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North Macedonia

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General labour market and litigation trends

Social/legislative/economic developments which have impacted the labour market/legislation

Labour market and labour legislation in general are always a hot topic in terms of improving the rights of the employees, simplifying the mechanisms supported by legislation for executing their rights in front of the courts and increasing the minimal average salary at a national level. The greater achievement, supported by the Union of Republic of North Macedonia, was declaring Sunday as a non-working day for most employees, with the exception of several industries such as the manufacturing industry, the processes of which involve and require a continuous performance of working duties. Furthermore, the period of duration of the employment agreement was shortened from five years to a maximum of two years, which after the expiration, the employee would be entitled to conclude an employment agreement for an indefinite time. Several changes in Labor Law are currently being drafted and are on track to be enacted by the end of the year. The employment agreement for an indefinite time remains to be the standard to which we strive. The employment agreement specifies the cases when a new contract is concluded, and when it can be annexed. The fixed-term employment agreement is limited to a duration of up to two years with the possibility of concluding a maximum of three contracts with the same employer.

Instead of previous maternity leave legislation, the division of the leave into maternal, paternal and parental leave is foreseen. The mother is entitled to up to four months of maternity leave and up to four months of parental leave. However, in addition, the father is entitled to up to four months of parental leave.

There is also a change in the registration of trade unions. The procedure now commences with registration in the Central Registry, followed by registry in the Ministry of Labour and Social Policy.

There has been little change in the terms of the types of employment claims over the last period, but it is shown that court cases that involve harassment in the workplace has increased. This is due to court practice that was created as the Law for prevention of harassment in the workplace is relatively new in North Macedonia.

Prior to the COVID-19 pandemic, Macedonian Labor Law included legislation relating to remote working but only as a possibility and without any specifics on the manner and duration. Some employers provide hybrid and flexible working within the employment agreement in order to give more flexibility to the employees and as an employee benefit, as it has shown that such models are working in terms of efficiency in at least some industries.

Remote work is a novelty through the application of information and communication technologies and is arranged according to the template of the European framework agreement

for remote work and provisions corresponding to our conditions have been prepared. The place of work is chosen by the employee and both sides arrange the working hours and availability of the employee for the needs of the employer, the technical support, the funds and equipment provided by the employer, as well as the protection of the employee's privacy.

Redundancies, business transfers and reorganisations

The Law on Labour Relations regulates the protection of employees' rights in case of transfer of a trade company or parts of a trade company. In case of transfer of activities of a trade company or parts of a trade company, or in case of transfer of tasks or part of them from the employer (the target) to another employer (the acquirer), the rights and obligations deriving from employment shall be completely transferred to the employer (acquirer) to whom the transfer is made.

Before making the transfer, the target company (employer) shall be obliged to inform the trade union representatives of its employees about the transfer in a timely manner. The acquirer shall also be obliged to inform the union representatives of its employees about the transfer, regarding their working conditions and employment, and always before its employees are directly affected.

The employees and the representatives of employees' unions, who consider they have been damaged due to non-fulfilment of the obligations arising from the transfer, can require judicial protection.

In accordance with the law, prior to the transfer of the rights and obligations under employment of the employees with the employer (the target) to the employer (acquirer), the target and the acquirer shall be obliged to inform the unions about this fact and to consult them, in order to reach an agreement regarding: i) the determined or proposed date of transfer; ii) the reasons for such transfer; iii) the legal, economic and social implications for the employees; and iv) the anticipated measures connected to the employees.

The relevant regulation does not state any procedure for electing employee representatives. In practice, the decision for electing an employee to represent the employees is brought by the majority of the employees at the company.

In accordance with the law, when the employer intends to conduct a mass layoff, it is obliged to commence a consultation procedure with the employees' representatives, at least one month prior to the commencement of the mass layoff, and to provide all relevant information prior to the commencement of consultations for the purpose of reaching an agreement.

Provided that the employer has an intention to adopt a decision on the termination of employment of a larger number of employees due to business reasons, that is, at least 20 employees for a period of 90 days regardless of the number of employees with the employer, it shall be considered a mass layoff due to business reasons in the event of each termination of employment.

