" (hereinafter the "Trade Union Law").

The Trade Union Law sets the criteria based on which is defined the right of trade union's representation: (i) registration of trade union with the competent authority within the Ministry of Labour and Social Welfare; and (ii) number of registered members with membership cards and payment slips.

2.2 What rights do trade unions have?

Pursuant to the Trade Union Law, a trade union has the right to enjoy all the rights of a legal person in accordance with the legal provisions: to acquire the right of representation in respect of collective contracts and agreements with employers within the authority of social dialogue; the right to manage its resources for the protection of the rights of employers; as well as the right to identify the wealth and property.

2.3 Are there any rules governing a trade union's right to take industrial action?

The Trade Union Law determines the right to strike as an elementary right of the employees and trade unions which is guaranteed by the Law no. 03/L-200 "On Strikes", as amended (hereinafter the "Strikes Law").

According to the Strikes Law, in order to be considered legal, the strike should be organised by a trade union that has the role of a legal person and is registered in the Ministry of Labour and Social Welfare.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Employers are not required to set up works councils.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Following the answer given to question 2.4 above, such circumstances are not determined.

2.6 How do the rights of trade unions and works councils interact?

The law is silent with respect to the interaction between these two bodies.

2.7 Are employees entitled to representation at board level?

The law is silent in this regard. However; this may be regulated between the parties.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The Labour Law provides protection from any discrimination including exclusion or preference made on the basis of race, colour, sex, religion, age, family status, political opinion, national extraction or social origin, language or trade union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation capacity building.

3.2 What types of discrimination are unlawful and in what circumstances?

When a specific job could be performed by a person with disabilities, the direct or indirect discrimination of such persons during employment, promotion and capacity building process, is prohibited.

Moreover, in case of hiring new employees, the employer is obliged to create equal opportunities and criteria to both male and female applicants, without any gender discrimination.

3.3 Are there any defences to a discrimination claim?

Discrimination claims are regulated by the Anti-Discrimination Law (Law no. 2004/3).

Any claim of discrimination under the above-mentioned law shall be decided or adjudicated in accordance with the applicable law by administrative bodies and courts of competent jurisdiction, which have jurisdiction over the concrete issue covered by the claim.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may enforce their discrimination rights by initiating claims before the competent bodies of the company or institution where they work. Based on the Labour Law, the employer has to decide on the claim within fifteen days (15) days from the day when the request was submitted.

In cases where the employee is not satisfied with the employer's decision, he/she can file a claim before the competent court within thirty (30) days.

3.5 What remedies are available to employees in successful discrimination claims?

According to the Anti-Discrimination Law, compensation exists for both pecuniary and non-pecuniary damages suffered by victims of violations. Such compensation may include restitution of all rights and other remedies, provided within the applicable law which the competent body deems appropriate.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

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.

4 Maternity and Family Leave Rigts

4.1 How long does maternity leave last?

Female employees are entitled to twelve (12) months of maternity leave to be taken upon a medical certificate forty-five (45) days

before giving birth or, if consented by the woman, twenty-eight (28) days before the expected childbirth. The first six (6) months of maternity leave are compensated with seventy per cent (70%) of the salary payable by the employer, the consecutive three (3) months are compensated with fifty per cent (50%) of the salary payable by the Government of Kosovo and the last three (3) months are not subject to monetary compensation.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Besides the right on the paid annual leave that we have described under question 4.1 above, a female employee does not have any other financial benefits.

4.3 What rights does a woman have upon her return to work from maternity leave?

A female employee during pregnancy, maternity leave or with a child up to three (3) years of age cannot be reassigned to other posts without her consent.

In case a born child necessarily requires special care due to poor health conditions or a child with permanent disabilities, one of the parents will be able to work part-time, after the expiry of the maternity leave, until the child becomes two (2) years old.

Moreover, pregnant and breastfeeding women shall be prohibited from labour that is classified as harmful for the health of the mother or the child (e.g., work during night shifts).

4.4 Do fathers have the right to take paternity leave?

Paternity leave consists of two (2) days' paid leave at the birth or upon adoption of the child and two (2) weeks' unpaid leave after the birth or upon adoption of the child, at any time before the child reaches the age of three (3).

