

## **LABOUR AND SOCIAL SECURITY LEGISLATION OF BULGARIA\***

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### **Bulgarian Labour Legislation**

#### **VI.1.1. Normative Provision**

The Bulgarian legislation related to labour law is characterized by codified and detailed provisions established in our Constitution, the Labour Code, a number of legal acts and many regulations and rules. The Labour Code lays down the principles, rules and manner for labour implementation at the territory of the Republic of Bulgaria within the framework of an employment relationship.

The Labour Code determines the territorial scope of the effect of the Bulgarian labour legislation; scope of persons in relation to which it is applied; trilateral cooperation; levels of labour negotiation; employees' organizations; employers' organizations; basic labour rights and obligations; types and content of labour contracts; general contents and amendment of the employment relationship; preserving employment relationships in case of change of the employer; working hours, rests and leaves; labour remuneration; termination of employment relationships and explicitly listed grounds for it; compensations related to employment relationships; safe and healthy working conditions; special protection of certain categories of employees; labour disputes and control for protection of the labour legislation.

Laws containing provisions for employment relationships may be divided into two basic groups: general laws developing the Labour Code and special laws regulating employment relationships of special categories of employees. There are numerous acts in both groups which makes their exhaustive enumeration impossible for the format of such an overview. Within the first group fall: Protection Against Discrimination Act, Safe and Healthy Working Conditions Act, Encouragement of Employment Act, Settling Collective Labour Disputes Act, Employees'

Secured Claims in Case Of Employer's Insolvency Act. The second group includes: Higher Education Act, State Employee Act, Ministry of Internal Affairs Act, Defense and Armed Forces Act, Judicial System Act and Civil Aviation Act.

The most important sub-legislative normative acts that fall within the field of labour law are: Regulation on Working Hours, Rests And Leaves, Regulation on the structure and the organization of the labour remuneration, Regulation of Business Trips and Specialization Abroad and Regulation of Business Trips in the Country, Regulation No 7 on the minimum requirements for healthy and safe working conditions in the place of work and in case of the use of working equipment, etc.

Of course, along with the national legislation, the Republic of Bulgaria has ratified a number of Conventions in the field of employment relationships, such as: the Convention on working hours, the Convention on unemployment, the Convention on employees' representatives, the Convention on annual paid leaves and the Convention on discrimination in the labour sphere and professions, etc. These conventions are an integral part of the Bulgarian legislation and in case of controversy between any internal law and any of these Conventions, Bulgarian courts are obliged to apply directly the provisions of the respective Convention.

As of 01.01.2007 integral parts of the Bulgarian legislation are also all labour related Regulations and Directives of the European Union. In case of controversy between any internal law and any of EU regulations, Bulgarian courts are obliged to apply directly the provisions of the latter.

### **VI.1.2. Legal Definitions**

The labour legislation indicates legal definitions of the basic labour terms as follows:

**Employer** - is any natural person, legal entity or its division, as well as any other organizational and economically separated formation (enterprise, establishment, organization, cooperation, economy, institution, household, company, etc.) which independently employs employees under employment relationship;

**Enterprise** – is any place - enterprise, establishment, organization, cooperation, establishment, site, etc – where employed labour is implemented;

**Place of Work** – is any premises, workshop, room, location of machinery, equipment or any other similar territorial specific place within the enterprise where the employee implements the labour assigned by his employer in pursuance of his obligations arising out of the employment relationship;

**Working time** - is any period during which the worker or employee is obligated to execute the work on which the said worker has agreed.

### **VI.1.3. General Review of the Labour Legislation**

The Bulgarian labour legislation is based on principles generally applicable to the labour law of the European Union: freedom and protection of labour, social dialogue between the state and employees' and employers' organizations for regulation of employment relationships, a ban on discrimination, sexual equality regarding the right to employment and remuneration, guaranteeing the labour remuneration, fixed working hours, limitation of overtime work, guaranteeing rests and leaves, preserving the labour relation in case of change of the employer, collective arrangements and freedom of association of employers and employees.

