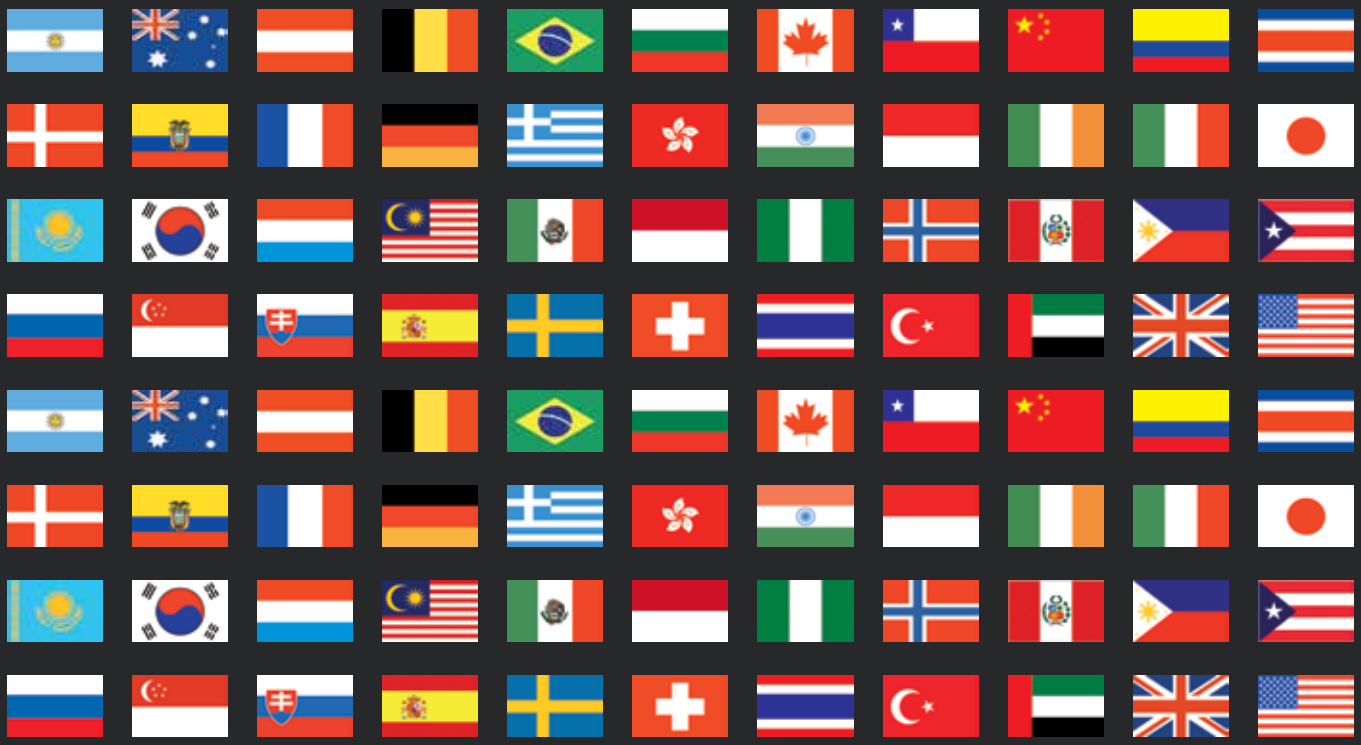
Labour & Employment

Contributing editors
Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek



2018

GETTING THE DEAL THROUGH

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Labour & Employment 2018

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Morgan Lewis & Bockius LLP

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Thirteenth edition

Getting the Deal Through is delighted to publish the thirteenth edition of *Labour & Employment*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Argentina, Canada, Colombia, Costa Rica, Ireland, Hong Kong, Nigeria, Peru and the Philippines.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek of Morgan Lewis & Bockius LLP, for their continued assistance with this volume.