In the procedure, the employer shall be obliged, after the completion of the consultations, to inform the service responsible for employment intermediation, for the purpose of providing help and intermediation services in employment. This notification shall contain all relevant information in connection with the planned mass layoff and the consultations with employees' representatives, in particular, the reasons for the layoff, the number of employees being laid off, the total number of workers with the employer, and the period within which the layoff should occur.

The employers shall submit a copy of the notification submitted to the service responsible for

employment intermediation to the employees' representatives, upon which the employees' representatives can submit their own proposals to the service responsible for employment intermediation.

The employer shall be obliged to submit the notification regarding the planned mass layoff to the service responsible for employment intermediation up to 30 days before the adoption of the decision for termination of the employment of the employees.

In accordance with the law, the amendments to the employment contract may be proposed by the employer or by the employee, and must be concluded by an annex to the employment contract.

The annex to the employment contract shall be concluded in the same form as the employment contract. The amendments to the employment contract can be executed if the two parties agree thereon. If there is no consent of the parties, the employer is not able to change terms and conditions of employment regarding the elements implemented in the employment agreement.

In addition, the employer is entitled to specifically regulate the employment relationship by the implementation of internal rules that must be within the boundaries of the labour regulations.

Business protection and restrictive covenants

An employee shall not use for his or her own interest, or give to a third party, data considered confidential to the employer, that are determined as such by a special act of the employer, or are entrusted to the employee, or of which he/she was aware. The employee is responsible for a trade secret, if he or she knew, or should have known, of data of such capacity. Every employee who comes into contact with materials, information and classified data is obliged to keep it secret. Representatives of the employees, and all the experts with whom they collaborate, must not disclose any information of commercial interest to the employer, which they were clearly told in confidence. This obligation shall remain valid beyond the end of their mandate (employment).

For the duration of employment the employee shall not, without the consent of their employer, for his or her own interest, perform or conclude anything that belongs to the business of the employer and which means, or could mean, competition for the employer. The employer has a right to demand compensation for damage caused by the actions of employees contravening the ban, within three months from the date when he learned of the execution of the work or the conclusion of the deal, or within two years of completion of the work or the conclusion of the deal.

If the employee in his or her work activity gains technical, production or business knowledge and/or business relations, the employer and the employee can agree in the employment contract, on the prohibition of competitive action after the termination of employment (competitive clause). This competitive clause cannot be agreed for a period longer than two years after the termination of the contract.

Discrimination protection

The employer is prohibited from putting a candidate for employment, or the employee, in an unequal position because of racial or ethnic origin, colour, sex, age, health condition or disability, religious, political or other opinion, union membership, national or social origin, family status, economic status, sexual orientation or other personal circumstances. Women and men must be provided with equal opportunities and equal treatment.

The law distinguishes direct and indirect discrimination: direct discrimination is any

treatment motivated by the abovementioned reasons by which the person has been placed, or could be placed, in a less favourable position than other persons in comparable cases.

Indirect discrimination exists when a certain seemingly neutral provision, criterion or practice puts, or would put, at a particular disadvantage compared with other persons, a job applicant or employee for a certain capacity, status, belief or conviction for the above reasons.

In cases of discrimination, the burden of proof is always on the employer, the person, or a group against whom the litigation for discrimination protection is initiated. The employment candidate or the employee is entitled to material compensation if he or she is discriminated against for one of the abovementioned reasons.

The law determines certain exceptions to the ban on discrimination. In accordance with the law, any distinction, exclusion or preference in respect to certain work shall not be considered discrimination when the nature of the work or the conditions in which it is performed are such that the characteristics related to some of the cases of discrimination (referred to in point a) above) represent real and determining occupational requirement, provided that the goal that is aimed to be accomplished is legitimate and the requirement is proportionate.

All measures anticipated by law, collective agreements and employment contracts referring to special protection and assistance to specific categories of employees, especially those for protection of disabled persons, elderly employees, pregnant women and women exercising any of the rights to motherhood protection, as well as the provisions referring to the special rights of parents, adoptive parents and dependants, are neither considered discrimination nor may they be considered a ground of discrimination.

The law does not state the amount of the compensation and other remedies, but only determines that the candidate for employment or the employee is entitled to damages in accordance with the Law on obligations.

The only regulation related to the salary for employees is the Law on the minimum wage that determines the lowest salary that an employer in North Macedonia is obliged to pay to employees for the performed work.