According to the last amendments of the Labour Code, the Bulgarian labour legislation is applicable to all employment relationships of Bulgarian citizens, citizens of the European Union and citizens of the countries parties of the Agreement of the European Economic Area and of the Confederation of Switzerland with employers in the Republic of Bulgaria, as well as with Bulgarian employers abroad insofar as not provided otherwise in a law or a treaty to which the Republic of Bulgaria is a party. The employment relationships of Bulgarian citizens sent to work abroad in foreign enterprises or joint ventures, and of foreign nationals appointed to work in this country in Bulgarian enterprises or joint ventures pursuant to treaties shall also be regulated by the Labour Code, insofar as not provided otherwise in a law or a treaty to which the Republic of Bulgaria is a party.

#### **Labour Contracts**

The Bulgarian law codifies two types of labour contracts: individual and collective ones. Both of them are concluded in writing and are subject to subsequent registration.

There is no collective labour agreement in Bulgaria established at a national level but there is a National Council for trilateral cooperation comprising representatives of the Council of Ministers, representative organizations of employees and employers. The Council has advisory functions and its own formations on a branch, trade and municipal level.

Collective labour bargaining exists on three levels: enterprise, branch and industry field. For businesses that are financed by the budget of a municipality a Collective Labour Agreement (CLA) is possible at the level of the respective Municipality. The Collective labour bargaining regulates issues of the labour and social security relations of employees, which are not regulated by mandatory provisions of the law. A collective labour agreement shall not contain clauses which are

more unfavourable to the employees than the provisions of the law or of a higher grade of CLA, which is binding upon the employer.

A CLA should be registered, depending on their level, with a special register of the local or Central Labour Inspectorate. The term of validity of the CLAs may not exceed 2 years. CLA are applicable only to the employees that are members of syndicalist organization - party to the contract. In case they are not members of such an organization, they may choose to participate to the CLA, conducted by their employer, upon written declaration to the employer or to the syndicalist organization – party to the contract.

The individual labour contract is to be concluded between the employee and the employer before the commencement of the job. Individual labour contracts are subject to registration within three days as of their signing with the respective division of the National Revenue Agency.

Upon conclusion of the labour contract the employer shall introduce the employee to the labour obligations ensuing from the position occupied or the nature of the work performed. According to the latest amendments of the Labour Code, the employer has to provide the employees with a copy of the description of their activities and scope of responsibilities before the conclusion of the contract. The obligatory contents of the individual labour contract was extended and it must now specify the place, position occupied and nature of work, duration of the labour contract, date of execution and commencement of performance, amount of basic and extended annual paid leave and additional annual paid leaves, identical term of advance notices for both parties in case of termination of the labour contract, basic and additional labour remunerations of constant nature as well as the periodic terms for their payment and the duration of the working day or week.

The employment contract may be concluded:

- for an indefinite period; or
- as an employment contract for a fixed term.

Fixed term employment contracts are: for a definite period which shall not be longer than 3 years, insofar as a law or an act of the Council of Ministers does not provide otherwise; until completion of some specified work; for substitution of an employee who is absent from work; for working at a job which is to be taken through a competitive examination, for the time until it is taken on the basis of the competitive examination; for a certain mandate, where such has been specified for the respective body or an employment contract for a trial period.

A fixed-term employment contract shall be concluded for execution of casual, seasonal or short-term work and activities, as well as with newly hired workers or employees in enterprises that have been adjudicated bankrupt or put into liquidation. As an exception, a fixed-term employment contract may be concluded for a period of not less than one year and for work and activities that are not of a casual, seasonal or short-term nature. Such an employment contract may also be concluded for a shorter period upon request in writing by the worker or employee. Any employment contract, concluded in violation of these principles shall be considered as a contract of an indefinite duration.

### **Working hours, rests and leaves**

The normal duration of the workday, according to Labour Code, is eight hours. The working week consists of five days, with normal duration of 40 hours. Along with the normal working hours, the Labour Code defines extended and shortened working time, flex time, shift work, night work, etc.

There should be one or several rests during the day. The lunch break should not last less than 30 minutes.

