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BULGARIA*

Introduction

The Republic of Bulgaria is situated on the west coast of the Black Sea, with Romania to the north, Greece and Turkey to the south, and the former Yugoslavia to the west. It has a population of approximately eight million, placing it in the same category as Austria, Belgium, Hungary, and Sweden in terms of population size. After World War II, state industrialization policy promoted the growth of urban centers; however, more than one-third of the population continues to live in rural areas.

Bulgaria had a communist form of government with only one legal political party, the Communist Party, from 1946-1990. As discussed below, a new Bulgarian Constitution was adopted early in 1990 to allow a multi-party political system.

Bulgaria has concentrated its resources on the development of certain industries, such as the production of mechanical handling equipment, pharmaceuticals, electrical engineering products, and electronics. Bulgaria's initial efforts to make the transition to a market economy were slow to take effect, so state-dominated industry continued to be the driving force of the national economy, accounting for about two-thirds of its economic output and employing nearly 40 percent of the working population in the late 1990s. By 2001, Bulgaria's continuing efforts to make the transition to a market economy were more successful. As a result of the ongoing privatization process, state-dominated industrial

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enterprises are no longer the driving force of the national economy, although they continue to employ a significant number of individuals.

In 2004, Bulgaria successfully completed accession negotiations with the European Union (EU), and on April 25, 2005, signed the Accession Treaty. During 2006, a number of constitutional and legislative amendments were enacted (some becoming effective as of the accession date), aimed at approximating Bulgarian law to the laws of the EU.

Bulgaria became an EU Member State on January 1, 2007. Consequently, the EU regulations (including those in the field of employment and social security), became directly applicable in Bulgaria.

A. Constitution

The new Constitution of the Republic of Bulgaria, adopted on July 13, 1991,[1] reflects the aspiration to move from totalitarian political and economic control to a democratic free market society. The Constitution transformed the state into a parliamentary republic with plural political power and an economy based on free-market economic initiative. The tripartite form of government in Bulgaria established by the Constitution consists of a legislative, executive, and judicial branch, each with its powers checked by the Constitutional Court.[2]

Under the new Constitution, the protection of investments and economic activities of Bulgarian and foreign, natural, and legal persons is declared to be a fundamental principle of law.[3] The Constitution expressly states that the national economy is based on free economic initiative and guarantees equal rights for all citizens and legal entities to engage in economic activities.[4] The Constitution further declares that private property rights are

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[1]CONSTITUTION OF THE REPUBLIC OF BULGARIA OF 1991 [hereinafter CONST.], published in *Darjaven Vestnik* (*DV*) No. 56 (1992).

[2]G. CURTIS, BULGARIA: A COUNTRY STUDY 2 (1993).

[3]CONST. art. 19(3).

[4]*Id*. art. 19(1).

"inviolable and guaranteed by law."[5] As the basic law of the country, the new Constitution allows a greater degree of democracy, freedom, autonomy, and creativity than existed under the prior constitution.[6] The Constitution also fosters the progressive development of Bulgarian labor legislation.

1. Form of Government

The Constitution provides for a republican form of government led by a President directly elected by universal suffrage for a five-year term. The Bulgarian legislature, the National Assembly, is a unicameral body consisting of 240 elected numbers. The National Assembly elects the Council of Ministers, the highest administrative body in the government.

2. The Courts

The Constitution also establishes an independent judiciary and a Constitutional Court. The Supreme Court is located in the capital, Sofia. Trial courts are sited on a town or city basis and appellate courts on a regional (county) basis. Special courts are established for the military.

Justice in the Republic of Bulgaria is administered by the Supreme Court of Appeals, the Supreme Administrative Court, the District Court of Appeal (regional and military), and the appellate and trial courts.[7] The Supreme Court of Appeals provides ultimate judicial supervision over the accurate and equal application of the laws of all courts.[8] The Supreme Administrative Court provides ultimate judicial supervision over the accurate and equal application of the law in the administrative justice system. This includes, for example, the authority to rule on disputes concerning the legality of acts promulgated by the Council of Ministers and individual ministers.[9]

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[5] *Id*. art. 17(1), (3). The Constitution imposes restrictions on the private acquisition of land by foreigners, however. *Id*. art. 22(1).

[6] V. MRACHKOV, BULGARIA LABOR LAW 40 (1995).

[7] CONST. art. 119.

[8] *Id*. art. 124.

[9] *Id*. art. 125(1), (2).

As a general rule, the trial courts have original jurisdiction, and their decisions may be appealed to the District Court of Appeal and the Supreme Court. This is the so-called "full tier system": the trial court, District Court of Appeal, and Supreme Court. The "two-tier system" refers to cases in which the District Court of Appeal decision is final and not appealable to the Supreme Court.

The Constitutional Court interprets the Constitution and rules on requests to decide the constitutionality of any law or legal act passed by the National Assembly or the President. Should a discrepancy between a law and the Constitution be found, the Supreme Court of Appeals or the Supreme Administrative Court will submit the matter to the Constitutional Court.[10] In addition, the Constitutional Court: (1) settles disputes over the respective jurisdiction of the National Assembly, the President, and the Council of Ministers, and disputes between local self-governments and central executive bodies; (2) rules on the constitutionality of international treaties signed by the Republic of Bulgaria (prior to ratification); (3) determines the consistency between Bulgarian laws, universally accepted standards of international law, and the international treaties to which Bulgaria is a signatory; (4) issues opinions on disputes concerning the constitutionality of political parties and associations, the legality of elections of the President, the Vice-President, and national representatives; and (5) issues rulings on charges formulated in the National Assembly against the President or the Vice-President.[11]

B. Labor Law Reforms

1. Traditional Bulgarian Labor Law

Employment and labor relations in Bulgaria traditionally have been dominated by the central government, with the rights and obligations of individual employees, organized labor, and management established by statute. The traditional Bulgarian system that prevailed during the communist era allowed some involvement of employees in governing their relationship with

[10] *Id*. art. 150(2).
[11] *Id*. art. 149.

employers, but strong national labor federations dominated collective representation.

The last major revision of the Bulgarian Labor Code to take place before the post-communist reform movement that began in 1989 was the 1986 Labor Code, regulating both individual and collective labor contracts.

2. *Post-Communist Era*

During the 1990s, a number of changes in Bulgarian labor law occurred in the following areas:

- regulation of unemployment benefits;
- settlement of collective labor disputes; and
- amendments to the 1986 Labor Code.[12]

Labor Code amendments adopted during the 1990s introduced new concepts and substantially changed the nature of Bulgarian labor law, reflecting the ongoing transition to a more democratic and decentralized social system and market economy.[13] With these amendments, labor law in the 1990s was characterized as a mixture of traditional conservative norms, combined with a modest attempt to free the system from the existing bureaucracy and centralized governmental control.

One of the principal purposes of the labor laws is to set minimum standards for labor protection from which the parties to individual and collective labor contracts may deviate by mutual agreement. To this extent, the labor law permits freedom of contract. However, despite the democratic trend reflected in the latest amendments to the Labor Code, there remain certain imperative legal norms that are not subject to negotiation by the parties in either individual or collective labor contracts. Examples include provisions on termination of the employment relationship, employees' disciplinary responsibility, and financial liability of the employee and the employer.[14]

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[12]V. MRACHKOV, BULGARIA LABOR LAW 39 (1995).

[13]*Id.* at 42.

[14]Termination is discussed below at I.F., discipline at I.E., and financial liability of employees at I.E.8.

Over the past few years, Bulgarian social policy and employment law have gradually been developing toward conformity with internationally accepted standards and the European Union's requirements.

In the period between 2001 and 2012, various labor law amendments were introduced. Certain legislative pieces were replaced, and new legislative acts were adopted. These amendments were initiated so as to further develop and regularly accomplish the required harmonization of Bulgarian labor legislation with the cumulative body of EU law. The thrust of these changes has been the development of a more precise legal framework and a more strict regulatory policy in areas such as the following:

- individual employment relationships;
- collective bargaining;
- encouragement of employment;
- antidiscrimination;
- social and health security;
- guaranteeing employee payments in case of bankruptcy of the employer;
- healthy and safe working conditions;
- information and consultations with employees;
- family allowances;
- social assistance.

C. Sources of Labor Law

1. National Sources

In addition to the Constitution, Bulgarian labor law currently is contained in a variety of normative acts issued by different state institutions and agencies. These acts can be categorized as follows:

- Laws of the National Assembly (the legislative body);
- Decrees adopted by the former State Council (which controlled until April 1990);
- Regulations and Ordinances promulgated by the Council of Ministers; and
- Instructions issued by the Council of Ministers.

Fundamental pieces of legislation that regulate labor law relations at a national level include the following:

- Labor Code;[15]
- Law on the Settlement of Collective Labor Disputes;[16]
- Law on Safe and Healthy Working Conditions;[17]
- Law on Encouragement of Employment;[18]
- Law on Protection Against Discrimination;[19]
- Law on the Guaranteed Payment of Employees in Case of Employer Bankruptcy;[20] and
- Law on Diplomacy.[21]

A number of secondary legislative acts such as ordinances and regulations provide detailed regulation in this area.

2. *International Sources*

International agreements and treaties to which Bulgaria is a party supersede domestic law. As discussed below, Bulgaria is a member of a number of international organizations affecting labor and employment law.

a. European Union Membership

Bulgaria signed the EU Accession Treaty on April 25, 2005, and became an EU Member State on January 1, 2007. As a result, a number of EU regulations in the sphere of employment and social security law became directly applicable, i.e., they took immediate effect in Bulgaria in the same way as a national instrument, without need for any further action on the part of the national authorities.[22]

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[15] *See* 26 STATE GAZETTE (Apr. 1, 1986).
[16] *See* 21 STATE GAZETTE (Mar. 13, 1990).
[17] *See* 124 STATE GAZETTE (Dec. 23, 1997).
[18] *See* 112 STATE GAZETTE (Dec. 29, 2001).
[19] *See* 86 STATE GAZETTE (Sept. 30, 2003).
[20] *See* 37 STATE GAZETTE (May 4, 2004).
[21] *See* 78 STATE GAZETTE (Sept. 28, 2007).
[22] For a discussion of EU regulations, see the chapter on the European Union, in the Introduction at D.1.a., in Volume IA, Part 1.

In addition, in 2007, the National Assembly ratified the European Social Charter, signed by the Republic of Bulgaria on September 21, 1998.[23]

b. International Labour Organization

Bulgaria has ratified certain International Labour Organization (ILO) conventions, including those on Freedom of Association and Protection of the Right to Organize[24] and the Right to Organize and Collective Bargaining.[25] In 2002, Bulgaria ratified Convention No. 183 of the ILO, on the Protection of Maternity and, in 2003, ratified Convention No. 180 of the ILO, on the Seafarer's Hours of Work and Manning of Ships Convention, 1996.[26] In 2005, the Bulgarian National Assembly ratified ILO Convention No. 181 on Private Employment Agencies, which completely reshaped the legal framework for private employment agencies in Bulgaria and became effective on March 24, 2006.[27] The National Assembly also ratified ILO Convention No. 173 on the Guaranteed Payment of Employees in Case of Employer Bankruptcy, which took effect in Bulgaria on September 27, 2005.[28] In 2006, the National Assembly ratified ILO Convention No. 156 on the Equal Opportunities and Equal Treatment of Employees of Both Genders Having Family Obligations.[29]

In 2009, the National Assembly ratified ILO Convention No. 177 on Home Work,[30] The Marine Labor Convention,[31]

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[23] *See* 12 STATE GAZETTE (Feb. 6, 2007). For a discussion of the European Social Charter, see the chapter on the European Union, in the Introduction at B.3., in Volume IA, Part 1.

[24] International Labour Organization Convention on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87). For a detailed discussion of ILO conventions, see the chapter on the International Labour Organization in Volume IB, Part 5.

[25] International Labour Organization Convention on the Right to Organize and Collective Bargaining, 1948 (No. 98).

[26] *See* 87 STATE GAZETTE (Oct. 3, 2003).

[27] *See* 10 STATE GAZETTE (Jan. 28, 2005).

[28] *See* 58 STATE GAZETTE (July 6, 2004). See additional discussion at V.A.12., below.

[29] *See* 9 STATE GAZETTE (Jan. 27, 2006). See VI., below.

[30] *See* 39 STATE GAZETTE (May 26, 2009).

[31] *See* 42 STATE GAZETTE (June 5, 2009).

Convention No. 122 on Employment Policy,[32] and Convention No. 102 on Social Security (Minimum Amounts).[33]

c. Bilateral Treaties

In recent years, the Bulgarian Government has entered into a number of bilateral agreements with other countries with respect to employment relationships, particularly regarding employment of citizens of one country within the other based on the principle of reciprocity. These bilateral treaties govern, among other things, the competence for performance of intermediary activities vested in the Employment Agency of the Republic of Bulgaria. The Employment Agency is a specialized body within the Ministry of Labor and Social Policy (see immediately below).

D. Administration of the Labor Laws

1. Government Bodies

The Ministry of Labor and Social Policy promulgates rules and regulations for the implementation of the labor laws, develops government policies on unemployment and employment matters, and protects the national employment market. It also issues ordinances and exercises overall supervision and control with respect to compliance with labor and employment laws.

Administration of the labor laws is the responsibility of the General Labor Inspectorate, which is under the Ministry of Labor and Social Policy. The trade unions also have some oversight functions, although their role in this regard is significantly limited.

By virtue of the Law on Encouragement of Employment, the Employment Agency was established within the Ministry of Labor and Social Policy for implementation of state policies on encouragement of employment and protection of the labor market, for providing vocational information and counseling, and for coordinating employment information and recruitment.

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[32] *See* 45 STATE GAZETTE (June 16, 2009).
[33] *See* 73 STATE GAZETTE (Sept. 11, 2009).

2. Administrative Sanctions Under the Labor Code

Pursuant to the Labor Code, compulsory administrative measures against violations of labor legislation, as well as for prevention and elimination of the harmful consequences of any such violations, may be imposed not only by the General Labor Inspectorate, but by other state bodies and government ministers, the heads of other central-government departments, and local government authorities.[34]

Where it is ascertained that labor is being provided in some form other than under an employment agreement in order to circumvent the Labor Code provisions, the existence of the employment relationship will be declared by a decree issued the labor inspection control authorities. In making their determination, the inspection authorities may use all available means of proof. The inspection authorities will determine the commencement date of the formation of the employment relationship. This determination may be made after the death of an employee, even if that death occurred prior to ascertainment of the Labor Code violation.[35]

Persons (both natural and legal) who violate the labor laws may be subject to fines and pecuniary sanctions.[36] In particular, fines and sanctions may be imposed for failure to fulfill the obligations for provision of health and safety at work, for violation of any other provisions of the labor legislation, or for failure to act in compliance with a mandatory prescription of an authority controlling the observance of the labor legislation.[37]

The 2012 Labor Code amendments introduced a number of changes with respect to administrative sanctions. These changes include the following:

- "user enterprises," as defined in the Labor Code,[38] were included in the types of entities that may be subject to administrative sanctions;[39]

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[34]Labor Code art. 404, in relation to arts. 400, 401.
[35]*Id.* art. 405a.
[36]*Id.* art. 412a.
[37]*Id.* arts. 413, 414, 415.
[38]See I.C.7., below.
[39]Labor Code art. 415f.