Notwithstanding the above, the Labour Law foresees that in case of sickness, abandoning of the child and/or death of the mother, all maternity rights may be exercised by the father.

4.5 Are there any other parental leave rights that employers have to observe?

Except the cases when one of the parents is entitled to work part-time when a born child requires special care (please refer to the answer given to question 4.3 above), the Labour Law also foresees the case when a female employee gives birth to a dead infant or if the child dies before the expiry of maternity leave.

In such case, the woman is entitled to maternity leave at the doctor's recommendation, until the recovery from birth and the psychical condition caused with the loss of the infant for no less than forty-five (45) days, during which period she shall be entitled to all entitlements under the maternity leave.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Parents are entitled to a part-time job in the cases described under question 4.3 above. However, the dispositions of the Labour Law do not foresee any other flexibility for employees if they have responsibility for caring for dependants.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

The Labour Law stipulates that in case of a business sale employees do transfer to the new employer (i.e., the buyer).

The new employer shall take over all obligations and responsibilities of the employment relationship that are applicable on the day of the business sale, in compliance with the collective and employment agreement.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

As described under question 5.1 above, all obligations and responsibilities of the employment relationship shall be transferred to the new employer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The previous employer (i.e., the seller) is obliged to inform all employees of the transfer of obligations and responsibilities to the next employer (i.e., the buyer). Such information must be given in written form.

The seller has an additional obligation to inform properly and entirely the buyer of the rights and obligations that will be transferred from the collective and employment agreement.

5.4 Can employees be dismissed in connection with a business sale?

The employee may be dismissed, if he/she refuses the transfer of the employment contract or does not declare within five (5) days from the day the announcement is given by the previous employer (i.e., the seller).

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

The new employer is obliged to take over all obligations and responsibilities deriving from the employment relationship that was subject to the business transfer. However, the Labour Law does not stipulate any restriction as it concerns any change of the terms and conditions as long as those changes are in compliance with the Labour Law provisions.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

According to the Labour Law the notice of termination of the employment has to be given to employees. The notice period is determined by the terms of the employment contract (i.e., indefinite period or fixed-term).

In case of the indefinite term the notice period shall be as follows: (i) from six (6) months to two (2) years of employment, the notice

given should be thirty (30) calendar days; (ii) from two (2) to ten (10) years of employment: forty-five (45) calendar days; and (iii) over ten (10) years of employment: sixty (60) calendar days.

Meanwhile, the employer who does not intend to renew a fixed-term contract must inform the employee at least thirty (30) days before the expiry of the contract.

6.2 Can 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?

The employer may deny the employee access to the premises of the enterprises during the period of notification, namely prior to terminating the employment contract.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

As foreseen by the Labour Law, employees enjoy protection of their rights including their right against dismissal. Besides the court, there is another public institution that provides support for employees on exercising their rights. An employee may submit an appeal to the Labour Inspectorate at any time for issues falling under the competencies of this institution. Moreover, employment disputes may also be resolved through mediation.

Consent from a third party is not required before dismissal.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

There are categories that enjoy special protection against dismissal. Pursuant to the Labour Law, during pregnancy, maternity leave and absence from work due to special care for the child, the employer shall not terminate the contract, except in cases of collective dismissals as described under question 6.9 below.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

An employer may terminate the employment contract of an employee, when: (i) such termination is justified for economic, technical or organisational reasons; (ii) the employee is no longer able to perform the job; (iii) it is impracticable for the employer to transfer the employee to another place; (iv) the employee is guilty of repeating misconduct or breach of obligations; and (v) the employee's performance remains dissatisfactory in spite of the written warning.

As concerns business-related reasons, the employer is entitled to collective dismissals when a business transfer is taking place.

The employer is obliged to execute the salary and other allowances up to the day of termination of the employment relationship. In case of collective dismissal, the employer is obliged to provide the severance payment to the employees with indefinite period employment contracts at the following scale: from two (2) to four (4) years of service, one (1) month's salary; from five (5) to nine (9) years of service, two (2) months' salary; from ten (10) to nineteen (19) years of service, three (3) months' salary; from twenty (20) to twenty-nine (29) years of service, six (6) months' salary; and from thirty (30) years of service or more, seven (7) months' salary.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

An employer is obliged by the Labour Law to follow certain procedures when it comes to individual dismissals. Some of the procedures as stipulated by the law are described below:

(i) An employer shall notify the employee about his/her dismissal immediately after the event which leads to this decision or as soon as the employer has become aware of it.