GETTING THE DEAL THROUGH

London
May 2018

Bulgaria

Maria Drenska and Maya Aleksandrova

Pavlov and Partners Law Firm in cooperation with CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH

Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The Labour Code is the basic source of law that regulates employment relations in Bulgaria. In addition, there are various legislative and sub-legislative acts focused on specific topics. The Health and Safety at Work Act contains detailed requirements with respect to health and safety conditions at work. The Settlement of Collective Labour Disputes Act encompasses the provisions related to collective employment disputes. The Labour Migration and Labour Mobility Act lays down the rules for access of foreign workers to the local labour market. The Ordinance on the structure and organisation of the employment salary, the Ordinance for the working time, breaks and leave, the Ordinance on business travel inside the country, the Ordinance on business travel and specialisation abroad, and the Ordinance on the terms and conditions of posting and sending of workers for providing of services are also worth mentioning.

Furthermore, the legally binding collective agreements are an integral part of Bulgarian labour legislation. Such agreements regulate labour and social security relations with employees in certain industry sectors.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Bulgarian Labour Code prohibits direct or indirect discrimination on the grounds of ethnicity, origin, gender, sexual orientation, race, skin colour, age, political and religious convictions, affiliation to trade union and other public organisations and movements, family and property status, existence of mental or physical disabilities, as well as differences in the contract term and the duration of working time.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The General Labour Inspectorate Executive Agency exercises overall control over compliance with labour legislation. The aim of the measures for control and prevention is not only to protect the rights of employees, but also to ensure free and fair competition between employers. The agency controls the compliance of employment relationships with legal requirements.

Judicial control for the enforcement of employment legislation is executed by the general civil courts.

Worker representation

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

There are several main categories of employees' representatives, such as trade unions representatives, representatives of the general meeting of the employees, information and consultation representatives, health and safety representatives, etc.

Employees are entitled on a voluntary basis to establish, join or leave trade union organisations.

Further, employees may form a general meeting or (in cases when this is not practically achievable) nominate proxies of the employees. The general meeting of employees may elect representatives who shall represent its common interests on issues of industrial and social security relations before the employer or before the state bodies.

5 What are their powers?

Generally, workers' representatives have the right to be informed by their employer and to participate in consultation procedures with the employer and to express their opinion on the measures envisaged by the competent authorities, which shall be taken into account during decision-making.

In addition, trade union organisations typically represent and protect employees' interests before state bodies and employers as regards the issues of industrial and social security relations and living standards through collective bargaining, participation in tripartite cooperation, organisation of strikes and other actions within the extent of the law. Trade union organisations shall be entitled, upon the request of the workers, to represent them as authorised representatives before the court.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Bulgarian law does not provide for any explicit regulations regarding background checks by the employer. Generally, background checks are acceptable as far as the employer does not violate employees' rights to privacy and personal freedom (ie, only publicly available information or information obtained with the consent of the employee).

Further, the applicants are required to present to the employer a number of documents before concluding the employment agreement. They include medical examination, passport data, documents evidencing qualification, capacity, length or work (the last are only required for specific jobs). For particular jobs, the employee may request a clear criminal record or financial standing, as well as other documents if required by law.

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Each employee shall present to the employer a medical examination document at his or her initial 'entrance into office' and after suspension of work under employment agreement for more than three months. The employer may refuse to hire applicants who do not submit the medical examination document.

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no explicit restrictions or prohibitions against drug and alcohol testing, provided the employer obtains the applicant's prior consent. An employer may require such tests if it is justified by the scope of work to be rendered by the applicant. In certain occupations, alcohol and drug testing is mandatory (eg, pilots, miners, professional drivers).

Further, the Labour Code prescribes that the employee shall report for work in a condition enabling him or her to fulfil the tasks assigned and not to consume alcohol or another intoxicating substance during working time. The employer may suspend from work an employee who

reports for work in a state that prevents him or her from performing the respective labour duties, or consumes alcohol or other strong intoxicating substances during working time.