- violations in the manner under which the conclusion of employment agreements is carried out, their registration, and the obligation for provision of a copy of the registration form of the employment contract to the employee[40] were expressly excluded from the category of "minor violations";[41]
- for violations of health and safety conditions, a system was established for the deposit of fines and penalties to the social and health security funds;[42]
- the ban on appealing rulings imposing sanctions for "minor violations" of the labor laws was revoked;[43] all rulings are now subject to appeal;
- the established allocation of funds stemming from imposed sanctions was revoked;[44] and
- the General Labor Inspectorate and other state bodies and government ministers, the heads of other central-government departments, and local government authorities were authorized to issue binding instructions to employers, appointing authorities and officials to transform employment contracts concluded for part-time work into employment contracts for normal working time, whenever employees appointed under employment contracts for part-time work actually work longer than contractually prescribed.[45]

Another 2012 Labor Code amendment imposed a fine on individuals who provided labor without an employment contract.[46] However, the Constitutional Court declared this provision unconstitutional.[47]

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[40] See I.B.4., below.
[41] *Id.* art. 415c, subsec. 2.
[42] *Id.* art. 414.
[43] *Id.* art. 416(7).
[44] *See id.* art. 416(9), (10).
[45] *Id.* art. 404(1), subsec. 9.
[46] *See id.* art. 414a.
[47] Decision No. 7 of 2012, 49 STATE GAZETTE (June 29, 2012).

3. The Law on Inspection of Labor

The Law on Inspection of Labor, which came into effect as of January 1, 2009,[48] represents the state's intention to better regulate the aims and activities of the inspecting authorities. The Law on Inspection of Labor applies to all executive authorities and specialized administrative structures that have been assigned to undertake labor inspection activities. The Law on Inspection of Labor provides for the creation of the National Council for Inspection of Labor, a new tripartite body for consultation, coordination, and collaboration on labor inspection.

E. Resolution of Labor Disputes

Articles 357-363 of the Labor Code deal with disputes between employees and employers over the creation, existence, implementation, and termination of the employment relationship.[49] The term "labor disputes" includes disputes between elected employee information and consultation representatives[50] and employers regarding alleged violations of employee representatives' rights.[51] This portion of the Labor Code deals with rights under both individual employment contracts[52] and collective labor contracts.[53]

The 2012 amendments provide that disputes between employees assigned by a temporary work agency and the user enterprise qualify as labor disputes.[54]

1. Jurisdiction

Jurisdiction over labor disputes is governed by both the Labor Code and the Code of Civil Procedure.

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[48] *See* 102 STATE GAZETTE (Nov. 28, 2008).

[49] Labor Code art. 357(1).

[50] See III.A., below.

[51] Labor Code art. 357(2).

[52] See I.A., below.

[53] See II.A., below.

[54] *Id*. art. 357(3). For a discussion of temporary agency employment agreements, see I.C.7., below.

a. Trial Courts

Unless a special act confers jurisdiction on another institution, all labor disputes are within the jurisdiction of the trial courts and are conducted pursuant to the rules of the Code of Civil Procedure.[55] The following individual grievances and labor disputes are not within the jurisdiction of the trial courts:[56]

- dismissal of elected employees in state representative organizations, public organizations, or political parties and movements; and
- dismissal of high-level state officials in the Council of Ministers, in the ministries, committees, agencies, and other central departments, in sections under the control of ministries, county managers, and assistant county managers, and board directors in county administration.

Disputes as to the legality of elections[57] are heard by the district trial court.[58]

As far as local jurisdiction is concerned, each employee is entitled to file a claim against his or her employer before the court in the region where the employee usually works.[59]

b. Appeals

Trial court decisions are appealable to the District Court of Appeal under the regular procedure and rules of the Code of Civil Procedure,[60] except as excluded by special laws.

As a general rule, all labor disputes are subject to a three-tier appeal system in accordance with the provisions of the Code of Civil Procedure.[61] The latter provides that any disputes having as subject matter: (i) labor remuneration, (ii) wrongful termination of an employment legal relationship and its revocation, (iii) reinstatement to a previous position, (iv) compensation for the period

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[55]Labor Code art. 360(1).
[56]*Id.* art. 360(2), subsec. 1–2.
[57]See I.B.7., below.
[58]Labor Code art. 87.
[59]Code of Civil Procedure art. 114.
[60]*See* 59 STATE GAZETTE (July 20, 2007).
[61]Labor Code art. 360(1).

during which the employee was unemployed due to the wrongful termination, as well as (v) amendment of the grounds for termination, as entered into the work book of the employee are heard by the civil courts under summary proceeding rules.[62] Under the law the summary proceeding rules also apply with respect to the hearings before the courts of appeal, where the proceedings before the third instance Supreme Court are conducted under the standard procedural rules. For all civil disputes, including labor disputes, a third-level appeal to the Supreme Court is available if the appealed interest exceeds BGN 5,000[63] and if the District Court of Appeal has ruled on a significant issue of procedural or substantive character, which (i) has been decided in contravention of Supreme Court practice; (ii) has been decided controversially by the courts; or (iii) is of importance to the precise application and development of the law.[64] The Supreme Court does not re-examine the facts of a case, but only reviews the interpretation of the law.

c. Foreign Nationals and Bulgarian Employees Working Abroad

Labor disputes between employees who are foreign citizens and employers that are foreign nationals or joint ventures with a domicile in the Republic of Bulgaria are under the jurisdiction of the Bulgarian courts, unless otherwise agreed to by the parties.[65] Labor disputes between Bulgarian employees working abroad and their employers are under the mandatory jurisdiction of Bulgarian courts, and that jurisdiction cannot be modified by agreement.[66]

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[62]Code of Civil Procedure art. 310.

[63]BGN is the ISO currency code for the Bulgarian Leva, the official currency of Bulgaria. As of July 2013, 1 BGN = 0.67 USD (as per the reference rate of the Bulgarian National Bank on Aug. 12, 2013).

[64]Civil Procedure Code art. 280(1).

[65]Labor Code art. 361.

[66]*Id*. art. 362.

2. Procedures

The prosecution of a labor case is free of charge for the employee,[67] who is exempt from paying court costs or taxes, or any fees for the taking of depositions of experts or witnesses.

3. Statute of Limitations

Article 358 of the Labor Code imposes certain definite periods within which a labor dispute may be brought before the courts. These periods are as follows:[68]

- one month for disputes involving limited financial liability and to repeal a disciplinary penalty of a "reprimand";
- two months for labor disputes to repeal a warning of dismissal, to appeal a modification in the place of work or employment assignment, or to challenge a termination of employment; and
- three years for all other disputes.

These limitations periods begin to run:

- for legal actions regarding revocation of a disciplinary sanction and for legal actions regarding modification in the place of work or employment assignment, as from the day on which the respective order issued by the employer was served to the employee;
- for legal actions regarding termination of an employment relationship, as from the day of termination;
- for all other legal actions, as from the day on which the respective right has become exigible or exercisable;
- for claims in cash, the exigibility is presumed to have occurred on the day on which payment of the respective amount should have been made.[69]

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[67] *Id*. art. 359.
[68] *Id*. art. 358(1).
[69] *Id*. art. 358(2).

F. Class or Group Actions

Under Article 379(1) of the Code of Civil Procedure, a group claim may be filed on behalf of a group of persons damaged by the same violation if, due to the character of the violation, the number of damaged persons cannot be determined precisely but is subject to determination. There is still no court practice regarding group claims. However, it is disputable whether group claims will be found permissible in case of labor disputes because the number of employees affected by a particular violation can be easily determined at any time.

G. Extraterritorial Application of Bulgarian Labor Laws

The Code of International Private Law[70] and the Labor Code on the national level, as well as Regulation No. 593/2008 of the European Parliament and of the Council of June 17, 2008 on the law applicable to contractual obligations[71] (the "Rome I Regulation") on the EU level contain provisions specifying the law applicable to labor relationships with an international element (e.g., cases when one of the parties—employer or employee—is non-Bulgarian). In order to avoid applicability collisions between the Code of International Private Law and the Rome I Regulation, the general rule established in the Law on Statutory Instruments[72] is applied. This rule explicitly states that if a statutory instrument collides with an EU regulation, the regulation should be applied. Therefore priority is given to the Rome I Regulation.[73]

Under Article 96 of the Code of International Private Law, the employment agreement must be governed by the law chosen by the parties, on the condition that the parties' choice of law does not deprive the employee of the protection he or she enjoys under the mandatory rules of law that would normally apply in the absence of a choice of law. In other words, the parties to an employment relationship of international character may choose a

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[70]See 42 STATE GAZETTE (May 17, 2005).

[71]European Parliament and Council Regulation 593/2008/EC on the law applicable to contractual obligations (June 17, 2008) (Rome I).

[72]See 27 STATE GAZETTE (Apr. 3, 1973).

[73]For additional discussion, see I.I., below.

non-Bulgarian law to govern their labor relationship, but in case the work is performed within the territory of Bulgaria, mandatory Bulgarian labor law rules must always be considered.

In the event that labor is not performed on Bulgarian territory, Bulgarian law could still apply outside the country in the absence of a chosen applicable law (or in case the employment agreement lacks an international element allowing for the choice of law). Pursuant to Article 10 of the Labor Code, employment relationships with Bulgarian enterprises abroad must be governed by Bulgarian law unless otherwise specifically provided for by law or international treaty. Bulgarian law must also be applied to employment relationships of Bulgarian citizens seconded abroad to foreign enterprises or to enterprises with Bulgarian and foreign participation, as well as to relationships with foreign persons working in Bulgaria. If the parties have not chosen the applicable law (or if the choice is not permissible), Bulgarian law would apply if the employee has his or her usual place of work in Bulgaria, even if temporarily seconded to another country. If the employee's usual place of work is not within the territory of a single country, Bulgarian law would apply if the employee's usual place of living or the employer's principal place of business were located in Bulgaria.

For the time being, there is no court or administrative practice illustrating the manner of regulating labor relationships with an international element and the prospective conflict between the legal norms of more than one country. One reason is that until March 1, 2008, Bulgarian courts had no obligation to publish their court practice. The publicly available legal databases of Bulgarian court practice do not yet contain references to such lawsuits.

I. Individual Employment

At the conclusion of a collective labor contract,[74] an affected employee and employer are free to negotiate more favorable employment conditions under an individual employment contract. The collective labor contract and the labor law and regulations

[74] See II.B.5., below.

provide the basic legal structure on which an individual employment contract should be negotiated. If the individual employment contract provides less favorable employment conditions for the employee than those provided in the collective labor contract or under the labor laws, the individual employment contract may be declared invalid.[75]

A. Job Placement Services

As of the Accession Treaty's effective date, January 1, 2007, the types of entities or individuals authorized to provide job placement services in Bulgaria was extended to include entities or individuals authorized to perform those services under the laws of a Member State of the EU or the European Economic Area (EEA).[76] Entities or individuals who are entitled to perform job placement services under the laws of the Confederation of Switzerland are also authorized to provide those services in Bulgaria.

From the employees' standpoint, any citizen of an EU or EAA Member State, who is actively looking for a job, may register with the Bulgarian Employment Agency.[77]

B. Formation of the Employment Relationship

The Labor Code provides that an employment relationship may be established by the following means:

- an employment contract;
- an election;[78] or
- a competitive examination.

The employment relationship also may be established by government act, judicial decision, or appointment by government officials.

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[75]Labor Code art. 74(1).
[76]Law on Encouragement of Employment art. 27(2.2).
[77]*Id*. art. 18(1).
[78]See I.B.7., below.

1. Capacity of the Employee

Both the individual employee and the employer must possess the contractual capacity to enter into an employment relationship. Individuals are competent to contract when they reach 16 years of age. However, the law does recognize limitations on the employment capacity of certain categories of citizens, including, for example, the following:

- convicted criminals may not occupy certain state or public positions and may not be appointed to jobs involving accounting or financial responsibility;
- professional drivers who have had their driving licenses temporarily suspended are subject to limitations on their employment; and
- professional drivers, pilots, and engine drivers who have caused an intentional accident are deprived of the right to practice their profession for an indefinite period.

2. Capacity of the Employer

Whether the employer is a natural or legal person, it must have the legal capacity to enter into an employment relationship. If the employer is a natural person, this requires mental capacity and attainment of legal age. If the employer is a corporate entity, it must satisfy the requirements of a juridical person (i.e., registration, minimum number of employees, and minimum amount of capital).

With regard to the capacity of an employer that is a legal entity, Bulgarian law does not require a minimum number of employees. Upon registration in the Commercial Registry, which is maintained by the Registry Agency, an administrative body subordinate to the Ministry of Justice, it may employ individuals without any numerical limitations.

3. Job Applications

The filing of a written job application and the issuance of a written order for employment are not obligatory. The parties to a future individual labor relationship are free to meet and discuss

the parameters of their relationship orally and, as a result of that discussion, enter into an employment contract. In cases where the employer issues a written order of employment, the order does not have the effect of unilaterally determining the employee's remuneration. Because it is necessary to obtain the employee's agreement to the amount of remuneration, it is more precise to say that the written order is an offer by the employer regarding the amount of remuneration.

A job applicant must submit a written application, which constitutes an offer to contract. The applicant is required to attach to the job application his or her passport, education certificate, work book, medical certificate, and, in the case of applicants younger than the age of 16, the applicant's special work authorization.[79]

If the employer accepts the offer, it issues a written order for the applicant's appointment to the position. The written order proves the existence of the employment contract and establishes clarity in the relations between the parties regarding the content of the employment contract and the moment of its conclusion.

4. Form of the Employment Contract

An employment contract is a written agreement[80] that is concluded between the employee and the employer.[81] The Labor Code does not provide a legal definition of the term "employment contract," but certain essential requirements are stated in the Code.[82]

The employment contract may be signed by a group of persons, in which case the employer and each member of the group have the same rights and obligations as if the contract had been signed by each person separately.[83]

Employers are obliged to inform the National Revenue Agency (NRA) about the execution of employment agreements

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[79]Ordinance No. 4 of the Ministry of Labor and Social Policy for the Necessary Documents for the Conclusion of an Employment Contract, *DV* No. 44 (1993). See also VI.B.1., below.