(ii) The employer has to issue a written notification to the employee, explaining the unsatisfactory performance and giving him/her a specified period of time within which they must improve their performance.

(iii) The employer must give a statement stipulating that the failure to improve the performance shall result in dismissal from work without any other written notice.

(iv) The employer should hold a meeting with the employee to explain termination of an employment contract.

(v) The decision to terminate an employment contract shall be issued in writing and shall include the grounds for the dismissal.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

If the claim is being initiated before the court and the decision is given in favour of the employee, the court shall order the employer to do one of the following, depending on the claim:

(i) to pay the employee compensation, additional to any allowance and other amounts to which the employee may be entitled under the Labour Law, the employment contract, a collective agreement or the employer's internal act, in such amount as the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal; or

(ii) in cases where the dismissal is deemed unlawful under the reasons of discrimination, the court may reinstate the employee in his or her previous employment and orders compensation of all salaries and other benefits lost during the time of unlawful dismissal from work.

6.8 Can employers settle claims before or after they are initiated?

Employees may initiate claims before the competent bodies of the company or institution where they work. As described under question 3.4 above, the employer has to decide on the claim within fifteen days (15) days from the day when the request was submitted.

In case when the employee is not satisfied with the employer's decision, he/she can file a claim before the competent court within thirty (30) days.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

The Labour Law determines that where dismissals include at least ten per cent (10%) of the employees but not less than twenty (20) employees are discharged within a six-month (6) period, it shall be considered as collective dismissal.

In such cases the employer has the obligation (i) to notify its employees and, where applicable, the employees' trade union(s) one (1) month in advance in writing of the changes planned and

their implications, (ii) to notify in writing the Employment Office (the "EO") about the termination of the employment, so the EO can be able to provide assistance on finding new jobs for the dismissed employees, and (iii) to provide the severance payment to the employees with indefinite period employment contracts at the scales described under question 6.5 above.

In case when, within a period of one (1) year from the termination of the employment contracts of employees, the employer will decide to hire persons with the same qualifications or training, the employer shall not hire other persons before offering to hire the employees whose contracts have been terminated.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Pursuant to the Labour Law, the employees may enforce their rights through the courts. If the court finds that the employer's cancellation of the employment contract is unlawful, it shall order the employer to pay the employee compensation, additional to any allowance and other amounts to which the employee may be entitled, in such amount as the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The law on the protection of personal data and the relevant laws on intellectual property rights determine some of the most common and recognised covenants in Kosovo. However, additional covenants may be imposed by the employer (e.g., nondisclosure and noncompetition agreement).

7.2 When are restrictive covenants enforceable and for what period?

The restrictive covenants are usually enforceable during and/or after termination of the employment contract.

7.3 Do employees have to be provided with financial compensation in return for covenants?

The law is silent with regard to financial compensation in return for covenants. However, such compensation remains an optional choice to be settled between the parties.

7.4 How are restrictive covenants enforced?

Restrictive covenants are enforced in accordance with the laws of Kosovo and any disputes unsettled amicably between the parties shall be subject to jurisdiction of the competent court.

8 Court Practice and Procedure

8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Currently, the justice system in Kosovo is going through a transitional process of restructuring of courts. This process started from January 2013 as stipulated by the Law no. 03/L-199 "On Courts".

Pursuant to the above-mentioned law, the Basic Courts, as the first instance courts, are competent to decide on employment-related complaints. All cases before the Basic Court shall be heard by one (1) professional judge.

8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed?

The dispositions of Law no. 03/L-006 "On Contested Procedures", as amended, will be applied as it regards to the procedure of employment related complaints. Conciliation is not mandatory in order to proceed with a complaint.

8.3 How long do employment-related complaints typically take to be decided?

Due to the restructuration process and the load of work that the courts are currently facing, the complaints may take quite a long time to be decided.

8.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

The appeal against a first instance decision is possible at the second instance court (i.e., the Court of Appeals). The Court of Appeals is competent to review all appeals from decisions of the Basic Courts and the decision usually takes less time compared to the first instance court.

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