Hiring of employees

9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

There are several categories of employees, who the employer would be required to hire or keep at work on a proper position. The employer, together with the health authorities, is obliged to determine on an annual basis positions and places for work for pregnant women, breastfeeding mothers and women in advanced stages of in vitro treatment. Further, businesses with more than 50 employees are obliged to annually define positions for disabled employees, which shall be from 4 per cent to 10 per cent out of the total number of employees in the enterprise, depending on the industry sector. Businesses with more than 300 employees shall establish specific units for persons with permanently reduced working capacity.

10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

The employment contract shall be in writing (as per the Labour Code).

The employment contract shall contain the following mandatory terms:

- place of work;
- position;
- date of its conclusion and starting date of its performance;
- duration of the employment contract;
- amount of annual leave;
- notice period in case of termination;
- basic and supplementary labour remunerations, payment period; and
- duration of the working day or week.

11 To what extent are fixed-term employment contracts permissible?

An employment contract shall, in principle, be entered into for an indefinite period. A fixed-term contract may be concluded in the following cases:

- contracts with new employees in enterprises, which are bankrupt in liquidation, as well as contracts for temporary, seasonal or short-term activities, wherein the contract may not exceed three years, unless otherwise stated by law. As an exception, a fixed-term employment contract may be concluded for work that is of no temporary, seasonal or short-term nature for a period of not less than one year. The employee may also conclude such an employment contract for a shorter period upon his or her voluntary written request. In such cases, the fixed-term employment contract may be re-concluded with the same employee for the same type of work only once for a period of at least one year;
- replacement of employee, who is absent from work;
- in case of staff leasing through a temporary work company;
- for work in a position which is to be occupied through a competitive examination – for the time until the position is occupied on the basis of a competitive examination; and
- mandate positions.

12 What is the maximum probationary period permitted by law?

The maximum probationary period is six months in favour of either the employer or the employee, or both of them. The probationary period shall not include the time during which the employee has been on statutory leave, or has not performed the work for other valid reasons.

An employment contract for a probationary period may be concluded with the same employee for the same type of work at the same enterprise only once.

13 What are the primary factors that distinguish an independent contractor from an employee?

Employees shall perform certain types of daily work as defined in their job description. The employment contract is regulated by the Labour Code and it shall contain minimum mandatory provisions. The employee shall observe the rules for work time, workplace, breaks, annual paid leave, labour discipline, termination rules, etc. Typically, employment contracts are concluded for an unlimited term, apart from exceptional cases. The employee may terminate the employment contract at any time with written notice. The employee enjoys general protection under the Labour Code (ie, the employer may terminate the employment agreement only based on exhaustively listed grounds in the Labour Code; mandatory compensations exist in various cases).

The independent contractor shall provide services and individual tasks for a specific matter. The contract is regulated by the provisions of the Contacts and Obligations Act. The parties are free to negotiate the content of the contract. The independent contractor bears the risk and is free to determine how and when the work will be performed, as long as he or she fulfils the assignment. The parties are free to negotiate the options for termination of the contract. No mandatory compensations apply in case of termination. The independent contractors are not treated as employees in the sense of employment law and they are not subject to special protection under the Labour Code.

14 Is there any legislation governing temporary staffing through recruitment agencies?

An employee may be hired by a recruitment agency, the 'temporary work agency', and sent to a client undertaking only to execute a specific work or temporarily replace an employee.

The employment relation arises between the employee and the temporary work agency. Additionally, the agency and the client shall conclude a general agreement for the leased personnel. Agency workers enjoy the same rights and benefits as permanent employees.

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Short-term visas, which enable their holders to reside (but not to work) in the territory of Bulgaria for up to 180 days, are not subject to any numerical limitations. Visas are available for employees who are subject to intra-company transfers.

Employees who are citizens of an EU or EEA member state or Switzerland, posted to Bulgaria, do not require a work permit for employment in Bulgaria. Employees who are third-state citizens and who have been posted to Bulgaria (except for numerous exemptions) do need a valid work permit.