[80]Labor Code art. 62.

[81]*Id*. art. 61.

[82]See I.B.5., below.

[83]Labor Code art. 61(3).

and are prohibited from allowing the employee to commence performance before the employer has furnished the employee with a certified copy of the notification filed with the NRA.[84]

The NRA will provide the General Labor Inspectorate with electronic access to the register of labor agreements and will send, upon request, a copy of the relevant certified notification received by the NRA.[85]

5. Content of the Employment Contract

The employment contract aggregates a variety of rights and obligations of the participating parties. Pursuant to Article 66(1) of the Labor Code, in order to conclude an employment contract, both parties must reach agreement on the following central issues:

- the workplace;
- the position and the nature of the work;
- the date of the contract's execution;
- the date on which the employee is to commence work;
- the duration of the contract;[86]
- the duration of basic paid annual leave and additional annual paid leave;[87]
- the notification period for termination of the employment contract, which must be the same for both parties;[88]
- the basic and additional remuneration of a permanent nature and the terms of payment;[89] and
- the duration of the working day or week.[90]

These elements constitute the core of the labor contract and are of great significance to both parties.

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[84]*Id.* art. 62(3) Regulation No. 5 on the Contents and Procedure for Delivery of the Notification under art. 62 para. 4 of the Labor Code. *See* 1 STATE GAZETTE (Jan. 3, 2003).

[85]Labor Code art. 62(3).

[86]See I.C.1., I.C.2., and I.C.4., below.

[87]See V.C.1., below.

[88]See I.F.1. and I.F.4., below.

[89]See V.A., below.

[90]See V.B., below.

The "workplace" is the designation of the employee's work territory within the employing entity. It is usually stated as the enterprise's place of business, unless another meaning is specified in the labor contract.

The employer determines the "nature of the work" assigned to the employee, which includes the requirements for quality and quantity of the work expected. The employer is required to submit these requirements to the employee in a written job description.[91]

The remuneration specified in the contract includes both the employee's basic wages and any additional remuneration. Additional compensation may be determined according to "the quantity and quality of the work performed by the employee."[92]

An employment contract may expressly contain statements of other benefits in addition to the employee's compensation. These additions may include housing, educational courses for professional development, and other provisions that are "more favorable to the employee than those provided for in the collective labor agreement."[93] As noted above, individual employment contract terms that are less favorable to the employee than those provided in the collective labor agreement or under labor laws are void.

Employment contracts also are required to contain a detailed identification of the parties.

The names of positions, as used in employment contracts, should be determined in accordance with the National Classification of Professions and Positions.[94]

An employer must also provide the employee with a written job description at the moment the employment contract is executed.[95] Each employee must sign a written confirmation of receipt of the job description, which further contains an indication of the date of receipt.[96]

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[91]Labor Code art. 127(1), subsec. 4.

[92]*Id*. art. 247(1). Labor Code provisions regarding compensation are discussed at V.A., below.

[93]Labor Code art. 66(2).

[94]Labor Code art. 66(4).

[95]*Id*. art. 127(1), subsec. 4.

[96]*Id*.

6. *Time of Conclusion and Execution of the Employment Contract*

Employers are prohibited from allowing employees to perform their obligations under their labor contracts unless the employer has furnished them with copies of their written labor contracts and certified copies of the standard form notifications sent to the NRA.[97]

In the event of the employer's failure to execute a labor agreement in writing, to communicate the required information to the NRA within the specified deadlines, or to present the employee with original copies of the executed employment agreement and the notification form certified by the NRA, the employer and the employer's officials could be subject to a fine or pecuniary sanction for each particular event of default.[98] As of 2010, for each employee not furnished with an original copy of the executed employment agreement and the notification form certified by the NRA, for each failure to communicate the required information to the NRA within the specified deadlines, etc., employers are subject to a pecuniary sanction ranging from BGN 1,500 to BGN 15,000, and employers' officials are subject to a fine ranging from BGN 1,000 to BGN 10,000.[99]

The employment contract is concluded on the date on which the parties reach an agreement on the core of the employment contract, as verified by their signatures. Unless otherwise agreed by the parties, the employee must commence work within seven days after the employer furnishes him or her with a signed copy of the contract and a notification form certified by the appropriate regional department of the NRA. Failure of the employee to assume job responsibilities within this period will result in dissolution of the contract.[100] The performance of the contract begins when the employee begins work, an act that is verified in writing.[101]

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[97] *Id*. art. 63(2).

[98] Regulation No. 5 on the Contents and Procedure for Delivery of the Notification under art. 62 para. 4 of the Labor Code. *See* 1 STATE GAZETTE (Jan. 3, 2003).

[99] Labor Code art. 414(3).

[100] *Id*. art. 63(3).

[101] *Id*. art. 63(4).

7. Employment by Election

An employment relationship can be created based on an election. The list of elected employment positions is determined and periodically updated by act of the Council of Ministers, or by other laws.[102] An example of an elected employment position is director of an enterprise.

8. Employment in the State Administration

With respect to individuals employed in the state administration, an employment agreement cannot be concluded with a person who meets any of the following criteria:[103]

- would thus be in a hierarchical relationship of direction and control (i) with a spouse; (ii) with anyone with whom the person actually resides; (iii) with a lineal relative up to any degree of consanguinity, a collateral relative up to the fourth degree of consanguinity inclusive, or an affine up to the fourth degree of affinity inclusive;[104]
- is (i) a sole trader; (ii) an unlimited partner in a commercial corporation; (iii) a managing director; (iv) a commercial proxy; (v) a representative; (vi) a procurator or commercial mediator; (vii) a liquidator or a trustee in bankruptcy; or (vii) a member of a management or supervisory body of a commercial business or corporation;
- is a member of the National Assembly;
- is a member of a municipal council (this restriction is applicable solely to the relevant municipal administration); or
- occupies a senior or supervisory position at the national level in a political party (this restriction does not apply to members of political offices or to the advisors and experts thereof).

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[102] *Id*. art. 83.

[103] *Id*. art. 107a.

[104] A mother is a lineal relative; a step-mother is an affine. The children of the mother's sister are collateral relatives.

Upon conclusion of a labor agreement, the individual who is to be the employee declares the lack of circumstances listed above.

The 2012 Labor Code amendments introduced new, additional conditions applicable to individuals employed in the state administration. In particular, the employee's scope of activities within which he or she can be engaged aside from the employment relationship with the state administration is broadened. As amended, the Labor Code allows employees to represent, free of compensation, the state or a municipality in boards, committees, audit committees, commissions, working or expert groups, and management or supervisory bodies of funds, accounts and others, which have no legal personality.[105]

The 2012 amendments also introduced an obligation for employees to declare not only their property status but also the income earned during the previous calendar year based on additional work agreements, the income from remuneration based on non-labor relations, as well as the employer or client who made the payments, including the grounds of the income and payments.[106]

The 2012 Labor Code amendments further provide that the chief secretary, the permanent Secretary of Defense, or the permanent Secretary of the Ministry of Interior must sign employment contracts with state officials.[107]

Finally, the amendments introduced an annual attestation test for individuals working on the grounds of an employment contract in the state administration.[108]

9. Secondment of Employees to EU Institutions

Pursuant to Labor Code Article 120a, an employee may be seconded to a position in an institution of the EU for not more than four years. Within the period of an assignment with the EU institution, the employee is entitled to retain his or her employment relationship with the employer and continue to receive from the employer his or her basic employment remuneration. Upon

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[105]Labor Code art. 107a(2).
[106]*Id*. art. 107a(5).
[107]*Id*. art. 107a(6).
[108]*Id*. art. 107a(18).

expiration of the secondment period, or in the event of early termination, the employee is entitled to reinstatement to his or her former position within 15 days, or if the previous position has been eliminated, to be offered an equal position.

The Council of Ministers will adopt a regulation providing for the conditions and manner for secondment under Article 120a of the Labor Code.

C. Types of Employment Contracts

1. Indefinite-Duration Contracts

Article 67 of the Labor Code provides that employment contracts may be for an indefinite duration or for a fixed term. Contracts are deemed to be concluded for an indefinite duration if no fixed term is specified.[109]

The contract for an indefinite duration is the most commonly used type of employment agreement. Indefinite-term contracts provide stability in the employment relationship and guarantee a longer term of job security than do fixed-term contracts.

2. Fixed-Term Contracts

Contracts with a fixed term are also widely used. Article 68 of the Labor Code establishes four kinds of fixed-term employment contracts:

- contracts with a fixed date of termination;[110]
- contracts that expire upon completion of a given task;[111]
- contracts for the employment of substitutes;[112] and
- contracts for the completion of a job that will be occupied by a nominee selected by competitive examination.[113]

[109] *Id*. art. 67(2).
[110] *Id*. art. 68(1), subsec. 1.
[111] *Id*. art. 68(1), subsec. 2.
[112] *Id*. art. 68(1), subsec. 3.
[113] *Id*. art. 68(2), subsec. 4.

The duration of these contracts may range from one day to several years. Termination of the fixed-term contract occurs upon expiration of the term stated in the contract.

Because fixed-term contracts do not guarantee continuous employment, employees are inclined to avoid them whenever possible. Nevertheless, fixed-term contracts provide a convenient tool for employers that require employees on a temporary or seasonal basis. Under the economic conditions that prevailed in Bulgaria in the mid to late 1990s, including the significant decline in employment opportunities, many employers preferred fixed-duration contracts because of the simplicity of termination. The contract simply expires without notice.[114]

The Labor Code places restrictions on fixed-term contracts that are concluded for periods of three years or fewer. If a fixed-term contract is concluded in violation of the statutory limitations, then the contract is considered to be an employment contract for an indefinite term.[115]

As a general rule, a fixed-term contract for a period not exceeding three years may be concluded for performance of work that is temporary, seasonal, or short-term in character, or with employees who are hired by companies in bankruptcy or liquidation proceedings. The Labor Code recognizes that fixed-term contracts may be concluded in other "exceptional cases," although the minimum duration of such a contract should be one year. The one-year limit applies only to fixed-term contracts that are concluded in exceptional cases for performance of works that do not qualify as temporary, seasonal, or short-term. Upon written request of the employee, a fixed-term contract may be of shorter duration, but, in any case, a fixed-term contract with a single employee for a single position may be renewed only once, and the duration of the renewed contract must be at least one year.[116]

An exceptional case for purposes of executing a fixed-term contract is one involving, at the moment of execution, technological, financial, marketing, or other circumstances out of the control of the employer that require a fixed-term contract, rather than a

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[114] V. MRACHKOV, BULGARIA LABOR LAW 67 (1995).
[115] Labor Code art. 68(5).
[116] *Id*. art. 68(3), (4).

contract for an indefinite term. Although the legislature attempted to limit the availability of fixed-term contracts, this definition of the term "exceptional cases" is so vague and broadly formulated that it makes it quite easy for employers to circumvent the new restrictions.

Employees working under fixed-term contracts enjoy the same rights and are subject to the same obligations as employees working for an indefinite duration. Accordingly, employees working under fixed-term contracts may not be put in a relatively disadvantageous position based on the fixed-term nature of the employment relationship.[117] In addition, employers must provide employees working under fixed-term contracts with adequate written information regarding vacant indefinite-term positions. This information must be provided to both the trade union representatives and the employees' information and consultation representatives.[118]

Pursuant to the 2012 amendments Labor Code amendments, a fixed-term employment contract may be concluded for employment in a position designated for long-term assignment to a mission abroad of the Republic of Bulgaria under the Law on Diplomacy.[119]

Another amendment establishes that the employer is under the obligation to take measures, to the extent possible, to facilitate access of fixed-term employees to vocational training for the purpose of enhancing their skills, career development, and occupational mobility.[120]

3. Transformation of Fixed-Term Contract to Indefinite-Duration Contract

As set forth immediately above, if a fixed-term contract is concluded in violation of the statutory limitations, then the

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[117] *Id*. art. 68(2).

[118] *Id*. art. 68(7). For a discussion of information and consultation representatives, see III.A., below.

[119] Labor Code art. 68(6).

[120] *Id* art. 68(8).

contract is considered to be an employment contract for an indefinite term.[121]

A fixed-term contract can also be converted into a contract for an indefinite duration based on the conduct of the parties. In particular, if an employee continues to work in the enterprise for five or more days after the expiration of the fixed-term contract without written objection by the employer, the fixed-term contract is thereby transformed under Bulgarian law into a contract of indefinite duration.[122]

The same rules of transformation apply to a contract with a temporary substitute for an absent employee if the contract with the absent employee is terminated during the period of substitution.[123]

4. Probationary Contracts

Another type of employment contract in common use is the probationary contract. Under the terms of this type of agreement, an employer has up to six months to offer a temporary prospective employee a permanent labor contract.[124] This enables the employer to observe and assess the qualifications and skills of the employee before entering into a permanent employment relationship. Under the probationary contract, the employer decides whether to offer another contract to the employee after the expiration of the probationary period. The employer's determination must be based on the employee's fitness and qualification for the job. The employer's decision is discretionary and not subject to any control.[125]

Theoretically, at least, a probationary contract of employment may be desirable for the employee in some cases, because the employer's decision whether to continue the employment relationship will depend on the employee's evaluation of the desirability of the job and his or her own fitness and qualification. In reality, however, this type of employment contract is rarely

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[121] *Id*. art. 68(5).
[122] *Id*. art. 69(1).
[123] *Id*. art. 69(2).
[124] *Id*. art. 70(1).
[125] V. MRACHKOV, BULGARIA LABOR LAW 71 (1995).

desirable for an employee, particularly during periods of widespread unemployment.

Article 70 of the Labor Code provides that the probationary contract should specify for whose benefit the probationary term is agreed. The party benefited is able to terminate the contract within the probationary term with immediate effect and without stating any motives for termination. If the contract does not specify for whose benefit the probation was agreed, it is considered to be for the benefit of both parties.

The execution of a second probationary contract between the same employer and the same employee for the same job is explicitly prohibited.[126]

5. Employment Agreements for Work from Home

An employment agreement may stipulate that the performance of employment duties may be performed at the home of the employee or in other premises outside the working place of the employer, if related to the manufacturing of certain production and/or provision of services. Employees working under such an employment agreement are deemed to be employees performing work from home. Employers must keep documentation for each employee performing work from home, which must be presented to the General Labor Inspectorate upon request.[127]

The employment agreement for work from home must be executed under the general terms and conditions applicable to employment agreements.[128] The employment agreement for work from home must further provide for the following:[129]

- the location of the working place;
- the employment remuneration in accordance with applicable requirements for payment;
- the manner for assigning work and its reporting;
- the manner for supplying materials and delivery of finished production;

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[126]Labor Code art. 70(5).
[127]*Id*. art. 107b.
[128]See I.B., above.
[129]Labor Code art. 107c.