Protection against dismissal

According to the labour regulations, there are specified cases where the employer can terminate employment in cases such as: i) the employee because of his behaviour, lack of knowledge or opportunities, or for failure to meet specific conditions set by law, is not capable of performing contractual or other obligations of employment (personal reasons); ii) the employee violates the contractual obligations or other obligations of employment (the cause of the fault); and iii) there is no need to perform the work under certain conditions specified in the employment contract due to economic, organisational, technological, structural or similar reasons by the employer (business reasons).

In addition, as a protection against dismissal, the regulations determine the unfounded reasons for termination of employment which include: i) membership of a trade union or worker participation in union activities in accordance with law and collective agreements; ii) filing of a complaint or participation in proceedings against the employer to verify the violation of contractual and other obligations arising from employment before arbitral, judicial and administrative authorities; iii) approved absence due to illness or injury, pregnancy, birth and parenting, care of a family member and unpaid parental leave; iv) use of approved leave

of absence and annual leave; v) serving in the military or a military exercise; and vi) other cases of suspension of the employment contract stipulated by this law.

Prior to the termination of the employment contract due to employee's fault, the employer must warn the employee in writing about the non-fulfilment of the obligations and the possibility of termination in case of repeating the breaches.

If the employee feels that the termination of the employment is unlawful, the employee is entitled to submit a formal complaint to the managing body of the employer within a period of eight days from the day that he or she received the decision for termination of the employment agreement. If the employee's contract is terminated due to an unfounded reason, the employee can initiate a civil procedure against the employer. The civil procedure for the employee can be also taken in front of the Supreme Court of Republic of Macedonia as an exception regardless of the value of the case. If the employee succeeds in the civil procedure, the court may order the employer to annul the decision for termination of the contract, or to put the employment contract into effect again. After the court's decision, the employee can initiate an executive procedure in order to force the employer to return the employee to work.

The employee is entitled to compensation for the period that he or she did not perform the duties of the employment only if the decision to terminate the employment by the employer is found to be unlawful by the court.

Statutory employment protection rights (such as notice entitlements, whistleblowing, holiday, parental and maternity leave, etc.)

In accordance with the labour regulations in North Macedonia, there are mandatory notice periods for the employee and the employer in the case of termination of the employment contract. If the employee terminates the employment contract, the notice period is one month. A longer notice period may be negotiated in the employment contract or the collective agreement, however, this must not exceed three months. Further, if the employer terminates the employment contract with an individual worker or a few workers, the notice period is one month; in case of termination of employment of more than 150 employees or 5% of the total number of employees working for the employer prior to the termination of their employment, the notice period is two months. If the employer terminates the employment contract of employees working seasonal work, the notice period is seven working days.

The employee is entitled to paid annual leave of at least 20 working days. The annual leave may be extended in a collective agreement, or in the employment contract, for up to 26 working days. The employee is entitled to the full annual leave period if he or she reaches six months of continuous employment. The full-time employment must not exceed 40 hours per week. The working week, as a general rule, means five working days. By specific law or collective agreement, a work time shorter than 40 hours a week can be determined as full-time working hours, but not less than 36 hours per week. The employee is entitled to 30 minutes' break for an eight-hour working day, or 15 minutes if the employee's working day is four hours. In accordance with the relevant collective agreement, the holiday pay is calculated in the amount of 35% of the salary, in addition to the basic salary per hour, which is the same amount as the overtime payment.

In North Macedonia there are family-friendly regulations such as the right of the employees to reimbursement of costs related to separation from family. As an obligation for the employer for health and safety measures, after receiving notification that an employee is pregnant, during the different stages of pregnancy, the employer is obliged to introduce

multiple assessments of the risks that may affect the pregnant woman, her unborn or newborn child. In accordance with the law, in case of pregnancy and parenthood, the employee is entitled to special protection in employment. The employer is obliged to enable easier harmonisation of family and professional obligations for workers. In North Macedonia, regulations regarding special care during pregnancy, care during pregnancy and parenting related to night and overtime work, have been established, as well as the right to an additional break for the nursing mother. In addition, the family-friendly employment regulations are determined in the collective agreements, depending on the sector regulated by the agreement.

As mentioned above, the employer cannot terminate the employment contract due to unfounded reasons for termination which include trade union membership, pregnancy or sick leave, employees engaged in a lawsuit with the employee, using annual leave, or service in the army.