Each worker or employee is entitled to a paid annual leave. In case of beginning work for the first time, the worker or employee may use his or her paid annual leave after acquiring at least eight months' length of employment service. The amount of basic paid annual leave is not less than 20 working days. Certain categories of workers or employees, depending on the special nature of work, are entitled to extended paid annual leave. The categories of such workers or employees and the minimum amount of such leave are determined by the Council of Ministers.

According to the new amendments of the Labour Code the maternity leave is extended from 315 to 410 days, 45 of which are taken before the birth of the child. It should be noted that no other European country provides such a long maternity leave. Another innovation is the right granted to the father to use the rest of the maternity leave once the child is 6 months old, subject of the mother's consent. Moreover the father of a new-born child is entitled to take 15 days leave upon the birth of a child.

### **Preserving employment relationships in case of change of the employer**

With similarities to the legislation of the European Union, the Bulgarian labour legislation envisages retention of the employment relationship in case of a change of employer. The employment relationship with the employee shall not be terminated in the event of a change of employer as a result of:

- merger of enterprises by the formation of a new enterprise;
- merger by acquisition of one enterprise by another;
- distribution of the operations of one enterprise among two or more enterprises;
- passing of a self-contained part of one enterprise to another;
- change of the legal form of business organization;
- change of the ownership or of a self-contained part thereof;
- cession or transfer of activity from one enterprise to another, including transfer of tangible assets.

In these cases, the rights and obligations of the transferor employer arising from the employment relationships existing on the date of the change shall be transferred to the new transferee employer. The employment relationship with the employee does not terminate also in the event of a change of employer as a result of renting, leasing or granting under concession of the enterprise or of an autonomous part thereof. In these cases the rights and obligations of the old employer arising from employment relationships existing on the date of the change shall be transferred to the new employer. Upon expiry of the contract for rental, lease or concession, the employment relationships with the workers or employees shall not be terminated but shall revert to the old employer thereof. The old and the new employer shall be jointly liable for all obligations towards the workers or employees.

### **Termination of the employment relationship**

As with the signing of labour contracts, termination of labour contracts is done in writing. The termination procedures and grounds for termination of labour contracts are specified in detail in the Bulgarian labour law. The types of termination of labour contracts may be divided in several basic groups:

- Procedures where termination requires consent of the other party or procedures where termination involves the will and actions only of the party entitled to initiate termination – termination by mutual consent or unilateral termination of the contract;
- Termination procedures via advance notice or termination procedures where no advance notice is required. The maximum terms of the advance notice are specified in the Labour Code: 1 month for non-fixed term contracts unless anything else is specified in the contract, but in any event not more than 3 months, and 3 months for fixed term contracts, but not more than the remainder to the expiry of the contract;
- Termination procedures of the contract upon a motion of the employer and termination procedures upon a motion of the employee. However, while the employee may terminate the labour contract without stating any grounds, the em-

employer cannot use such a procedure. Within seven days after the termination of the employment contract, the employer or a person authorized thereby is obligated to send a notification of this to the relevant territorial directorate of the National Revenue Agency.

The Labour Code provides for a special termination of the labour contract whereby the employer can propose, at his initiative, to the worker or employee termination of the employment contract against indemnification. If the worker or employee makes no comment in writing on the proposal within 7 days it shall be considered rejected. If the worker or employee accepts the proposal for termination against indemnification the employer shall owe him/her an indemnification amounting to not less than the quadruple size of the last received monthly gross remuneration, except if the parties have agreed upon a larger size of the indemnification. If such indemnification is not paid within one month from the date of termination of the labour contract, the grounds for its termination shall be considered dropped.

There are no special Bulgarian courts for consideration of labour disputes as in certain other European countries, but the Bulgarian legislation establishes a special procedure for consideration of labour disputes. A particular feature of considering labour disputes is that employees are released from paying fees and taxes related to the court procedure. The new Civil Procedure Code implements a special legal procedure for cases concerning the rights of the workers or employees which aims to facilitate and shorten the proceedings.