- expenditures for the working place and their payment; and
- other conditions related to the specific requirements for performance of work from home.

The employer must provide the employee performing work from home with the following:[130]

- conditions for the performance of the work assigned upon commencement of the employment relationship;
- payment and treatment equal to those provided to other employees in the enterprise;
- healthy and safe working conditions;
- qualification, pre-qualification, and education;
- social and health security under the terms and conditions required by applicable legislation;
- an opportunity for participation in trade unions, in the general meeting of employees in the enterprise, information and consultation, and coverage under any applicable collective labor agreement; and
- social, welfare, and cultural services.

While performing work from home, the employee must do the following:[131]

- observe the rules for healthy and safe working conditions;
- ensure access of the employer and the controlling bodies to the working premises;
- if the working place is in a residential building or near a residential building, refrain from activities and acts that would create undue anxiety for other owners and residents, as determined by the Law on Condominium Ownership Management.

Employees performing work from home must determine the beginning, the end, and the distribution of their working time

[130] *Id*. art. 107d.
[131] *Id*. art. 107e.

within the frame of its statutory duration.[132] These employees must also determine the periods for rest during the working day, rest between working days, and between the weeks.[133] The employee must inform the employer in writing about these circumstances within seven days of execution of the employment agreement. Open-ended working hours and performance of overtime work are not available to employees performing work from home.[134]

6. Employment Agreements for Distance Work

Distance work is a way to organize work outsourced from the employer's premises through the use of information technology, which work was or could have been performed at the employer's premises before its outsourcing. Distance work is voluntary. The terms and conditions for distance work must be stipulated in a collective labor agreement or in an individual employment agreement.[135]

An employer may propose to an employee to switch from working at the employer's premises to distance work; the agreement of the parties to that effect must be memorialized in an addition to the individual employment agreement. An employee's refusal to change to distance work may not lead to adverse consequences for him or her. It is also possible that an employee proposes to the employer to switch from working at the employer's premises to distance work.[136]

An individual employment agreement or a collective labor agreement may provide for the following:[137]

- combined working systems, as well as the terms and the procedure for their implementation; and
- possibilities and conditions for switching from distance work to work at the employer's premises.

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[132]See V.B.1., below.

[133]See V.B.8., below.

[134]Labor Code art. 107f. For a discussion of open-ended working time, see V.B.9., below; for a discussion of overtime, see V.B.2., below.

[135]*Id*. art. 107h(3).

[136]*Id*. art. 107h(5).

[137]*Id*. art. 107h(6).

An individual employment agreement and/or a collective labor agreement or the employer's internal regulations may provide for rules regarding the following:[138]

- the procedure for assigning and reporting distance work; and
- the content, volume, achieved results, and other characteristics of the work important for the accounting of distance work.

An employee performing distance work must designate a specific area in his or her home or in other premises chosen by him or her outside the enterprise of the employer to serve as a working place. Issues related to the operational, technical, and other equipment at the working place, the obligations and costs pertaining to its maintenance, other conditions relating to the supply, replacement, and maintenance of the equipment, as well as clauses relating to the acquisition of separate items of equipment by an employee performing distance work must be stipulated in the individual employment agreement.[139]

The employer must provide to the employee at the employer's expense the following:[140]

- the equipment necessary for performing distance work, as well as the supplies necessary for its operation;
- the necessary software;
- preventive maintenance and technical support;
- the devices intended for communication with the employee performing distance work, including an Internet connection;
- data protection;
- information on and requirements for operating the equipment and keeping it in good order, and the legal requirements and rules, including those of the enterprise in the

[138] *Id*. art. 107h(8).
[139] *Id*. art. 107i(2).
[140] *Id*. art. 107i(3).

field of data protection, for data to be used in the course of the distance work;
- a surveillance system, where it is necessary to install one at the working place and if the employee's written consent thereto has been obtained; and
- other technical devices in accordance with the individual employment agreement and/or the collective labor agreement.

An employee performing distance work is responsible for the proper storage and operation of the equipment provided to him or her. In case of a breakdown, the employee must immediately inform the employer in accordance with the procedure agreed to by the parties in advance. An individual employment agreement and/or a collective labor agreement must stipulate the conditions for preventing the employee performing distance work from abusing the equipment and the Internet and other communication connections provided to him or her.[141]

The employer must provide the employee in advance with written information on liability and sanctions in case of failure to observe established rules and requirements, including those on the protection of business data, and this information becomes an integral part of the individual employment agreement.[142]

Employees performing distance work enjoy the same rights related to the organization of work and health and safety at work, provided by Bulgarian legislation and by the applicable collective labor agreements, as those enjoyed by employees working at the employer's premises.[143]

The employer is obliged to ensure that, as of the commencement of the distance work, the working place chosen satisfies the minimum requirements for health and safety at work as provided for by the Law on Safe and Healthy Working Conditions and the regulations on its application.[144]

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[141] *Id*. art. 107i(6).
[142] *Id*. art. 107i(7).
[143] *Id*. art. 107j(1).
[144] *Id*. art. 107j(2). See VII.A., below.

The employer is responsible for health and safety conditions at the working places of employees performing distance work and is under an obligation to inform them about requirements for the organization of work and healthy and safe working conditions in accordance with legal regulations, the applicable collective labor agreements, the internal rules of the enterprise, the enterprise's policy on health and safety at work, and all requirements and rules on the organization of work and on working with video displays.[145]

Observance of the requirements and standards on health and safety at work is controlled as follows:[146]

- employees performing distance work have the right to request a visit to their working place by submitting an application to the relevant directorate of the General Labor Inspectorate;
- the employer and/or a representative thereof, the representatives of trade union organizations, the employees' information and consultation representatives,[147] and the controlling authorities of the Labor Inspectorate have the right to access the working place within the limits stipulated in the individual employment agreement and/or the collective labor agreement, subject to advance notification given to the employee performing distance work and subject to his or her consent.

The working time of an employee performing distance work is subject to the following:[148]

- working time must be stipulated in the individual employment agreement in accordance with the Labor Code,[149] the collective labor agreement, and the enterprise's internal working rules;

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[145]Labor Code art. 107j(3).
[146]*Id*. art. 107j(5).
[147]See III.A., below.
[148]Labor Code art. 107k(1).
[149]See V.B., below.

- working time must be subject to the daily and weekly rest periods provided for by the Labor Code;[150] and
- working time must correspond to the duration of working time applicable to employees working at the employer's premises.

An individual employment agreement may explicitly exclude the possibility for overtime work, night work, and work on national holidays.

Subject to the above conditions, an employee performing distance work must organize his or her own working time in such a way as to be available and to work at the time when the employer and the business partners thereof communicate with each other. The actual time worked must be recorded on a monthly basis. The employee performing distance work is responsible for the authenticity of the data so recorded.[151]

Employees performing distance work must do the following:[152]

- determine their own rest periods within their working time in accordance with the provisions of the Labor Code,[153] the Law on Safe and Healthy Working Conditions, and secondary legislation related to their application, as well as the arrangements stipulated in the individual employment agreement and/or the collective labor agreement; and
- use paid annual leave in accordance with the provisions of the Labor Code,[154] secondary legislation, and arrangements in the individual employment contract and/or collective labor agreement.

The amount of remuneration must be stipulated in the individual employment agreement, subject to the provisions of the Labor Code and in accordance with the collective labor agreement and the enterprise's internal salary rules. An employee

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[150] See V.B.8., below.
[151] Labor Code art. 107k(5).
[152] *Id*. art. 107k(6).
[153] See V.B.8., below.
[154] See V.C.1., below.

performing distance work is entitled to all additional employment remuneration provided for by current legislation, the enterprise's internal salary rules, the individual employment agreement and/or the collective labor agreement.[155]

An employee performing distance work has labor and trade union rights equal to those of employees working at the employer's premises. Employees performing distance work may form their own group, which may choose a separate information and consultation representative,[156] provided that their total number exceeds 20.[157]

The employer must provide opportunities for the following:[158]

- preventing the isolation of employees performing distance work from the rest of the employees working at the employer's premises by creating conditions for periodic work or social meetings at the employer's premises/offices and possibly creating a corporate virtual space—a chat room, forum, or other kinds of media, through which employees performing work at the employer's premises and those working remotely can freely communicate;
- access to corporate and professional information of the enterprise related to performing distance work;
- participation of employees performing distance work in the organizational and social life of the enterprise trade union organization in which they are members.

Employees who perform distance work must have the same access to training and career development opportunities as those provided to employees who work at the employer's premises and must be subject to the same evaluation policy.[159]

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[155]Labor Code art. 107l, (1). For a discussion of additional remuneration, see V.A.4., below.

[156]See III.A., below.

[157]Labor Code art. 107m(2).

[158]*Id*. art. 107m(4).

[159]*Id*. art. 107n.

7. Employment Agreements with Temporary Work Agencies

EU Directive 2008/104/EC on Temporary Agency Work[160] regulates the employment relationship in which enterprises known as temporary work agencies hire and supply employees for assignments with client enterprises, known as "user enterprises." In 2012, Directive 2008/104/EC was implemented into Bulgarian law by means of amendments to the Labor Code.

The 2012 Labor Code amendments introduce conditions and rules for performance of work through a temporary work agency; in particular, the following: [161]

- the employment contract should stipulate that the employee is being assigned to perform temporary work with a user enterprise and under its control;
- a limitation is placed on the maximum number of persons who can be assigned by a temporary work agency and the type of work that can be performed under such circumstances;
- the temporary work agency is banned from prohibiting employees from establishing an employment relationship directly with the user enterprise after the expiration of the initial employment contract;
- a prohibition is placed on the imposition of fees for assistance in starting the job, upon the conclusion of an employment contract, or upon formation of an employment relationship with a user enterprise;
- a registration requirement is established for temporary work agencies;
- rules are established to regulate the legal relationship between the temporary work agency and the user enterprises;
- a written contract containing certain requisites should be concluded between the enterprises;
- joint liability is established for the enterprises.

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[160]European and Council Directive 2008/104/EC, 2008 O.J. (L 327) 9. For a discussion of this Directive, see the chapter on the European Union, at I.B.3., in Volume IA, Part 1.

[161]Labor Code art. 107r.

As per the 2012 Labor Code amendments, the temporary work agency is under an obligation to do the following:[162]

- charge the labor remuneration of the employee on a payroll;
- pay the labor remuneration;
- upon written request by the employee, issue and provide an abstract of the documents concerning the employment remuneration and compensation amounts paid or outstanding;
- insure the employee;
- provide for the social and health security of the employee;
- upon a written request by the employee, issue and provide the necessary documents certifying facts related to the conclusion, execution, and termination of the employment relationship;
- upon termination of the employment relationship, issue a dismissal order or another document certifying the termination.

The Labor Code amendments establish obligations for the user enterprise as well. Thus, the user enterprise must do the following:[163]

- designate the workplace where the work is to be performed;
- deliver a job description to the employee prior to commencement of the assignment;
- instruct the employee to perform the assignment in a safe and healthy manner;
- record the time worked and inform the enterprise providing temporary work and the employee;
- determine the amount of the basic and additional labor remuneration due;
- upon a written request by the employee, issue and provide the necessary documents certifying facts related to the performance of the assignment;

[162] *Id.* art. 107s.
[163] *Id.* art. 107t.

- inform the temporary work agency of the conditions under which other employees perform the same or similar work in the same or a similar position, and of any changes in those conditions;
- provide the employee with information on health and safety requirements;
- insure the employees at its own expense for accidents at work;
- make available in writing information on the vacant jobs and positions with a view to facilitate the employee's access to permanent employment;
- facilitate the employee's access to training;
- conduct introductory and regular training of the employee.

D. Mutual Rights and Obligations

The employment relationship is a combination of diverse corresponding duties and obligations. Chapter Six of the Labor Code defines the general rights and duties of the employee and the employer. For example, the employee must perform his or her work obligations and observe the requirements of labor discipline, while the employer must provide employees with normal work conditions and pay for the work performed. The rights and obligations of the parties are specified in greater detail in various specialized acts and regulations.

1. Rights and Obligations of Employees

Article 124 of the Labor Code states that employees have a basic right to do the work and the right to be paid for the work performed. Other more specific employee entitlements include the following:

- payment according to the duration and results of the work performed;[164]

[164] *Id*. art. 247(1).

- statutory fixed working time,[165] rest,[166] and leave;[167]
- safe and healthy working conditions;[168] and
- professional training.[169]

Under Articles 125 and 126 of the Labor Code, the employee has a basic obligation to do the following:

- perform work obligations accurately and in good faith;[170]
- strictly comply with established technical and technological rules;[171]
- maintain quantity and quality performance of entrusted tasks;[172]
- strictly observe health and safety rules;[173]
- appear at work ready and able to perform;[174]
- comply with established working hours;[175]
- carry out the lawful instructions of the employer;[176]
- observe the internal rules and regulations of the enterprise;[177]
- take care of the property entrusted to him or her in the course of performing job duties;[178] and
- act loyally and not disclose information of a confidential character, and protect the image of the employer's enterprise.[179]

The employee's duties, recited above, may be viewed as expectations to which the employer is entitled.

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[165] *Id*. art. 136. See V.B., below regarding hours of work.
[166] Labor Code art. 151. See V.B.8., below regarding periods of rest.
[167] Labor Code art. 155. See V.C., below regarding leave.
[168] Labor Code art. 275. See VII.A., below.
[169] Labor Code arts. 229–241.
[170] *Id*. art. 125.
[171] *Id*. art. 126, subsec. 5.
[172] *Id*. art. 126, subsec. 5.
[173] *Id*. art. 126, subsec. 6.
[174] *Id*. art. 126, subsec. 2.
[175] *Id*. art. 126 subsecs. 1, 3.
[176] *Id*. art. 126, subsec. 7.
[177] *Id*. art. 126, subsec. 10.
[178] *Id*. art. 126, subsec. 8.
[179] *Id*. art. 126, subsec. 9.