16 Are spouses of authorised workers entitled to work?

Family members of citizens of EU or EEA member states or Switzerland, who are themselves third-country citizens, have access to the labour market if they possess a valid permit for temporary residence for a family member or a long-stay visa, unless an international treaty binding Bulgaria provides otherwise. Family members of third-country citizens require a valid working permit to be employed in Bulgaria.

The spouses of employees transferred on the grounds of an intra-company transfer may work upon issuance of a long-term residence permit with a decision of the Employment Agency Director.

17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

There are no work restrictions for citizens of the EU/EEA member states or Switzerland. Generally, non-EU/EEA or non-Swiss citizens have the right to work in Bulgaria only after a work permit or blue card is issued. Those provisions do not apply, among others, to managerial personnel.

Work permits or blue cards should be requested by the employer from the employment agency.

Work permits shall be issued for a maximum duration of one year. If the terms and conditions for its issuance are still valid, the work permit may be renewed for an additional one-year term.

If the employer employs a foreign national who does not have the right to work, the following sanctions shall apply to the employer: from approximately €1,020 to approximately €10,215, and to the foreign

worker: from approximately €255 to around €2,555. The range of the fines is doubled for a repeated violation.

18 Is a labour market test required as a precursor to a short- or long-term visa?

A labour market test shall be performed before granting certain work permits and long-term visas. A labour market test is not required for particular jobs (currently only positions in the IT sector) that are included in a special, annually updated, list.

Terms of employment

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The standard working time is eight hours per day over a 40-hour (five-day) week. Further, there are several working time models:

- extended working time up to 48 hours per week, but not more than 60 working days annually, 20 of which should not be successive;
- reduced working time for minors or employees working in specific conditions and under unavoidable health exposures;
- open-ended working time for some job positions;
- shift work;
- overtime (generally forbidden and acceptable only in exceptional cases);
- part-time work; and
- flexible working.

20 What categories of workers are entitled to overtime pay and how is it calculated?

Overtime work is generally prohibited and could be permitted only in exceptional cases:

- performance of work related to national defence;
- the prevention, management and mitigation of the effects of disasters;
- performance of urgent, publicly necessary work to restore water and electricity supply, heating, sewerage, transport and communication links, provision of medical care;
- performance of emergency repair on working premises, of machinery or of other equipment; or
- performance of intensive seasonal work.

Performance of overtime shall not be permitted for:

- employees who have not attained the age of 18;
- pregnant women or women in an advanced stage of in vitro treatment;
- mothers of children who have not attained six years of age, mothers taking care of children with disabilities irrespective of the age thereof, except with their written consent;
- occupational-rehabilitated employees, except with their consent; or
- employees pursuing studies without interruption of employment, except with their consent.

Overtime work cannot be more than three hours in two consecutive working days and cannot be more than six hours in one working week, respectively 150 working hours per year.

The overtime shall be compensated with a higher remuneration of 75 per cent for work on weekends and 100 per cent for work on public holidays.

21 Can employees contractually waive the right to overtime pay?

Employees may not waive their right to overtime pay.

22 Is there any legislation establishing the right to annual vacation and holidays?

Employees are entitled to a minimum 20 working days' paid vacation per year on the basis of a five-day working week. In the case of first employment, the employees are entitled to vacation after eight months of service. Compensation in cash for non-used paid annual leave is not allowed, except upon termination of the employment.

Employees working under specific conditions or risks for life and health and at open-ended working time are entitled to five days' additional paid vacation per year. Employees who have not reached 18 and employees with a permanently reduced working capacity of 50 per cent and more than 50 per cent are entitled to paid annual leave of not less than 26 working days.

Paid annual leave does not depend on the accumulation of length of service. Longer annual leave may be agreed in individual employment agreements and collective bargaining agreements.

Vacation is in addition to public holidays, which are also paid.

23 Is there any legislation establishing the right to sick leave or sick pay?

According to Bulgarian law, employees are entitled to sick leave and sick pay, if an illness or accident results in the inability to work. Employees shall have the right to cash benefits instead of remuneration for the duration of the sick leave, provided that they have at least six months of insured length of service. The requirement for six months of insured length of service shall not apply to those under the age of 18.