### **Compensations related to the employment relationship**

The Labour Code provides for certain compensations, as briefly scheduled below:

- Compensation for failure to observe the termination notice - equal to the amount of the employee's gross labour remuneration for the remainder of the notice period;
- Compensation for terminating the employment relationship without notice - to the extent of the gross pay for the notice period in case of a labour contract for an indefinite period; and to the amount of the real damages (on the basis of the gross pay for the period during which the employee was unemployed but not more than the remainder of the employment relationship) in case of a labour contract for a fixed term;
- Compensation for dismissal on other grounds:
  - Upon dismissal due to closing down of the enterprise or part of it, staff reduction, reduction of the volume of work and work stoppage for more than 15 working days: 1 month's pay (unless otherwise stipulated);

- Upon termination of the employment relationship due to an illness: 2 months' pay (provided service of at least 5 years and during the last 5 years of service not received any compensation on the same grounds);
- Upon termination of the employment relationship after employee has acquired the right to a pension for insured service and age, irrespective of the grounds for the termination: 2 months' pay; by service with the same employer for ten years: 6 months' pay;
- Compensation for unused paid annual leave.

#### **VI.1.4. Incentives**

Incentives in the sphere of labour law are aimed mainly at decreasing unemployment and enhancement of employment. Those are established in the Encouragement of Employment Act and the Rules on its application. The incentives are payment of funds from the Employment Agency to employers who open new job positions, preserve opened job positions in case of decrease of the working volume, hiring unemployed women over the age of 50 years and unemployed men over the age of 55, engaging unemployed persons of decreased working ability, hiring unemployed women mothers or single parents, employing permanently unemployed persons, etc. An employer wishing to apply for an encouragement of employment program should be registered pursuant to the existing legislation and lack any claimed public liability. Depending on the particular program, other requirements may also be specified.

Further, the Bulgarian Corporate Income Tax Act stipulates some incentives and stimuli as follows:

- incentives for hiring unemployed persons which find expression in reduction of the accounting financial result with the installments made by the employer in Personal Income Tax Fund and National Health Insurance Fund for the period of 12 months;
- the corporate tax is assigned to the amount of 60 % to agricultural producers under the condition that they invest the assigned tax into long-lasting material and non-material assets;
- the corporate tax is assigned to the amount of 100% for the period of 5 years to companies that operate in agriculture, manufacturing industry, manufacture, high technologies and infrastructure, when they invest up to 10 million BGN annually and assets are acquired, which are new to the company and are not utilized before their acquisition, and this incentive does not fall under the category of a minimal state aid;
- the corporate tax is assigned to the amount of 100% when manufacturing activity is performed in municipalities with unemployment higher than the average for the country, as this right is preserved for the following 5 years after the mu-

nicipality is no longer in the list with municipalities with higher unemployment than the average for the country.

In accordance with the principle that the granting of state aid should be in compliance with the common market regulations, the Bulgarian tax legislation, as well as the special State Aid Act stipulate for various restrictions for the granting of tax incentives, which are qualify as state aid, including the infrastructure development aids. The Bulgarian Corporate Income Tax Act provides for certain exceptions from the above restrictions within the framework of the minimal state aid (De minimis aid).

## **VI.2. Bulgarian Social Security Legislation**

### **VI.2.1. Normative Provision**

The right to social security and social relief is determined in the Constitution of the Republic of Bulgaria. Similarly to the labour legislation, the provision of social security is characterized by codification: its basic provision is grounded in the Social Security Code. The procedure provisions are newly settled in the Bulgarian Tax and Social Security Procedure Code.

The legal acts representing part of the normative provision on social security are The Budget of the State Social Security Acts, which are adopted annually. Issues of general importance from the sublegislative acts in the sphere of social security are: the Regulation on elements of remuneration and income over which are deposited social security installments; Regulation on granting and payment of financial compensations for unemployment; Regulation on pensions and security length of service; Regulation on social security funds and the Regulation on social security of self-secured persons and Bulgarian citizens working abroad.

The Republic of Bulgaria is a party to a number of international agreements in the sphere of social security such as: Contracts for social security between the Republic of Bulgaria and Spain, Republic of Macedonia and the Ukraine; Agreements with the Slovak Republic, Czech Republic, Federal Republic of Germany, Hungary and Libya, etc.