Employees also are obliged to participate in trainings organized or sponsored by their employers for the purpose of maintaining, increasing, or improving their professional skills and qualifications.[180]

2. Rights and Obligations of Employers

Provisions of the Labor Code state the obligations of the employer in the labor relationship. The first and most important obligation of the employer, which is set out in Article 127, is to provide the employee with normal and adequate working conditions. This is a complex obligation, requiring the employer to undertake the following:

- provide work that conforms to the labor contract;[181]
- provide a workplace and adequate working conditions;[182]
- provide a safe and healthy working environment;[183]
- provide employees with a short description of the work to be performed or a job description;[184]
- inform the employee of his or her labor obligations, the required manner of performance, the internal rules and regulations of the enterprise, and the health and safety rules;[185]
- respect the employees' dignity during the performance of their employment;[186] and
- inform employees before sending them on a business trip outside the country for more than one month regarding the following: the duration of the work; the currency in which salary will be paid; any additional remuneration, either monetary or in-kind; and the conditions for returning to Bulgaria.[187]

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[180] *Id*. art. 228b.
[181] *Id*. art. 127(1), subsec. 1.
[182] *Id*. art. 127(1), subsec. 2.
[183] *Id*. art. 127(1), subsec. 3.
[184] *Id*. art. 127(1), subsec. 4.
[185] *Id*. art. 127(1), subsec. 5.
[186] *Id*. art. 127(2).
[187] *Id*. art. 127(4).

Labor Code Article 128 obligates employers to pay and account for employee remuneration. Specifically, the employer must do the following:

- maintain payroll records of each employee's agreed remuneration;[188]
- pay the employee the agreed remuneration for the work done within the time periods established under the contract (biweekly or monthly);[189] and
- issue, upon a request by the employee, an excerpt from the payroll stating the amount of paid or unpaid remuneration and/or compensation.[190]

Employers also have an obligation to provide employees with specific information, as follows:

- announce vacant positions at all levels (including positions requiring special qualifications and management positions) and provide information on the required qualifications and education for the benefit of employees working under fixed-term contracts or for the benefit of employees working with a user enterprise;[191]
- issue documentation certifying facts related to the employment relationship with its employee within 14 days of the employee's request;[192]
- at employees' request, to provide them a fair and impartial description of their professional qualities and achievements or a fair and impartial recommendation necessary to apply for a position with another employer;[193]
- inform employees of any change in the employment relationship within no more than one month after the date those changes go into effect;[194] and

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[188] *Id*. art. 128, subsec.1.
[189] *Id*. art. 128, subsec. 2.
[190] *Id*. art. 128, subsec. 3.
[191] *Id*. arts. 68(7) and 107r(1) subsec. 10.
[192] *Id*. art. 128a(1).
[193] *Id*. art. 128a(2).
[194] *Id*. art. 66(5).

- upon termination of the employment relationship, issue an order of dismissal or other document certifying the termination of the employment relationship.[195]

Labor Code Article 129 creates an obligation on the part of the employer to make social security and health security contributions to protect employees against certain risks (e.g., illness, occupational diseases, accidents at work, pregnancy, maternity, childcare, unemployment, retirement, and death).[196]

Employers also have obligations to maintain and upgrade employees' professional qualifications. These obligations are set out in Labor Code 228a as follows:

- ensure conditions for the maintenance and upgrading of employees' professional qualifications for effective work performance and their future professional development;
- in the event of an employee's prolonged absence from work, to ensure employee conditions for becoming familiar with changes in the work that occurred during his or her absence, as well as to provide conditions to the employee for achieving the relevant qualification level necessary for the effective fulfillment of his or her employment duties.

In addition, according to the 2012 Labor Code amendments, where an employee is assigned to work abroad by a temporary work agency,[197] the agency is under an obligation to provide the employee with the following information:[198]

- the duration of the assignment;
- the currency of the remuneration to be paid;
- the additional labor remuneration to be paid in cash or in kind, if any;
- the conditions for return in his or her home country.

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[195] *Id*. art. 128a(3).
[196] See VIII.A. and VIII.B., below.
[197] For a discussion of temporary work agencies, see I.B.7., above.
[198] Labor Code art. 127(5).

3. Work Book

The work book is an official document that certifies the employment record of an employee.[199]

When an employee begins work for the first time, the employer must provide the employee with a work book within five days. The fact that the employment is the first one for the employee must be certified by a written declaration signed by the employee.[200] Otherwise, the employee must present his or her work book to the employer upon beginning work.[201]

The following information about the employee must be entered in the work book:[202]

- name, date and place of birth;
- address;
- identity card number or number of other identity document and the personal identification number of the employee;
- educational attainment, occupation, and specialty;
- position occupied and organizational unit where the employee works;
- agreed labor remuneration;
- date of beginning work;
- date and grounds for termination of the employment;
- duration of the time attributed to the length of employment service, as well as any time that is not attributed to length of employment service;
- compensation paid upon termination of the employment relationship; and
- notices of garnishment.

As a rule, information is entered in the work book by the employer.[203] Upon termination of the employment relationship, the employer must enter the particulars relevant to the termination

[199] *Id*. art. 347.
[200] *Id*. art. 348(2).
[201] *Id*. art. 348(1).
[202] *Id*. art. 349(1).
[203] *Id*. art. 349(2).

and then immediately deliver the work book to the employee.[204] In the event that the length of employment service is determined by a court decision, the employer is obliged to enter that duration into the employee's record of service. If the employer refuses to observe this obligation, then the General Labor Inspectorate is entitled to enter the data.[205]

E. Discipline

1. Internal Rules of the Enterprise

Article 181 of the Labor Code states that "every employer shall have its own internal regulations" by which the employer determines the rights and obligations of employees. Employer discretion to create internal regulations is not as broad as it might appear, largely because strict compliance is required with the minimum requirements of the national labor laws and with provisions of the applicable collective labor contract.

Employers must consult with the representatives of trade-union organizations and employee information and consultation representatives[206] prior to issuing internal rules of the enterprise.[207]

2. Violations of Labor Discipline

A violation of labor discipline is defined in Article 186 of the Labor Code as an intentional failure to perform work obligations. The penalties that may be imposed on the offending employee are expressly listed,[208] along with the different kinds of violations.[209] The penalties are imposed irrespective of any additional financial or legal liabilities that may be assessed against an employee by the employer.[210] Article 187 enumerates the following violations of labor discipline:

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[204] *Id.* art. 350(1).
[205] *Id.* art. 350a.
[206] See III.A., below.
[207] Labor Code art. 181.
[208] *Id.* art. 188.
[209] *Id.* art. 187.
[210] *Id.* art. 186.

- failure to report for work on time;[211]
- departure before the end of the work day;[212]
- waste of working time;[213]
- failure to complete the assigned job;[214]
- nonobservance of technical or technological specifications;[215]
- nonobservance of the rules for safe and healthy working conditions;[216]
- failure to carry out legitimate orders and decisions of management;[217] and
- failure to meet other labor obligations specified by law, by the internal regulations of the enterprise or by the collective labor contract, or arising from the employment relationship.[218]

The list of labor discipline violations is not exhaustive and may be supplemented by the employer's internal regulations.

3. Disciplinary Penalties

The following disciplinary penalties are listed in Article 188 of the Labor Code:

- reprimand;[219]
- warning of possible dismissal;[220] and
- dismissal.[221]

Unlike the listing of labor discipline violations, the statutory list of disciplinary penalties is exclusive and exhaustive. Under the law, there are no other disciplinary penalties that an employer

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[211] *Id*. art. 187, subsec. 1.
[212] *Id*.
[213] *Id*.
[214] *Id*. art. 187, subsec. 3.
[215] *Id*.
[216] *Id*. art. 187, subsec. 5.
[217] *Id*. art. 187, subsec. 7.
[218] *Id*. art. 187, subsec. 10.
[219] *Id*. art. 188, subsec. 1.
[220] *Id*. art. 188, subsec. 2.
[221] *Id*. art. 188, subsec. 3.

legally may impose on a employee. Dismissal is the final disciplinary measure, resulting in complete termination of the employment contract.

The Labor Code does not provide that financial penalties may be imposed as a means of discipline. In this regard, a distinction must be made between disciplinary penalties, such as a reprimand, and financial liability for damage caused by the employee's negligence.[222] Similarly, an employee's salary may not be reduced as a disciplinary sanction; a reduction in the monthly salary is a means of recouping damages[223] and, even then, is available only in the circumstances explicitly provided for by law and up to a certain amount.

In determining the appropriate disciplinary penalty, consideration must be given to the gravity and circumstances of the violation and the conduct of the employee.[224] Only one disciplinary penalty may be imposed for a single violation of labor discipline.[225]

4. Disciplinary Procedures

Disciplinary penalties normally are imposed by the director of the enterprise, although other managerial officials also may be vested with limited disciplinary authority.[226] Disciplinary penalties are implemented by a written order from the employer.[227] The order is delivered to the employee and signed and dated by the offending employee.[228] Disciplinary penalties may be imposed only after a written explanation is given and the offending employee receives a hearing.[229] The purpose of this provision is to ensure that evidence is collected and presented, as well as to ensure that management will make a fair and informed decision. The failure of management to comply with this provision

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[222]For a discussion of financial liability, see I.E.8.a., below.
[223]See I.E.8.b., below.
[224]Labor Code art. 189(1).
[225]*Id*. art. 189(2).
[226]*Id*. art. 192(1).
[227]*Id*. art. 195(1).
[228]*Id*. art. 195(2).
[229]*Id*. art. 193.

(without fault on the employee's part)[230] will result in reversal of the dismissal by the courts.[231]

5. Statute of Limitations

The statute of limitations for the imposition of disciplinary penalties is one year from the date on which the violation was committed, but no later than two months after its discovery.[232] The statute of limitations is tolled under two circumstances:[233]

- during an employee's lawful leave of absence; and
- during the period of a strike in which an employee participates, regardless of the legality or illegality of the strike.

6. Deletion of Disciplinary Penalties

All disciplinary penalties are considered "deleted" one year from the date they are imposed[234] but may be deleted within a shorter period by written order[235] of the employer.[236] Deletion of a dismissal action does not constitute grounds for reinstatement of the employee.[237]

7. Appeals

Disciplinary penalties are appealable to the courts.[238] The statute of limitations for an appeal from disciplinary action is one month for a reprimand.[239] In the event that an employee receives a written order for the imposition of either a warning concerning possible dismissal or a dismissal,[240] the appeal may be taken within two months from the date of receipt of the written order.[241]

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[230] *Id*. art. 193(3).
[231] *Id*. art. 193(2).
[232] *Id*. art. 194(1).
[233] *Id*. art. 194(3).
[234] *Id*. art. 197(1).
[235] *Id*. art. 198(2).
[236] *Id*. art. 198(1).
[237] *Id*. art. 197(2).
[238] *Id*. art. 360(1). See the Introduction, at E., above.
[239] Labor Code art. 358(1), subsec. 1.
[240] *Id*. art. 358(1), subsec. 2.
[241] *Id*. art. 358(2), subsec. 1.

8. Financial Liability

a. Scope of Liability

Limited financial liability may be imposed on an employee for damage caused in the performance of his or her assigned duties.[242] The imposition of financial responsibility is based on the existence of actual damage negligently caused by the employee as a result of unlawful conduct.[243] In these cases, the employee's financial liability is determined in accordance with civil law.[244]

The offending employee may be held liable only for damage actually caused, and not for any resulting lost benefits to the company.[245] The damage must have been discovered within a year after its occurrence for the employer to hold an employee accountable.[246] The Labor Code does not impose financial liability for damage due to normal risks of the production process or so-called "economic risks."[247]

Employee liability is "limited" to the extent that the Labor Code places a cap on liability, which is determined by the amount of the employee's monthly compensation.[248] Thus, the employee may be held responsible only for the amount of damage not exceeding the amount of one month's salary.[249] If the damage is caused by a manager, his or her financial responsibility may not exceed an amount equal to three months' salary.[250]

Increased financial liability is imposed on employees whose duties involve the safeguarding of and accounting for the employer's property.[251] For these employees, if the damages are assessable, liability may be as much as three months' salary[252] and is based on the full value of the damage plus interest from the date

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[242] *Id*. art. 203(1).
[243] *Id*. arts. 203(1), 205(1).
[244] *Id*. art. 203(2).
[245] *Id*. art. 205(1).
[246] *Id*. art. 210(2).
[247] *Id*. art. 204.
[248] *Id*. art. 206(1).
[249] *Id*.
[250] *Id*. art. 206(2).
[251] *Id*. art. 207.
[252] *Id*. art. 207(1), subsec. 1.

of causation or discovery of the loss.[253] If damages are not assessable, the liability is for the so-called "financial deficit."[254]

b. Procedure for Recoupment of Damages

The procedure for recouping damages caused by an employee under the limited financial liability rules is established in Article 210 of the Labor Code. If the loss is caused by an employee, an order for deduction is issued by the employer. If the loss is caused by an executive or a manager,[255] an order by the superior administrative body or the collective managing body is required.

The deductions must be made within one month from the date the loss is discovered, but no later than one year from the date of occurrence.[256] Before making any deduction from an employee's salary, the employer must notify the employee regarding the deductions and allow an opportunity to contest the validity of the deductions. If the employee objects within 30 days of notification, the employer may refer the dispute to a court.[257] Deductions are made in accordance with the Code of Civil Procedure if no objection is filed within the 30-day period.[258]

The limited financial liability obligation may be enforced by writ of execution even after the contract of the responsible employee is terminated.[259] This writ is issued pursuant to the Code of Civil Procedure.[260]

In cases where the damage results from intentional, criminal acts of the employee, or occurs under circumstances outside the scope of the employee's employment obligations, the employee's liability is determined by the civil law,[261] which generally means that the employee must assume full responsibility to the enterprise for restitution of the damage caused. The enforcement of full financial liability is implemented by the courts[262] and is

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[253]*Id*. art. 207(1), subsec. 2.
[254]V. MRACHKOV, BULGARIA LABOR LAW 82 (1995).
[255]Labor Code art. 210(1).
[256]*Id*. art. 210(2).
[257]*Id*. art. 210(3).
[258]*Id*. art. 210(4).
[259]*Id*. art. 210(5).
[260]*Id*.
[261]*Id*. art. 203(2).
[262]*Id*. art. 211.

based on a civil claim made in accordance with the Code of Civil Procedure.