In case of illness (inability to work), the employee is obliged to submit to the employer a medical certificate within two days as of its issuance. Sick leave of more than 14 days without interruption may be allowed only by the medical consulting commission. Medical consulting commissions allow continuous sick leave for temporary disability up to 180 calendar days, but not for more than 30 days at once. After the expiry of 180 days continuous leave for temporary disability, additional sick leave may be allowed only by the Labour Expert Medical Commission, which decides on a case-by-case basis.

Sick pay is determined by the duration of the illness. The first three days of sick leave shall be paid by the employer at 70 per cent of the average daily remuneration. The rest shall be paid by social security at 80 per cent of the average daily remuneration, or 90 per cent in case of a workplace accident or occupational sickness.

24 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

In addition to holidays and sick leave, employees are entitled to maternity or parental leave, which commences 45 days prior to expected childbirth and ends when the child reaches two years of age. For 45 days prior to childbirth and the first year after childbirth the employee shall receive from social security 90 per cent of the social secured income. After the first year until the end of the maternity leave, the employee shall receive from social security a salary equivalent to the national minimum wage.

Furthermore, employees are entitled to educational leave (25 working days for each educational year), leave for family responsibilities (funerals of family members, wedding, blood donation) and public responsibilities (summons by a public authority, witness in court case, etc), which are paid by the employer.

Carers' leave shall be paid by social security and limited to the following reasons:

- taking care of a close family member living in the same household as the employee or taking care of a child under two years of age when the person normally caring for the child is unable to do so due to death, illness, etc (up to 10 calendar days per year for a family member over the age of 18 and up to 60 calendar days per year for a family member under the age of 18); or
- unpaid leave of up to six months for taking care of a child under the age of eight years. This leave may be used in parts.

Each employee is entitled to unpaid annual leave, irrespective of whether the paid annual leave has been already used or not.

25 What employee benefits are prescribed by law?

The employer is obliged to make contributions to the social security system, which comprises statutory pension (retirement pension, disability pension), health social security (healthcare and nursing care, pregnancy and maternity, sickness and disability), unemployment and occupational accidents insurance. Contributions to the social security system are borne in shares by the employer (60 per cent) and the employee (40 per cent).

Furthermore, statutory benefits on the part of the employee include paid holiday leave (see question 22) and severance pay (see question 39).

The employer may also make bonus payments, but he or she is not statutorily obliged to do so.

26 Are there any special rules relating to part-time or fixed-term employees?

The law does not provide for sufficient regulation of part-time work, especially with regard to the duration of breaks. The Labour Code, however, provides an explicit principle of non-discrimination: part-time employees cannot be discriminated solely due to the part-time duration of the working time thereof compared to regular employees who perform the same or similar work at the enterprise. The part-time employees shall have the same rights and obligations as the regular employees, except for particular cases where the law makes the enjoyment of certain rights contingent on the duration of the work time of the part-time employees, the length of employment service, the qualifications possessed (ie, the annual leave of part-time employees shall be determined proportionally to the work time). As to conclusion, amendment and termination of the employment contract, the same rules apply as for full-time contracts.

For fixed-term employment, see question 11.

27 Must employers publish information on pay or other details about employees or the general workforce?

There is no requirement for employers to publish such information.

Post-employment restrictive covenants

28 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Non-compete clauses are in general prohibited by Bulgarian law and therefore not valid and enforceable. However, many employers implement non-compete clauses in the employment contracts for psychological effect. In some cases, the employer enforces the non-compete clause by offering to pay compensation (post-termination covenant) to the employee during the restrictive period.

In several cases, the Bulgarian courts have accepted particular non-compete clauses in employment agreements as valid and enforceable, but only in favour of the employee, when post-termination covenants have been agreed between the employer and the employee and the employee claimed their payment, except in the case of waiver: prior to or upon termination of the employment, the employer may waive the covenant not to compete in writing.