As of 01.01.2007 integral parts of the Bulgarian legislation are also all social security related Regulations and Directives of the European Union. In case of controversy between any internal law and any of EU regulations, Bulgarian courts are obliged to apply directly the provisions of the latter. Some of the more important Community law legislation includes the following: Directive 86/378/EEC

on the implementation of the principle of equal treatment for men and women in occupational social security schemes, Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community, Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

### VI.2.2. Legal Definitions

Of all legal definitions specified in the provisions of the social security, we shall review just the three basic terms.

- **Obligatory insured persons for all social risks (i.e. general disease and maternity, disability because of general disease, old age and death, accident at work and professional disease, unemployment)** – pursuant to article 4 of the Social Security Code such persons are: the workers or employees hired to work for more than five working days or 40 hours, within a calendar month, regardless of the nature of the work, the mode of pay, and the source of funding. Persons included in the From Social Welfare to Employment Programme and the Maternity Support Programme shall not be insured against unemployment; the civil servants; the judges, prosecutors, investigating magistrates, executive judges, recording magistrates, and judicial officers; the career servicemen under the Defence and Armed Forces of the Republic of Bulgaria Act and the civil servants under the Ministry of Interior Act and the Implementation of Penal Sanctions Act; the co-operative members, who perform work and receive remuneration at the co-operative; the co-operative members, who work at the co-operative without entering into an employment relationship, shall not be insured against unemployment; the persons who work under a second employment contract or under an additional employment contract; the contractors under contracts for management and control of commercial corporations; persons performing work and receiving income from elective office, with the exception of the ministers holding a spiritual title of the Bulgarian Orthodox Church and other registered religions under the Religious Denominations Act.
- **Obligatory insured persons for limited social risks (disability due to a general disease, old age and death)** are persons registered as sole practitioners /as freelancers and/or exercising craftsmen activity; persons performing work as sole traders, owners or partners in commercial corporations; registered agricultural producers and tobacco producers; persons who perform work without entering into an employment relationship and who receive a monthly remuneration equal to or exceeding one minimum wage less the expenses allowed for standard deduction, unless insured on different grounds during the relevant month; persons who perform work without entering into an employment relationship and who are insured on different grounds during the relevant month, regardless of the amount of the remuneration received.
- **Social Insurance Contributors** – according to article 5 of the Social

Security Code this is any natural person, legal entity or non-personified entity, as well as any other organizations obligated by the law to make social security contributions for other natural persons.

- **Self-insured person** – a natural person obligated to make his social insurance contributions entirely at its own account.

### **VI.2.3. General Review**

The authorities governing the social insurance system are the Ministry of Labour and Social Policy and the National Social Security Institute. The Ministry develops, coordinates and implements state policy in the field of public social insurance.

The National Social Security Institute directly administers social insurance. As a structure, it consists of a Supervisory Board, Governor and Deputy Governor. The Supervisory Board comprises one representative of each representative organization of workers or employees and of employers and an equal number of governmental representatives designated by the Council of Ministers, one of whom is the Executive Director of the National Revenue Agency. The Governor and the Deputy Governor of the National Social Security Institute are elected by the National Assembly for a term of office of four years.

### **State social security**

Social security relations in the Republic of Bulgaria may be divided in two general groups: relations regarding the state social security and relations regarding the additional social security. The state social security covers the risks of general disease, labour accident, professional illness, maternity, unemployment, old age and death. There are special funds collecting the resources allocated to each of them. The basic principles of the state social security are: equality of socially secured persons, compulsory compliance, universal coverage, solidarity of socially secured persons, and fund organization of the social insurance sources. This means that all members of the society contribute to the collection of the resources in the social security funds, but the social security compensations are paid only to those for which the socially covered risks arise.

The income over which security installments are assessed includes all remunerations and other income received from labour activity. The Budget of the State Social Security Act for the respective year determines the amount of social security installments depending on the encompassed social risks as well as the minimum and maximum security income for the year. With the new amendments of the Social Security Code as of 1.1.2009 a more complex system of distribution of the security installments was introduced. For the year 2009 the amount of secu-

rity installments regarding employees working at the third (basic) category of labour for the fund „Pension“ range between 13-18%, depending on the age of the secured person; for fund “General Disease and maternity” – 3,5%; for fund “Unemployment” – 1% and for labour accident and illness - from 0,4% up to 1,1%.