F. Termination

1. Automatic Termination

The Labor Code states that a contract for employment may be terminated without either party being obligated to give advance notice in the following cases:[263]

- by mutual consent of the parties expressed in writing;[264]
- where the dismissal of an employee is pronounced wrongful or where the employee is reinstated to employment by a court, but the employee fails to report within the allotted time;[265]
- upon expiration of the contractual term;[266]
- upon completion of a definite amount of work;[267]
- upon the return of a substituted employee;[268]
- when a position is designated to be filled by a pregnant employee, or an employee reassigned for rehabilitation,[269] and a candidate entitled to that position appears;[270]
- upon the inability of the employee to perform the assigned job because of illness;[271]
- upon the death of the person with whom the employee has concluded the contract of employment;[272] and
- upon the death of the employee.[273]

The rule for automatic termination upon expiration of the contractual term is not absolute. A fixed-term employment

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[263]*Id.* art. 325.
[264]*Id.* art. 325, subsec. 1.
[265]*Id.* art. 325, subsec. 2.
[266]*Id.* art. 325, subsec. 3.
[267]*Id.* art. 325, subsec. 4.
[268]*Id.* art. 325, subsec. 5.
[269]See VI.B. and VII.B., below.
[270]Labor Code art. 325, subsec. 6.
[271]*Id.* art. 325, subsec. 9.
[272]*Id.* art. 325, subsec. 10.
[273]*Id.* art. 325, subsec. 11.

contract automatically converts to a contract for an indefinite period if the employee continues to perform his or her duties for five business days after expiration of the contractual term, and the employer fails to object.[274]

According to the 2012 Labor Code amendments, a fixed-term employment contract for the period of a long-term mission at a position designated for assignment abroad under the Law on Diplomacy[275] will be automatically terminated upon discontinuation of the long-term mission, without either party being obligated to give prior notice.[276]

2. Termination by Employee With Notice

An employee working under an indefinite-term employment contract has the right to terminate the contract by giving 30-days' advance notice, unless the parties negotiate a longer notice period in the agreement.[277] The Labor Code provides for a longer notice period for employees who occupy positions of property accountability if the property entrusted to the employee cannot be handed over within a 30-day period.[278] The required length of notice due by an employee with a fixed-term contract is three months, but no longer than the remaining term of the contract.[279]

During the notice period, the employment contract continues in force and the employee giving the notice must fulfill all of his or her work obligations. The notice period begins on the day following receipt of the notice,[280] and the employment contract is considered terminated on the last day of the notice period.

3. Termination by Employee Without Notice

The employee has the right to terminate the employment contract without advance notice in the following cases:

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[274] See I.C.3., above.
[275] See I.C.2., above.
[276] *Id*. art. 325(2).
[277] *Id*. art. 326(1), (2).
[278] *Id*. art. 326(3).
[279] *Id*. art. 326(2).
[280] *Id*. art. 326(4).

- the employee is unable to perform the assigned job because of illness and the enterprise fails to provide the employee with suitable work;[281]
- the employer fails to pay or delays payment to the employee;[282]
- the employer changes the place or character of work or the amount of agreed upon compensation, unless the employer is entitled to do so, as well as where the employer fails to fulfill other obligations agreed by the employment contract or by the collective agreement, or obligations established by a statutory instrument;[283]
- the employee assumes a paid elected position;[284]
- the employee continues his or her education as a regular student;[285]
- the employee was employed as a substitute for an absent employee, and the absent employee returns;[286]
- the employee is being reinstated upon a finding that his or her dismissal was unlawful;[287]
- the "serious deterioration" of working conditions in the event of a transfer, rental, lease, concession, or other events of transfer of the employer's undertaking.[288]
- the employee works under a fixed-term labor agreement and starts a new job for an indefinite term;[289]
- the employee enters into civil service;[290]
- discontinuation of the operation by the employer;[291] and

[281] *Id*. art. 327(1), subsec. 1.
[282] *Id*. art. 327(1), subsec. 2.
[283] *Id*. art. 327(1), subsec. 3.
[284] *Id*. art. 327(1), subsec. 4.
[285] *Id*. art. 327(1), subsec. 6.
[286] *Id*. art. 327(1), subsec. 7.
[287] *Id*. art. 327(1), subsec. 8.
[288] *Id*. art. 327(1), subsec. 3a. The term "serious deterioration" is not defined. In the absence of a legal definition, it is unclear how the courts will regard this condition. For a discussion of transfers of undertakings, see IV., below.
[289] Labor Code art. 327(1), subsec. 7.
[290] *Id*. art. 327(1) subsec. 9.
[291] *Id*. art. 327(1) subsec. 10.

- the employer forces the employee to use unpaid leave without his or her consent.[292]

Pursuant to the 2012 amendments to the Labor Code, the scope of the grounds for termination without notice was further extended by inclusion of the situation where the employee works under an employment contract with a temporary work agency[293] and concludes another employment contract with another employer—different from an enterprise providing temporary work.[294]

4. Termination by Employer With Notice

An employer may terminate an employment contract with due notice under any of the following circumstances:

- total or partial liquidation of the enterprise;[295]
- reduction in the level of business activities within the enterprise;[296]
- personnel layoffs for economic reasons;[297]
- suspension of the work process for more than 15 days due to reasons such as strikes, economic slowdowns, or acts of God;[298]
- the employee does not satisfy the educational requirements for the particular job;[299]
- the employee refuses to transfer to another area where the enterprise is relocated;[300]
- the position must be vacated in order to reinstate an unlawfully dismissed employee to his or her previous position;[301]

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[292]*Id*. art. 327(1) subsec. 11.
[293]See I.C.7., above.
[294]Labor Code. art. 327(1), subsec. 7a.
[295]*Id*. art. 328(1), subsecs. 1, 2.
[296]*Id*. art. 328(1), subsec. 3.
[297]*Id*. art. 328(1), subsec. 2.
[298]*Id*. art. 328(1), subsec. 4.
[299]*Id*. art. 328(1), subsec. 6.
[300]*Id*. art. 328(1), subsec. 7.
[301]*Id*. art. 328(1), subsec. 8.

- an employee has become eligible for a retirement pension based on length of service and age;[302]
- the employment relationship arises after the employee has acquired and exercised his or her right to retire on an old-age pension;[303]
- the requirements for the job have changed, and the employee is no longer qualified for the position;[304] or
- it is objectively impossible to implement the contract of employment.[305]

The employer is also entitled to terminate employment agreements with managerial personnel in the event that the employer enters into a management agreement, i.e., in case of a change in the general manager(s) of the company.[306] The deadline for exercising this right is nine months from the initial date of performance under the management agreement.

Pursuant to Labor Code Article 331, an employer is permitted to offer an employee termination of the employment contract in exchange for payment of compensation amounting to four times the employee's gross monthly remuneration. The employee has seven days to accept or reject such an offer. The employee's silence regarding the offer is considered a rejection. If the offer is accepted, compensation must be paid within one month of the contract termination date. Failure of the employer to pay the compensation due invalidates the termination.

With respect to a civil servant, the employer is permitted to terminate the employment contract if the employee fails to comply with the requirement to give due notice with respect to his or her incompatibility with the employment contract because of social, business, or personal position.[307]

The notice period for an employer termination is 30 days, unless the parties have agreed on a longer period, but not more

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[302] *Id.* art. 328(1), subsec. 10.
[303] *Id.* art. 328(1), subsec. 10a.
[304] *Id.* art. 328(1), subsec. 11.
[305] *Id.* art. 328(1), subsec. 12.
[306] *Id.* art. 328(2).
[307] *See id.* art. 330(2), subsecs. 7, 8.

than three months.[308] Under Article 326, Paragraph 2 of the Labor Code, a collective agreement may provide that the required length of the termination notice depends on the length of the employee's service for the employer when the ground for termination is one of the following:[309]

- closure of the enterprise;
- closure of part of the enterprise or reduction of personnel;
- decrease in the volume of work;
- discontinuation of work for more than 15 working days;
- failure of the employee to meet changed requirements for the performance of work.

Pursuant to the 2012 Labor Code amendments, an employer is entitled to terminate an employment agreement concluded with a professor, associate professor, or person holding a doctoral degree upon their attainment of age 65.[310]

When the employer has given an employee notice of termination, the employee is entitled to paid leave of one hour daily during the notice period. This leave is not available to an employee who works for seven hours or less.[311]

5. Termination by Employer Without Notice

An employee may be terminated without notice if he or she is detained by government authorities.[312] An employee must be terminated without notice if any of the following circumstances apply:

- the employee is disbarred by the competent authority and does not have the right or license to practice his or her profession;[313]

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[308] *Id*. art. 328(1).
[309] *Id*. art, 326(2).
[310] *Id*. art. 328(1), subsec. 10.
[311] *Id*. art. 157, subsec. 6.
[312] *Id*. art. 330(1).
[313] *Id*. art. 330(2), subsec. 1.

- is deprived of the academic degree, if the employment contract has been concluded considering the degree that was previously awarded;[314]
- the employee has been deleted from the registers of the professional organizations under the Law on Doctors and Dentists Professional Organizations, from the register of the professional organization of the masters of pharmacy under the Law on Professional Organization of Masters of Pharmacy, or from the register of the Bulgarian Association of Bulgarian Health Care Specialists under the Law on Professional Organizations of Medical Nurses, Midwives and Associated Medical Specialists;[315]
- a disabled employee refuses to accept an offer of placement;[316]
- the reason for dismissal is a violation of labor discipline;[317]
- the employer fails to fulfill the obligation to notify the employer for an incompatibility that occurred during performance of the work or where an incompatibility already exists;[318] or
- in the event of a conflict of interests, as ascertained by an act issued under the Law on Prevention and Disclosure of Conflict of Interests.[319]

6. *Termination of the Employment Relationship Established by an Election*

An employment relationship established by an election[320] may be terminated under the same circumstances as any other nondisciplinary termination.[321] In cases involving a disciplinary offense, the employment of an offending elected employee may be terminated only by recall action of the electorate body.[322]

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[314]*Id*. art. 330(2), subsec. 2.
[315]*Id*. art. 330(2), subsec. 3.
[316]*Id*. art. 330(2), subsec. 5.
[317]*Id*. art. 330(2), subsec. 6. See I.E.2., above.
[318]*Id*. art. 330(2), subsecs. 7, 8.
[319]Labor Code art. 330(2), subsec. 9.
[320]See I.B.7., above.
[321]Labor Code art. 339(1).
[322]*Id*. art. 339(2).

7. Special Protections Against Termination

Certain categories of employees are protected from termination of the employment relationship. This protection is based on the employee's health, family status, occupied position, and other related factors. Protection against termination serves a social function by creating relative job security for certain categories of employees, such as the following:

- pregnant women, women in an advanced stage of in vitro treatment, and mothers of children who are three years old or younger;[323]
- disabled workers;[324]
- employees with an illness listed in a Ministry of Health Ordinance;[325]
- employees on a leave permitted by the employer;[326]
- trade union leaders;[327]
- elected employee information and consultation representatives;[328] and
- employees who are members of special negotiation bodies, a European Works Council, European company, or European cooperative society.[329]

In order to dismiss a protected employee, the employer must obtain advance authorization from the General Labor Inspectorate and, in the case of union leaders, the relevant trade union.[330] Prior authorization is required where the employee is being dismissed for nondisciplinary grounds, including the partial closing of the business, a decrease in the volume of work, or a lack of ability for effective performance of the employee's obligations, or due

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[323]*Id*. art. 333(1), subsec. 1.

[324]*Id*. art. 333(1), subsec. 2.

[325]*Id*. art. 333(1), subsec. 3. See VII.B., below.

[326]Labor Code art. 333(1), subsec. 4.

[327]*Id*. art. 333(3). See also II.E., below.

[328]Labor Code art. 333(1), subsec. 5. For a discussion of information and consultation representatives, see III.A., below.

[329]Labor Code art. 333(1), subsec. 6. For a discussion of European Works Councils, European companies, and European cooperative societies, see III.B., below.

[330]Labor Code art. 333(1), (3).

to disciplinary violations, but is not required where the dismissal is for reasons that render performance of the employment agreement "impossible."[331] If the employer violates this special procedure and dismisses a protected employee without the required permission, the employee is entitled to challenge the dismissal.[332]

Pregnant employees or female employees in an advanced stage of in vitro treatment may be dismissed with prior written notice only on the following grounds: [333]

- total liquidation of the enterprise;
- the employee's refusal to transfer to another area where the enterprise is relocated;
- a need to vacate the position in order to reinstate an unlawfully dismissed employee to his or her previous position; or
- an objective impossibility to implement the employment contract.

Pregnant employees or female employees in an advanced stage of in vitro treatment may be dismissed without prior notice only in the event that they are detained by government authorities for execution of a sentence or have committed a disciplinary offense.[334] In the latter case, the employer must obtain the prior written consent of the General Labor Inspectorate.

Employees may not be dismissed while using their pregnancy, childbirth, and adoption leave,[335] unless the ground for dismissal is liquidation of the whole enterprise.[336] This protection applies to both female and male employees.

8. Protection Against Unlawful Dismissal

The Labor Code contains various provisions that describe the circumstances under which an employer is deemed to have

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[331] *See id.* art. 328(1), subsec. 12.
[332] *Id.* art. 344(1).
[333] *Id.* art. 333(5).
[334] *Id.*
[335] See V.C.2.b., below.
[336] Labor Code art. 333(6).

made an unlawful dismissal. These include, but are not limited to the following:

- the employer failed to obtain the required permission of the General Labor Inspectorate or trade union to terminate a protected employee;[337]
- the employer violated the required criteria for imposition of the disciplinary sanction of termination;[338]
- the employer violated the established periods for imposing sanctions;[339] and
- the employer failed to provide the employee with a hearing or to accept the employee's written explanations.[340]

A former employee who claims that he or she was unlawfully dismissed may file a petition with the court within two months from the date of receiving the order of dismissal.[341] The court will reaffirm the dismissal if it is found to be lawful. If the employee's challenge is successful, and the dismissal is found to be unlawful, remedies include the following:

- repeal of the dismissal;[342]
- reinstatement to the previous position;[343]
- compensation for the period of unemployment;[344] and/or
- revision of the grounds for dismissal in the employee's service record from a disciplinary termination to one of the nondisciplinary grounds allowed under the employment agreement.[345]

The employer may, on its own initiative, cancel the dismissal before a court action is instituted by the dismissed employee. In cases that require the prior consent of the General Labor

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[337]*Id*. art. 344(3).
[338]*Id*. art. 189(1), (2). See I.E.3., above.
[339]Labor Code art. 194(1). See I.E.5., above.
[340]Labor Code art. 193(2), (3). See I.E.4., above.
[341]Labor Code art. 344.
[342]*Id*. art. 344(1), subsec. 1.
[343]*Id*. art. 344(1), subsec. 2.
[344]*Id*. art. 344(1), subsec. 3.
[345]*Id*. art. 344(1), subsec. 4.

Inspectorate or a trade union as a prerequisite to dismissal, and the employer has failed to obtain consent, the court will adjudicate the order of dismissal as unlawful on this procedural ground alone, without considering the merits of the labor dispute.