Worker consultation, trade union and industrial action

In North Macedonia, the obligation to inform and consult applies to any company, public company or other legal entity having more than 50 workers, and institutions that have over 20 workers. Informing and consulting covers information on local and likely trends of the activities of the company, public company or other legal entity or institution and their economic situation, structure and probable course of employment, and any measures envisaged, especially when there is a threat to employment, or decisions that could lead to substantial changes in work organisation or contractual obligations.

In addition, according to the Labour Law, if the employer intends to make a decision on the termination of employment of a multiple number of employees due to a business reason, or at least 20 employees for a period of 90 days, each termination of employment is considered to be collective dismissal by the employer for business reasons, regardless of the total number of employees. When an employer intends to carry out collective redundancies, he must begin the process of consultation with workers' representatives, at least one month before the collective dismissal, and provide them with all relevant information before starting consultations to achieve agreement.

The unions are requested to enter into the register of unions kept by the ministry responsible for labour-related issues. The entry in the register shall be performed on the basis of a request by the trade union.

The collective agreement shall be concluded between the employer and the representative employers' association and the representative trade union. The collective agreement shall be concluded upon receipt of the notification of the Ministry of Labour and Social Policy to the union; that is, the employers that submit a request for determination of representativeness of the union, i.e., the employers with the largest number of members. The participants in concluding the collective agreement shall be obliged to bargain. If, in the course of the bargaining, consent for conclusion of a collective agreement is not reached, the participants may establish arbitration to settle the disputable issues.

The union and its associations at higher levels have the right to call a strike and mobilise to protect the economic and social rights of their members in employment, in accordance with the law. The strike must be announced in writing to the employer or employers' association that it is directed against. The strike cannot commence before the end of the conciliation procedure under the law.

The employer may suspend employees from the working process only as a response to a strike that has already started. The number of employees suspended from work must not be higher

than 2% of the number of employees that participate in the strike. The employer may suspend from the working process only those employees who, by their conduct, incite violent and undemocratic behaviour, as a consequence of which the negotiations between the employees and the employer are impeded. The employer shall be obliged to pay the contributions determined by the special regulations for the lowest basic amount for contribution payment to the employees suspended from work during the period of their suspension.

Employee privacy

In North Macedonia, the employer is entitled to require the applicant to provide personal data for the fulfilment of requirements connected to employment only. The employer who has concluded the employment contract cannot require data on family or marital status and family planning, or for the employee to submit documents and other evidence that are not directly related to employment. According to law, the contents of the agreement can contain only information on the parties, their residence or office in terms of privacy.

The personal data of employees may be collected, processed, used and delivered to third parties only if it is determined by a law or if it is necessary for exercising the rights and obligations arising from employment or related to employment. The personal data of employees may be collected, processed, used and delivered to third parties only with specific authorisation by the employer. The personal data of employees, the collection of which is no longer on a legal basis, must immediately be removed and usage cease. These rights also apply for candidates for employment.

There are no provisions prohibiting the employer from monitoring, or performing surveillance in, the workplace.

The law does not specify nor prohibit the employer from vetting and/or making background checks of his employees or future employees.

In accordance with the Labour Law, when concluding the employment contract, the employer must not require provision of data on the employee's family such as marital status and family planning including the submission of documents or other proofs that are not connected directly to the employment.

The current labour regulation does not regulate any right of the employer to require their employees to submit to a drug test or any other test in the workplace.

Other recent developments in the field of employment and labour law

In the case of seasonal work, an employment contract for recurring seasonal work is established where if the employee will continue to work in the next season, the employer pays him the contributions throughout the year. If the employee does not report to work the following season without justification, he should return the paid funds to the employer.

The salary of house helpers should be paid in cash and should not be lower than the minimum wage. A worker with working hours shorter than full-time is equal to the rights of a full-time worker, except for the salary which is paid proportionally according to the working hours worked.

When hiring a young person, who is in full-time education, and after the end of the training, the young person is permitted to work two hours a day and 12 hours a week. In the case where practical training takes place over the summer, when young people are out of school, they are permitted to work 35 hours a week or seven hours a day. There are also changes in the upper limit of annual leave, that is, the upper limit is exempted.

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