

Issue 03/15

To keep you up-to-date with the latest economic and financial developments, this bulletin provides information that may affect the operation of your business in Albania.

Amendments to the Labor Code

On 05.12.2015 the Parliament of Albania passed the Law no. 136/2015 "On some additions and amendments to the Law no. 7961, dated 12.07.1995, "Labor Code of the Republic of Albania", as amended (the "Amending Law"). The Amending Law is published in the Official Gazette no. 220, dated 22.12.2015 and shall enter into force 6 months after its publication (ie. by 22 June 2016).

Below is a brief summary of the amendments:

Temporary employment of foreign citizens

Albanian law provisions shall govern the employment relationship of foreigners working in Albania for a period not longer than 12 months. It also provides that the legislation of the country of residence of the employee may be applicable if it is more advantageous.

Part-time employment

The Amending Law reiterates the principle that part-time employees enjoy the same rights as the full-time employees that carry out the same type of job, and introduces the obligation of the employer to inform the part-time employee when a full-time position becomes vacant and vice-versa.

Telecommuting

Telecommuting is introduced as a new form of employment, where the employer agrees with the employee that the work will be performed from an arranged place of work through telecommuting.

Temporary employment agency

Another novelty is the introduction of the "temporary employment agency" ("Agency"). By incorporating a set of subsections related to temporary employment by the Agency, the legislator brings the domestic labor law closer to the provisions of Directive 2008/104/EC on temporary agency work.

The Agency hires an employee based on an employment contract to temporary work in a hosting enterprise. The employment term shall not exceed 2 years, provided that the employee works for the same hosting enterprise and carries out the same type of job.

The Agency and the hosting company shall be jointly entitled and liable as follows:

- The right of termination of the employment contract pertains to the employee and the Agency;
- Salary and other benefits of the employee are paid by the Agency;
- All obligations regarding the declarations with the tax authorities, confidentiality of personal data, salary deductions due to health and social contributions are the responsibility of the Agency;
- The hosting enterprise is responsible for (i) health and safety at work (ii) equal treatment (iii) working and time-off period (iv) orders and instructions addressed to the employee;

- The hosting enterprise is not entitled to transfer the employee to another employer;
 - The hosting enterprise regularly informs the unions on the number and the working conditions of the employees hired through the Agency;
 - The hosting enterprise informs the employees of the Agency about vacancies and gives them equal opportunities to be directly hired by the enterprise;
 - The hosting enterprise shall be entitled to damage relief if the employee causes any damages during the employment period;
 - The Agency and the hosting enterprise shall be jointly liable for damages caused to the employee, unless they have provided otherwise in the agreement.
- a) term of employment abroad;
 - b) currency of the salary;
 - c) if necessary, the type of compensation whether in cash or in kind;
 - d) if necessary, the conditions that regulate the repatriation of the employee.

Data protection

The employer should not collect information on the employee, except for the information related to the professional skills of the employee, which are necessary for the implementation of the employment contract, provided that the employee is informed for the data collected and processed and the employer implements the legislation in force on the protection of the personal data. The data processed in the file of the employee shall be protected for a period of 6 months after termination of the employment contract.

Any agreement entered into between the Agency and the hosting enterprise shall be considered as invalid if:

- a) prohibits or limits the hiring of the employee at the hosting enterprise after termination of the employment contract entered into between the employee and the Agency;
- b) provides for the obligation of the employee to pay an employment fee to the Agency.

Information and consultation with the employees' representatives

The Employer must inform the representatives of the employees and regularly have consulting sessions with them, at least once a year, on the current and future activities of the company, financial situation and employment relationship.

Written form of the employment contract

Under the Amending Law the employment contract must be concluded and amended only in writing. The contract should be stipulated as of the day the parties agree on the terms and conditions of their collaboration.

Employees' representatives may request information and participate in consultations with the employer on issues regarding the employees and their employment relationship.

However, if justifiable, the contract may be executed within a period of 7 days from the hiring. In addition, the Amending Law requires that the employment contract includes provisions on the probationary period. Lack of compliance with the requirement to enter into a written contract is subject to penalty imposed on the employer.

The employer may refuse to (i) give any requested information when it is considered as confidential, or (ii) participate in any consultation if the nature of matters to be discussed may seriously damage the company's activity.

International transfer

When the employer intends to assign the employee to work abroad for a period longer than one month, the employer must obtain his/her consent to do so and provide him/her with a document stating beside the conditions of the work, also a complementary information as follows:

Annual leave and other leaves

If the annual leave falls on an official holiday, the annual leave is postponed. Annual leave cannot be substituted with monetary compensation, save where the employment has terminated and the employee must obtain the compensation corresponding to untaken leave.

Cohabitant is also listed among those persons that in case of their death, the employee is entitled to a 5 days paid leave.

In case of child birth, the spouse/cohabitant is entitled to a 3 days paid leave.

Special protection for women

Pregnant women in agreement with the employer are entitled to paid leave for medical visits if these visits must occur during the working time. In addition, the prohibition to work after giving birth is extended from 42 to 63 days.

Risk evaluation

A document on the evaluation of risk of each job including relevant precautionary measures must be prepared by the employer and made available to the labor inspectors when required.

Working conditions

If the employee works more than 6 hours per day without interruption, a minimum of 20 minutes unpaid break should be provided. If the employee works more than 9 hours per day, an additional minimum break of 20 minutes should apply.

Working hours

The time used from the employee for his/her professional development as requested by the employer is included in the working hours.

Work during weekends or official holidays and overtime

Work performed during the weekend will be compensated with an additional remuneration of at least 25% or with paid time-off equal to the time of the performed work plus an additional time-off of at least 25% of the performed work.

Work performed during official holidays when the latter falls on a work day, will be compensated with an additional remuneration of at least 25%, and with paid time-off equal to the time of the performed work.

Maximum weekly work is reduced under the Amending Law to 48 hours (previously 50 hours). In any case, the overtime should not exceed 200 hours of work per year. Overtime work for pregnant women or women with a child of up to 1 year old is forbidden.

Term of employment agreement and termination process

The Amending Law reiterates the principle that an employment contract should be indefinite. The definite employment contract must be justified by the objective reasons related to the temporary nature of the duty for which the employee is hired.

The reasons for termination must be disclosed to the employee and should pertain to employee's skills, behavior or operational requirements of the company.

In addition, it is foreseen that when the contract is terminated from the employer, the employee is entitled of at least 20 hours paid leave to seek a new job during the notice period.

Other amendments

Other amendments consist of provisions regulating the work at night, shift work, rights of an employee under the definite term contract, unions, creation of regional three parties' council, etc.

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