Post-termination covenants not to solicit or not to deal with customers are essentially subject to the same rules.

29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

See question 28.

Liability for acts of employees

30 In which circumstances may an employer be held liable for the acts or conduct of its employees?

The general rules in the Obligations and Contracts Act and the specific rules in the Labour Code provide for liability for acts or conduct of third persons (including employees).

According to the Obligations and Contracts Act, a person who has commissioned another to perform certain work (including an employer) shall be liable for the damage caused by the latter in, or in connection with, the performance of such work. The compensation shall include material and immaterial damages. The person liable for deliberate damage caused by third parties shall have a regress claim against the latter.

According to the Labour Code, the employer shall incur financial liability for damages resulting from employment injury or occupational disease, which have caused temporary disability, permanently reduced working capacity of 50 per cent or more or death of an employee, regardless of whether an employee was at fault. The employer shall be liable for compensation for the difference between the damage caused (including the lost profit) and the social security benefit or pension or both. However, the employer shall not be liable if the injured employee has acted wilfully. In case of gross negligence of the employee, the liability of the employer shall be reduced. The employer shall have a regress claim against the employee who caused the damage for the compensation paid to the injured employee.

Upon unlawful non-admission to work of an employee, the employer and the responsible employees shall be jointly liable for payment to the employee of the gross employment remuneration from the day when the said employee reported to begin work until the actual admission. The same applies when an employee has been unlawfully suspended from work by the employer or the immediate supervisor – such employee shall be entitled to compensation from the employer or the responsible employee (jointly liable) amounting to the gross employment remuneration for the time of suspension.

Taxation of employees

31 What employment-related taxes are prescribed by law?

Employees pay income tax in the amount of 10 per cent, which is withheld by the employer and paid to the tax authorities. The employer must also withhold the employee's share of social security contributions. Mandatory contributions to the social security funds are borne by both the employer and employee (see question 25).

Employee-created IP

32 Is there any legislation addressing the parties' rights with respect to employee inventions?

The Bulgarian Patent Act contains provisions regarding inventions made by the employee in the course of the performance of his or her work obligations. Such inventions are called 'business inventions', except where the employment contract provides otherwise. According to the law, the inventor shall notify his or her employer in writing of the invention within three months of making it and shall be entitled to be identified and to a fair remuneration.

33 Is there any legislation protecting trade secrets and other confidential business information?

Trade secrets and business information are generally regulated in the Bulgarian Commercial Act and Competition Protection Act and do not specifically relate to the employment relationship. The Labour Code obliges the employee to be loyal to the employer and not to abuse the employer's trust, respectively not to disclose any confidential data for the employer, as well as to protect the reputation of the enterprise.

Violating the confidentiality obligation shall constitute a breach of work discipline and shall represent legal grounds for employment termination. Besides the employment termination, the employee could be financially liable for damages caused to the employer to the amount set by the general civil rules.

Data protection

34 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The basic principles and the admissibility of data use, as stipulated in the General Data Protection Regulation (GDPR) and the Bulgarian Data Protection Act, must be observed in an employment relationship. Third parties receiving personal data from the employer, particularly affiliated companies and payrolls, may process or use such data only for the purposes for which they were transmitted and in accordance with the law.

Transmission of personal data to countries other than member states of the EU and the EEA and other countries with an adequate level of data protection is subject to further requirements. In the case of transmission of personal data, employees shall first be informed about the persons to whom the data is transmitted, the volume and the kind of personal data to be transmitted and the purpose of the transmission, and must provide their consent for such transfer to the employer.

Business transfers

35 Is there any legislation to protect employees in the event of a business transfer?

According to the Labour Code, in case of business transfer (share/asset deal, transformation of enterprise) all existing employment contracts shall be automatically transferred to the new proprietor without a change of the rights and obligations arising from those contracts. The employer shall meet the following information and consultation requirements:

Before the transfer, the 'old' and the 'new' employer have to notify the trade union members and the employees' representative of the date

of the transfer, the reasons for the transfer, the possible legal, economic and social implications of the transfer for the employees and any measures envisaged in relation to the employees. The notification shall be performed at least two months before the transfer. The transfer does not itself constitute ground for termination of the employment relationship; terminations for other reasons, however, shall remain unaffected.