There are considerable amendments in the Social Security Code concerning the distribution of security installments between the social insurer and the social secured person. The security installment for the funds Unemployment and Maternity and general disease are kept at a 60 to 40 ratio, instead of the initially planned for year 2009 55 to 45 ratio. Also a new method of distribution of the security installment for the fund Pension has been introduced as of 1.1.2009.

Security installments for state social security which are to the account of social insurers are deposited simultaneously with the payment of remunerations. Social security installments to the account of socially secured persons are to be deducted and deposited upon payment of the remuneration. Security installments for self-secured persons and persons employed under no employment relationships are deposited by the tenth day of the month following the month they refer to.

### **Supplementary social insurance**

The principles of functioning of the supplementary social insurance differ considerably from those of the mandatory social insurance. The additional social security consists of: additional obligatory pension security in case of old age and death; additional voluntary pension security in case of old age, disability and death; additional voluntary security for unemployment and/or vocational training. Supplementary social insurance is implemented by participation in universal and/or occupational pension funds, funds for supplementary voluntary pension insurance on occupational schemes and funds for supplementary voluntary insurance for unemployment or vocational training. The latter are managed by licensed pension insurance companies or insurance companies for unemployment and/or vocational training. Individual lots are opened for each insured person and the amounts collected therein are paid in the event of the respective social risk or may be withdrawn from the lot by the beneficiary, that is, the principles of mutual participation and solidarity do not apply to supplementary social insurance. The money on individual lots is calculated in leva and in units. The value of one unit depends not only on the contributions made, but on the profitability of the investment of the money which is subject to imperative rules. Insured persons may transfer the money on their individual lot to another fund, or withdraw them on certain conditions.

## **Supplementary mandatory and voluntary pension insurance**

Supplementary mandatory pension insurance is made in universal and occupational pension funds in keeping with the principle for mandatory nature of the insurance. Persons born after 31 December 1959 are insured for supplementary pension in case they are insured in the manner of the mandatory state social insurance, as well as persons working under the conditions of first and second category of labour, regardless of their age.

As of 1.1.2009 the social security contribution for persons insured in an universal pension fund is 5% and is distributed between the social insurer (2,8%) and the social insured person (2,2%), while for an occupational pension fund it is 12% for persons working under the conditions of first category of labour and 7% for persons working under the conditions of second category of labour, and the contributions are entirely borne by the social insurer. Persons insured in an universal pension fund acquire entitlement to supplementary pension for old age for life, and those insured in an occupational pension fund – occupational pension for early retirement for a certain period.

Supplementary voluntary pension insurance is made in a supplementary voluntary pension insurance fund and supplementary voluntary pension insurance on occupational schemes in keeping with the principle for voluntary nature of the insurance. Insured persons are those 16 years of age and older. Social security contributions for supplementary voluntary pension insurance have no fixed amount. Insured persons acquire entitlement to personal pension for old age, personal pension for disability, and if certain prerequisites are met, their heirs are entitled to inheritance pension if the insured person dies. Supplementary voluntary insurance for unemployment and/or vocational training is made in funds for supplementary voluntary insurance for unemployment or vocational training. Insurance in such funds entitled the insured persons to benefits in the event of unemployment and/or money for attendance of vocational trainings.

### **VI.2.4. Incentives**

Incentives in the area of social security are directed mainly at tax reliefs:

- Income of universal and professional pension funds is not subject to taxation pursuant to the Corporate Income Tax Act;
- Income from investments of pension funds distributed to the individual lots of secured persons is not subject to taxation pursuant to the Taxation of Income of Natural Persons Act;
- Individual security installments for additional obligatory pension security are deducted from the income prior to taxation;

- Installments made by employers for additional obligatory pension security are acknowledged as costs related to their business activity.

\* The present material reflects the applicable Bulgarian legislation as of December 31, 2008.

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