An employer that wrongfully refuses reinstatement of an employee upon order of the court will be held administratively liable,[346] and a criminal penalty may be imposed under Article 172 of the Penal Code as well.

G. Privacy

Privacy in the employment relationship relates to protection of personal data as regulated by the Law on Personal Data Protection.[347] Data privacy protections are required by the EU Data Privacy Directive.[348] Under the Law on Personal Data Protection, "personal data" is defined as any information relating to an individual who is identified or identifiable, directly or indirectly, by reference to an identification number or to one or more specific features.[349] Any person, including an employer, who is collecting, recording, organizing, or storing personal data must, prior to any event of processing, notify the Commission for Personal Data Protection by filing an application and sample documents approved by the Commission.[350] Employers also are obliged to inform their employees regarding the purpose of collecting or otherwise processing personal data and whether the provision is mandatory or voluntary.[351] In addition, employers may not collect, store, or otherwise process personal data without obtaining the explicit written consent of the employees to that effect.[352] Consent is not required where processing is needed by operation of the law

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[346]*Id*. art. 414.

[347]*See* 1 STATE GAZETTE (Jan. 4, 2002).

[348]European Parliament and Council Directive 95/46/EC, 1995 O.J. (L 281) 31. For a detailed discussion of this Directive, see the chapter on the European Union at I.C. in Volume IA, Part 1.

[349]Law on Personal Data Protection art. 2(1).

[350]*Id*. art. 17(1).

[351]*Id*. art. 19(1), subsec. 1.

[352]*Id*. art. 4(1), subsec. 2.

(e.g., for the purpose of executing an employment agreement),[353] or in order to protect the life or health of the employee or other individuals.

The restrictions of the Law on Personal Data Protection apply only where individually identified records are transferred or accessed or otherwise processed. Statistical reporting relying on aggregate employment data and/or the use of data not disclosing the identity of the employee does not give rise to any privacy concerns.

Regulation No. 14 on the Medical Service,[354] issued by the Minister of Health, regulates use of personal data related to the health status of employees. Under this Regulation, any results from medical screening and testing of the employee may be disclosed to third parties other than physicians only with the prior written consent of the employee.

[*Editor's Note*: For more information on this topic, see *Restrictive Covenants and Trade Secrets in Employment Law: An International Survey, Volume I* (BNA Books 2011).]

H. Employee Duty of Loyalty, Trade Secrets, Covenants Not to Compete

1. Employee Duty of Loyalty

Under the Bulgarian Labor Code, the duty of loyalty relates to the employee's obligations to refrain from abusing in any way the employer's confidence and to refrain from disclosing information of a confidential nature.[355] Bulgarian legal theory further interprets the concept of loyalty by adding to employees' duties the obligation to protect the employer's interests and goodwill. The performance of activities inimical to the best interests of the employer is prohibited. This obligation refers to, among other things, not joining companies performing competitive activities

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[353] *See* Regulation No. 4 dated May 11, 1993, on the Documentation to be Provided in View of the Execution of an Employment Agreement, 44 STATE GAZETTE (May 25, 1993).

[354] *See* 95 STATE GAZETTE (Aug. 14, 1998).

[355] *See* Labor Code art. 126, subsec. 9.

and not performing other activities that might qualify as unfair competition.

Failure of the employee to abide by the prohibitions enumerated above represents a material violation of workplace rules and serves as grounds for disciplinary dismissal.[356]

2. *Trade Secrets*

Under Bulgarian law, any willful or negligent disclosure of confidential information by the employee constitutes a violation of workplace rules and entitles the employer to dismiss the employee.[357] Any information considered as confidential must be outlined in the individual employment agreement, because the court will not enforce such an agreement if the employee can demonstrate that he or she has not been informed by the employer that the information must be considered as confidential.

In addition to the disciplinary sanctions that could be imposed for disclosure of confidential information, the employer is entitled to claim damages under general tort rules.

3. *Covenants Not to Compete*

Generally, covenants not to compete are contractual agreements between employees and employers whereby the employee undertakes not to compete with the employer for a specific period of time and/or within a particular geographic area, in the course of the employment relationship and following its termination.

As regards competition during employment, Article 111 of the Labor Code provides that the employee may enter into an employment contract with another (second) employer in the course of his or her primary employment unless otherwise provided in the respective employment agreement with the first employer. Therefore, the employer is entitled to ban the employee from entering into an additional employment contract in the course of the main employment relationship, whether or not the additional work with another employer qualifies as an activity competitive with the activities performed by the employer.

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[356] See I.E.2., above.

[357] *See* Labor Code art. 126, subsec. 9.

As regards competition after employment, Bulgarian labor legislation does not specifically provide for a noncompetition arrangement. Yet no explicit prohibition against its use exists either. Therefore, theoretically, a clause providing for the obligation of an individual not to accept employment in a company or organization performing activities that compete with those performed by his or her ex-employer for a certain period of time following termination of the existing employment relationship could be considered lawful based on the principle of contractual freedom. Further, because such an obligation would not be classified as a labor provision, in the event of failure to observe the terms and conditions of the noncompetition agreement, the individual would be held liable for breach of contract under the general rules for contractual liability.

In the absence of specific statutory rules on the post-termination obligations to not compete with the former employer, recent court and administrative practice has held that the constitutionally proclaimed freedom of labor preempts any attempt to restrict, by means of a contractual stipulation, the ability of a natural person to engage in employment activities. Specifically, it has been noted that "declarations and/or clauses in an employment agreement, whereunder an employee undertakes not to engage in an activity, competing with the business of the employer on the Bulgarian market, are devoid of legal effect, as they come into variance with the idea for liberal and efficient development of the Bulgarian market by stimulating competition, and therefore such undertakings contradict with the good morals and are invalid."[358]

These decisions do not mean that non-compete covenants are deemed null and void per se in every enforcement aspect. Although it is broadly accepted in court practice that specific performance cannot be awarded for a breach of a non-compete obligation, the question is still open whether compensation for damages is possible. Arguably, the courts would uphold a particular non-compete undertaking as long as it was made in consideration for a specific promise on the part of the employer—i.e., where the employee received something in return. Such consideration might

[358]Resolution No. 259 of Oct. 18, 2005, of the Commission on Protection of Competition issued on file No.K3K-149/1.07.2005.

be specific payments post-termination or consideration provided during the effective term of the employment agreement (e.g., specific bonuses relating to the obligation not to compete or payments for improvement of the employee's qualifications).

On another point, even if consideration were present, a non-compete covenant would only be considered enforceable if it were appropriate in terms of duration and coverage—i.e., if it did not unreasonably restrict the rights of the former employee to find an alternative employment for his or her knowledge and skills. A restriction would be appropriate as long as it was limited to the minimum necessary to protect the ex-employer's business—this would mean that the restriction covered the same market segment (both in terms of products/services and in terms of geographical scope) as the one in which the ex-employer was active. The appropriateness of the restriction should be further scrutinized considering the particular functions inherent to the employee and his or her access to confidential information and awareness of the employer's business policies.

[*Editor's Note*: For more information on these topics, see *Restrictive Covenants and Trade Secrets in Employment Law: An International Survey, Volume I* (BNA Books 2011).]

I. Choice of Law for Individual Employment Contracts

Originally, under Article 3 of the Rome Convention,[359] the parties to an employment contract were free to choose the law that governed their contract. The choice of law had to be expressed or demonstrated with reasonable certainty by the terms of the contract or the accompanying circumstances.

Under Article 6(2), if no express choice was made by the parties and unless a choice of law could be inferred from the circumstances, the employment contract would be governed as follows:

(a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or

[359]Rome Convention, 1980 O.J. (L 266) 1, art. 6(2).

(b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract is to be governed by the law of that country.

An inference of choice of law could be made from factors such as, but not limited to, the process of the employee's remuneration and the location of the employer's management.

Article 6(1) provided further that a choice of law by parties to an employment contract should not deprive the employee of the protection afforded by certain mandatory rules of law that would be applicable in the absence of that choice. Mandatory rules of law are those that cannot be derogated by contract and must be applied whatever the law applicable to the contract. Pursuant to Article 7 of the Rome Convention, the application of mandatory rules was subject to certain conditions and to the territorial scope of the rule. In addition, the mandatory rules would not apply in so far as the applicable law afforded the employee an equivalent or a higher degree of protection. The same approach applied to the mandatory rules of a foreign country, whether or not it was a party to the Rome Convention.

In December 2009, the Rome Convention provisions on choice of law were replaced with the so-called "Rome I Regulation"[360] (applicable to contractual obligations). In addition, effective January 11, 2009, the "Rome II Regulation"[361] (applicable to non-contractual obligations) took effect with respect to events giving rise to damage and occurring after the Regulation's entry into force.

As with the Rome Convention, Article 8 of the Rome I Regulation provides that an employment contract is to be governed by the law chosen by the parties. However, mandatory

[360]European Parliament and Council Regulation 593/2008/EC on the law applicable to contractual obligations (June 17, 2008) (Rome I).

[361]European Parliament and Council Regulation 864/2007/EC on the law applicable to non-contractual obligations (July 11, 2007) (Rome II).

provisions of the law of the forum (e.g., provisions regarding dismissal, health and safety, maternity leave, and social security contributions) cannot be overridden by choice of law provisions.[362] In the absence of a choice of law, the Rome I Regulation sets criteria similar to those under the Rome Convention, stipulating that employment contracts are to be governed by the law of the country in which the employee habitually carries out his or her work (even if temporarily employed in another country) or, if the employee does not habitually carry out his or her work in any one country, by the law of the country in which the employer is situated. As an override, an employment contract is to be governed by the law of another country if it is more closely connected with that country.[363]

The Rome I Regulation applies to employment contracts concluded after December 17, 2009, in all EU Member States other than Denmark, which opted out of the Regulation and continues to follow the requirements of the earlier Rome Convention.

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[362] Rome I Reg. art. 9.

[363] Article 8 of the Rome I Regulation specifies as follows:

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.
2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.
3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.
4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.

II. COLLECTIVE BARGAINING

A. Unions

Employees in Bulgaria are entitled to freely form trade union organizations.[364] All employees, including managers and supervisors (as long as they are not employers), are eligible to join employees' unions. Employees' unions have their own bylaws and rules that regulate their internal structure and functions and are free to elect their own representatives, organize their leadership, and adopt programs of action.[365]

Union representatives have the right to participate in the preparation of a company's bylaws and regulations[366] and to represent employees' interests as regards issues of labor and social security.[367] Unions also are authorized to represent employees in court in labor disputes, but they cannot settle, dismiss, or amend employees' claims unless expressly authorized.[368]

Employers' organizations are formed in ways similar to employees' unions, with equally representative and functional authority and independence.[369] Like employees' unions, employers' unions have the right to enact their own bylaws and other internal rules and regulations, to elect their representatives and representative bodies, and to determine independently their functions.[370] The only functional distinction between employees' and employers' unions is that employees' unions participate in the preparation of internal company rules concerning employment relationships, over which the employer has final approval authority.[371]

The recognition of employees' and employers' unions is governed by the Regulation on Trade Unions and Employers

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[364]Labor Code art. 4.
[365]*Id*. art. 33.
[366]*Id*. art. 37.
[367]*Id*. art. 42.
[368]*Id*. art. 45.
[369]*Id*. art. 5.
[370]*Id*. art. 33(1), (2).
[371]*Id*. art. 37.

Organizations Recognition Criteria.[372] The Council of Ministers is competent to resolve whether a trade union or employers' organization is eligible to represent its members at the national level.[373]

1. National Employees' Unions

In 2012, the Labor Code requirements for the formation of employees' unions at the national level were changed. As a result of these changes, the requirements became more stringent. Thus, in order to qualify as a union of employees at the national level, the following criteria must be met:[374]

- membership must be at least 75,000;
- the union must have organizations in more than one-fourth of the industries designated by a code under the National Statistical Institute's Classification of Economic Activities, with at least five percent of the employees engaged in each economic activity being members thereof, or at least 50 member organizations with at least five members in each economic activity;
- the union must have local organizations in more than one-fourth of the municipalities in Bulgaria as well as a national governing body;
- the union must have the capacity of a legal person, acquired at least two years prior to the submission of the request for recognition.

2. National Employers' Unions

The 2012 Labor Code amendments also changed the requirements for employers' unions. Originally, the government wanted to require that to be representative, an employer organization had to unite sector/branch structures and companies that had at least 100,000 employees and had to perform activities exclusively assigned to the union by a law or statutory instrument. However,

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[372]*See* 64 STATE GAZETTE (July 18, 2003), as amended, 93 STATE GAZETTE (October 21, 2003) and 52 STATE GAZETTE (June 29, 2007).

[373]Labor Code art. 36.

[374]*Id.* art. 34.

the Constitutional Court of Bulgaria ruled that these criteria were unconstitutional.[375] Hence, the new requirements to be met by employers' unions are as follows:[376]

- the union must have employer organizations in more than one-fourth of the industries designated by a code under the National Statistical Institute's Classification of Economic Activities, with at least 5 percent of the employees in each economic activity or 10 employer-members in each economic activity;
- the union must have local bodies in more than one-fourth of the municipalities in Bulgaria as well as a national governing body;
- the union must possess the capacity of a legal person at least three years prior to the submission of the request for recognition.

For purposes of the above criteria, an employer that is a member, either directly or through a branch or industry organization, of two or more national employer organizations has the following options:[377]

- to authorize representation through an express power of attorney given to one of the national organizations of which it is a member; or
- to authorize representation through an express power of attorney given to the branch or industry organization of which it is a member.

B. The Collective Labor Contract

1. Subjects of Bargaining

The collective labor contract occupies an important place in the regulation of the employment relationship in Bulgaria due to the special social functions assigned to it. The Labor Code states

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[375] *See* 7 STATE GAZETTE (Jan. 24, 2012).
[376] Labor Code art. 35.
[377] *See id*.

that the collective labor contract is used to settle matters of labor relations "not settled by the mandatory stipulations of the Labor Code" or by other related labor regulations.[378] The subject matter of the collective labor contract consists of a variety of social security and labor issues, such as remuneration, working conditions, rest periods, leave, insurance, social security benefits, work time, and related matters.