No explicit provisions are provided for in the Labour Code with regard to keeping the employment agreements in case of outsourcing. However, in particular cases of outsourcing, the existing employment agreements can be transferred to the new employer, especially when the outsourcing of the activity is accompanied by the transfer of material assets (in these cases, the existing employment relations will be transferred to the new employer because they have been established for the work related to those material assets).

In view of the above, the question of whether to keep the employment agreements when outsourcing shall be decided on a case-by-case basis.

Termination of employment

36 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The employment contract may be terminated by the employer only on grounds provided for in the Labour Code (ie, by mutual consent; against compensation in a minimum amount of four gross monthly salaries; due to business reasons – partial closure of the enterprise; reduction of work volume; in case the employee lacks the professional qualification required for the work; statutory retirement or disciplinary liability).

37 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

In the case of regular termination (see question 36), written notice to terminate must be given prior to dismissal. For unlimited employment contracts, the statutory minimum notice period is 30 days, the statutory maximum – three months. For limited employment contracts, the statutory minimum notice period is three months, but the notice period may not be longer than the unexpired term of the contract. Pay in lieu of notice shall be possible, in which case the compensation shall amount to the remuneration due for the non-kept notice period.

38 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Dismissal without notice is possible in the event of a serious breach of duty (persistent breach of the obligation to work, non-compliance with the employer's order) or for reasons related to the individual (eg, deprivation of the right to exercise the job based on a court sentence or an administrative act). Under certain circumstances, employees may challenge a dismissal before the labour courts.

If an employee gives rise to a cause of dismissal, the employer shall perform a special disciplinary procedure.

39 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

A statutory right to severance exists only in particular cases. Generally, the employees may claim, depending on the respective termination ground, the following severance payments:

- non-kept notice period;
- unused annual leave. The amount of this compensation depends on the number of days of unused annual leave;
- unemployment (only in case of termination due to business reasons): the unemployment benefit amounts to one gross monthly salary or to the difference between the employee's salary and the lower salary with the next job;
- retirement (age pension) upon employment termination (irrespective of the grounds for the termination) – the severance payment shall amount to two gross monthly salaries. If the employee has worked for the same employer for the past 10 years, the compensation shall amount to six gross monthly salaries; or
- employment termination by reason of illness: the employee shall be entitled to compensation amounting to two gross monthly salaries, if the employee has a length of employment service of at least five years and has not received compensation on the same grounds during the past five years of work.

Update and trends

In order to provide additional protection for employees against delayed remuneration, at the beginning of 2018 the Civil Procedure Code, Commercial Code, Guaranteed Workers and Employees Claims Act (in case of employer bankruptcy) and the Public Procurement Act were amended. A business may be transferred to a new owner only after the existing shareholder has paid all outstanding salaries and wages, indemnities and statutory social security contributions to employees, including those who have left the company up to three years prior to the transfer. In principle, the previous employer must make the payments, but if agreed upon, the buyer of the company can also be responsible for the delayed payables.

Furthermore, the oversight authority, the Executive Labour Inspectorate, has been expanded, not only to check on the payment of wages and salaries to employees and former employees, but also to request insolvency proceedings for companies that have not paid at least one-third of their staff for more than two months. In addition, it is envisaged that a trustee accept receivables ex officio for an employee (included on a list of accepted receivables), even if the employee's work relationship was terminated six months prior to an insolvency filing in the Commercial Register.

The Public Procurement Act also introduces a limitation, whereby employers that owe remuneration and compensation to employees may be prevented from participating as contractors or subcontractors in a public procurement procedure. The Labour Inspectorate or a court decision would make such a ruling.

Lastly, the Guaranteed Workers and Employees Claims Act entitles employees who are or have been employed by an enterprise currently facing insolvency proceedings to a guaranteed claim. These claims apply even if the employer terminated these contracts prior to the proceedings. Guaranteed claims include six months of accrued unpaid wages and benefits over three calendar years before the decision was made (the previous law applied to only one calendar year).

40 Are there any procedural requirements for dismissing an employee?

In case of termination of employment due to business reasons or the employee's lack of professional qualification, required for the work, certain groups of employees are granted protection against a dismissal, such as: mothers of children under the age of three and pregnant women; an occupational-rehabilited employee; employees suffering from certain diseases; employees taking their leave; elected workers' representatives. The employment contracts in these cases may only be terminated with the prior approval of the Labour Inspectorate or the Medical Labour Expert Commission or both. Otherwise, the employer may not terminate the employment contract.

41 In what circumstances are employees protected from dismissal?

Some groups of employees may be dismissed only after prior approval by the authorities:

The dismissal of female employees during statutory pregnancy leave, mothers of children under the age of three, employees on statutory leave (annual leave, illness, unpaid leave, etc) is possible only after the prior consent of the Labour Inspectorate. The dismissal of disabled employees or employees suffering from certain diseases is possible only after the prior statement of the Medical Labour Expert Commission and the prior approval of the Labour Inspectorate. The termination of employment of works council members and employees responsible for the work safety conditions also requires the prior consent of the Labour Inspectorate. Trade union members may be dismissed during their membership only after the prior approval of the management of the respective trade union.

42 Are there special rules for mass terminations or collective dismissals?

Mass terminations are terminations by the employer, for reasons not related to the employees themselves, when the number of employment agreements to be terminated within 30 days are:

- at least 10 in an enterprise where usually more than 20 and less than 100 employees are engaged; or
- at least 10 per cent of the employees in an enterprise where usually more than 100 and less than 300 employees are engaged.

Before implementing a collective dismissal, the employer is obliged to notify in writing the Bulgarian Employment Agency and the employee's staff representatives about the mass termination, at least 30 days before the termination takes place.

43 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Bulgarian Law does not permit class or collective actions to be brought by employees. Employees may only assert labour and employment claims on an individual basis.

Collective labour disputes may be settled through direct negotiations between the employees and the employers or between their representatives, pursuant to a procedure freely determined by them.

44 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

A mandatory retirement age is a legal ground for the employer to terminate the employment. The employer may dismiss the employee who has already reached the mandatory retirement age by giving him or her prior written notice and a severance (see question 39).

Currently, the mandatory retirement age for female employees is 61 years and for male employees it is 64 years.

Dispute resolution

45 May the parties agree to private arbitration of employment disputes?

Pursuant to the Bulgarian Labour Code and the Civil Procedure Code, arbitration clauses with respect to employment disputes are not valid.

46 May an employee agree to waive statutory and contractual rights to potential employment claims?

Bulgarian labour law does not provide for explicit regulation with respect to an employee's waiver of employment claims. However, according to a basic principle in Bulgarian law, a prior waiver of statutory rights under individual employment agreements or collective bargaining agreements, respectively, regarding claims arising from statutory legal regulations, is not permissible. With respect to non-mandatory claims (eg, voluntary benefits provided by the employer), the employee may validly waive future claims.

47 What are the limitation periods for bringing employment claims?

As a general rule, claims in connection with employment (eg, salary claims, severance claims, etc) are subject to a three-year statute of limitation starting with the date when the respective right has arisen (eg, with the maturity date in case of monetary claims).

However, Bulgarian law provides for several exemptions to the general three-year limitation period. Holiday entitlement becomes time-barred within two years of the end of the respective leave year. For claims in connection with an unfair termination by the employer, including disciplinary termination and reinstatement to the previous work, a limitation period of two months applies as of the date of termination, respectively as of the date of delivery of the employer's order for termination. Claims for compensation for financial damages caused by the employees must be filed within one month as of the date the right became exercisable.

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