2. Superiority of the Labor Code

The Labor Code states that the collective labor contract may not restrict the rights and privileges granted to employees under the Code. Furthermore, an employment contract, whether collective or individual, may not create less favorable benefits for employees than those existing under the current labor laws.[379] Thus, provisions of the collective labor contract must not fall below the minimum standards established by law. In case of a conflict with legal standards, the collective agreement is rendered null and void.[380]

3. Relationship to Individual Contracts

After conclusion of the collective labor contract, the affected employee and employer are free to negotiate more favorable employment conditions under an individual employment contract.[381] Taken together, the collective labor contract and the labor laws and regulations provide the basic legal structure upon which individual employment contracts should be negotiated. If the individual employment contract provides less favorable employment conditions for the employee than those provided in the collective labor contract or under the labor laws, the individual employment contract is thereby rendered null and void.[382] In these cases, where particular terms of an individual employment contract are invalidated, the invalid terms are then replaced by the applicable statutory provisions or the provisions of the collective labor contract.

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[378] *Id*. art. 50(1).
[379] *Id*. art. 50(2).
[380] *Id*. art. 74(1).
[381] See I.B.5., above.
[382] Labor Code art. 74(1).

4. Parties and Representation

A collective labor contract is concluded between the relevant trade union and employer.[383] The Labor Code states that the collective labor contract is the product of collective negotiations between the parties, which may include the trade union organizations or their association on the one side, and a single employer, group of employers, or their respective organizations on the other.[384] Only one collective agreement may be concluded with an individual employer, employer's representative, or employer's association.[385] The trade union initiates the negotiation and seeks the conclusion of a collective labor contract.

Upon the employer's request, made before commencement of the negotiation process, the trade union organizations are obliged to provide information about the actual number of their members.[386]

The employer's representative must participate in and present information necessary for the bargaining process, including, for example, data on the economic situation of the enterprise, its marketing, profits and losses, organization of work, and related matters.[387] An employer that violates this bargaining obligation is subject to civil liability according to Article 52(2) of the Labor Code. If the information is considered to be of a confidential nature, i.e., its disclosure could cause damage to the company, then the employer may refuse to provide it or may condition release of the information on certain nondisclosure obligations.[388]

5. Conclusion and Registration

The resulting agreement must be in writing and signed by the parties, or by their designated representatives.[389] Upon its conclusion, the employer must inform the employees of the terms of

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[383] *Id*. art. 51(2).
[384] *Id*.
[385] *Id*.
[386] *Id*. art. 52(4).
[387] V. MRACHKOV, BULGARIA LABOR LAW 194 (1995).
[388] Labor Code art. 52(1), subsec. 2(b).
[389] *Id*. art. 53(1).

the collective bargaining contract and make the contract available to all employees.[390]

Labor Code Article 53(3) requires that the collective labor contract be registered with the local Labor Inspectorate with jurisdiction over the enterprise's place of business. The procedure for registration is established in Article 53(4). In particular, Article 53(4) provides that the parties to a collective agreement must present an electronic copy of the agreement, as well as a copy of the signed original, to the Labor Inspectorate for purposes of registration. This registration requirement does not affect the legality of the collective labor agreement, which is considered concluded from the date of signing, unless provided otherwise.

If the collective labor contract is concluded with a number of employers that have different places of business, then the contract may be registered with any Labor Inspectorates having jurisdiction over the company's place of business. Collective labor contracts concluded on an industrial sector level or national level must be registered with the Central Labor Inspectorate.[391]

Copies of collective agreements must also be provided ex officio to the National Institute of Conciliation and Arbitration, which is responsible for the creation and maintenance of an information system for collective agreements. The procedure and manner for the provision of these copies and their further preservation will be established by the Minister of Labor and Social Policy.[392]

6. Duration

As noted immediately above, the collective labor contract takes effect from the date of its signing.[393] The contract duration is defined by the Labor Code as one year, unless otherwise agreed by the parties, but not more than two years.[394] The parties are given the right to agree on a shorter duration for separate clauses within the contract.[395]

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[390] *Id.* art. 58.
[391] *Id.* art. 53(3).
[392] *Id.* art. 53(5).
[393] *Id.* art. 54(1).
[394] *Id.* art. 54(2).
[395] *Id.*

The collective labor contract may be amended, partially or in its entirety, provided all parties agree to the proposed amendment.[396]

Negotiations for a new collective contract should commence no later than three months prior to the expiration date of the existing contract.[397]

7. Coverage

As a general rule, the collective labor contract applies to all employees who are members of the trade union that signed the contract.[398] However, the law attempts to equalize the effect of the collective contract for all employees by providing them with uniform contractual benefits and work conditions. To accomplish this, the Labor Code provides that employees who are not members of the trade union may join employees covered by the collective agreement by submitting a written application for acceptance to the employer, or to the leadership of the trade union,[399] in accordance with the acceptance procedure determined by the parties to the collective contract.[400]

This acceptance procedure may not conflict with statutory requirements, aim at the achievement of illegal results through legal means, or violate the public order.[401] In addition, the acceptance may not be conditioned on the payment of a fee.

8. Effect of Employer Noncompliance

An employer may be held liable for noncompliance with the terms of the collective contract in an action brought in a civil court by the trade union or an aggrieved employee.[402]

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[396] *Id*. art. 56(1).
[397] *Id*. art. 54(3).
[398] *Id*. art. 57(1).
[399] *Id*.
[400] *Id*. art. 57(2).
[401] *Id*.
[402] *Id*. art. 59.

C. Dispute Settlement

In addition to court actions, collective labor disputes may be settled by negotiation, voluntary arbitration, or strikes.[403] Procedures for the settlement of labor disputes through negotiation or arbitration are provided by the Law on the Settlement of Collective Labor Disputes (Collective Disputes Law).[404] The Collective Disputes Law also establishes the National Institute of Conciliation and Arbitration for the purpose of assisting in the amicable settlement of collective labor disputes between employees and employers.

1. National Institute of Conciliation and Arbitration

The National Institute is a legal entity with its principal place of business in Sofia. The managing entities of the National Institute are the Supervisory Board and the Director. The Supervisory Board consists of two representatives of employee organizations, two employer representatives, and two representatives of the state. The members of the Supervisory Board serve for a one-year term. The Director of the Institute is a member of the Supervisory Board by virtue of his or her position.

The Supervisory Board adopts rules for the conduct of mediation and arbitration and criteria for nomination of mediators and arbitrators, and approves the list of mediators and arbitrators proposed by the organizations of employees, employers, or the state. The Director of the Institute is appointed by the Minister of Labor and Social Policy after consultation with the Supervisory Board. The activities of the Institute are financed with funds from the state budget.

2. Negotiation

Employers and employees may participate in settlement negotiations through their representatives. The procedure is commenced upon submission of a written request by the affected

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[403]For a discussion of strikes, see II.D.1., below.

[404]*DV* No. 21 (1990), amended by *DV* No. 27 (1991) (Collective Disputes Law).

employees that includes information regarding the representatives who will participate in the negotiations.[405]

The law states that the procedure is to be "freely decided" by the participating parties.[406] Both parties present arguments during the negotiations to justify their positions, and compromise generally is necessary in order to reach a final agreement. Negotiations may last up to 14 days, or longer if agreed to by the parties. In the event a disagreement persists, the superior body of the employer's organization and the trade union must become involved, and may reach an agreement to resolve the matter.

3. Arbitration

A collective labor dispute may be referred to an individual arbitrator or an arbitration panel upon written agreement of the parties.[407] The panel may consist of one or three arbitrators who are chosen by the parties from a list. The list of arbitrators must be approved by the Supervisory Board of the National Institute for Conciliation and Arbitration and must be published in the *State Gazette*.[408] The arbitration procedure contemplates a hearing on the disputed issues, with the presentation of evidence and testimony of experts. The arbitration decision is binding and subject to immediate enforcement.[409]

D. Industrial Actions

1. Strikes

The right to strike is a fundamental right of Bulgarian citizens guaranteed by the Constitution.[410] The Collective Disputes Law regulates in detail the right of Bulgarian employees to strike in an effort to solve their collective labor disputes.[411] In contrast, strikes are not allowed to settle individual labor disputes and

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[405]Collective Disputes Law art. 3(2).
[406]*Id.* art. 1(1).
[407]*Id.* art. 5(1).
[408]*Id.* arts. 4a, (7), subsecs. 5, 6.
[409]*Id.* supp. & final provisions §1(1).
[410]CONST. art. 50.
[411]Collective Disputes Law arts. 10–19.

grievances,[412] which must be resolved under the procedures established in Chapter 18 of the Labor Code.[413]

If a collective dispute cannot be settled by negotiation, or if the employer fails to perform its obligations, employees may strike by temporarily suspending work.[414] Employees also may announce a symbolic strike, without interruption of work, by carrying and placing appropriate signs, posters, or other symbols.[415] The decision to strike is made by a majority of the employees in the enterprise or branch.[416]

Seven days before commencement of a strike, the employees and their representative must inform the employer in writing about the strike, its duration, and the designated body that will lead the strike.[417] However, employees may conduct a warning strike for less than an hour without a preliminary warning.[418]

At least three days before the commencement of a strike, the employer and the employees should reach a written agreement to allow the normal, continuous operation of any activities that, if interrupted or suspended, might have the following effects:[419]

- endangering the life and health of the citizens in need of urgent medical care or hospitalized;
- disruption of the production, distribution, and supply of gas, electricity, and heat, public utility services and transportation services, TV and radio communications, or telephone services;
- irreparable damage to public or private property or the environment; or
- endangering the public peace.

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[412] *Id*. art. 16(5).
[413] See I.E. and I.F., above.
[414] Collective Disputes Law art. 11(1).
[415] *Id*. art. 10.
[416] *Id*. art. 11(2).
[417] *Id*. art. 11(3).
[418] *Id*. art. 11(5).
[419] *Id*. art. 14(1).

If the parties are unable to reach agreement on these issues, the dispute is referred to arbitration.[420]

Participation in a strike is voluntary. No one may be forced to participate or not participate.[421] Furthermore, strikers are not permitted to create obstacles or make it more difficult for employees who are not participating to continue to perform their work duties.[422] During a strike, the parties make efforts to settle their dispute through negotiations, mediation, or by any other appropriate means.[423]

Strikes are not allowed under the following circumstances:[424]

- if the employees' claims are against the Constitution;
- in case of noncompliance with the requirements of negotiation, majority employee decision, employer notice, or an agreement to protect public services, etc.;
- on questions previously settled by agreement or arbitration decision;
- during a natural disaster and any related urgent and immediate rescue and restoration activities;
- for settlement of individual labor disputes;
- within the Ministry of Defense, Ministry of Internal Affairs, judicial, prosecutorial, and investigators' bodies; or
- to assert political demands.

The employer and the employees not participating in the strike may bring an action to declare the illegality of an announced, ongoing, or completed strike.[425]

Employees are not compensated by the employer for the time spent participating in a strike. However, they may be compensated from a special strike fund on the employees' own initiative with their personal or professional organizations' funds.[426] Time

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[420] *Id*. art. 14(3). See II.C.3., above.
[421] Collective Disputes Law art. 13(1).
[422] *Id*. art. 13(2).
[423] *Id*. art. 15.
[424] *Id*. art. 16.
[425] *Id*. art. 17.
[426] *Id*. art. 18(1).

spent participating in a strike is considered as length of service for purposes of entitlement to pensions.[427] An employee who does not participate in a strike, but who is unable to work because of the strike of other employees, is entitled to receive compensation.[428]

Employees may not be disciplined or held financially liable for participation in a legal strike. However, discipline and financial liability may be imposed on employees who participate in an illegal strike.[429]

During a legal strike, an employer is not allowed to hire new employees to replace those participating in the strike, except under the following circumstances:[430]

- to guarantee the provision of public utility services;
- to assure normal TV and radio communications; or
- to prevent irreparable damage to public or private property or the environment.

Even in these cases, the hires must be temporary and only for the duration of the strike.[431]

The 2012 amendments to the Collective Disputes Law broaden the scope of the foregoing obligations by prohibiting the employer from recruiting replacement employees, including those from a temporary work agency. [432]

2. *Lockouts*

An employer may not suspend work and announce a lockout to stop a legal strike or to impede satisfaction of its employees' demands.[433]

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[427] *Id*. art. 18(4).
[428] *Id*. art. 18(5).
[429] *Id*. art. 19.
[430] *Id*. art. 14(1).
[431] *Id*. art. 21.
[432] *Id*.
[433] *Id*. art. 20.

E. Union Security

State government bodies, local government bodies, and employers are obligated to facilitate trade unions by providing buildings, equipment, and other types of subsidies to support their activities.[434]

Unsalaried leaders of national, industry, or regional trade union organizations, as well as unsalaried chairpersons of trade unions within an enterprise, are entitled to paid leave in an amount established by the applicable collective bargaining agreement, but not less than 25 hours per calendar year. Payment for this leave is made under the same rules established for paid annual leave,[435] and cash compensation in lieu of leave is prohibited.[436] Unless otherwise established in a collective bargaining agreement, a salaried elected trade union official is considered to be on unpaid leave for the period of his or her office.[437]

During the time an employee occupies a trade union office at the enterprise or at a regional, industrial, or national elective trade union body, and for six months after vacating that office, the employer may dismiss the employee only with the advance consent of the trade union.[438] This protection applies to dismissals based on the following grounds:[439]

- partial closing of the business;
- decrease in the volume of work;
- lack of ability for effective performance of the employee's obligations;
- the requirements for the job have changed, and the employee is no longer qualified for the position; or
- a disciplinary violation.

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[434]Labor Code art. 46.
[435]See V.A.1.e., below.
[436]Labor Code art. 159(2).
[437]*Id*. art. 161.
[438]*Id*. art. 333(3). See also I.F.7., above.
[439]Labor Code art. 333(3).

III. REPRESENTATION BY ENTITIES OTHER THAN UNIONS

The Labor Code permits employee participation in the management of the enterprise through their trade union representatives on questions regarding professional qualifications, increases or decreases in production, expansion or reduction of personnel, improvement of work conditions, and employee layoffs.

In certain cases provided by law, employees are entitled to participate in discussions related to the management of the enterprise through their elected representatives, whether or not the employees are represented by a trade union. For example, in the event of a transfer in company ownership, the employer is obligated to consult with the employees if, as a result of the transfer, it intends to take certain measures affecting employment.[440] If no trade union is present within the company, the general meeting of the employees may elect representatives for the purpose of conducting the consultations.[441]

A. Employee Representatives for Information and Consultation

The EU Information and Consultation Directive[442] was transposed into Bulgarian law through Labor Code amendments regarding employees' participation in company management through elected representatives.[443]

Under the amended Labor Code provisions, for companies with 50 or more employees, and in economically and organizationally autonomous parts of companies with 20 or more employees, employees have the right to elect representatives for purposes of receiving information and consulting with management. The Labor Code sets forth a procedure for the election, the number of

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[440] *Id*. art. 123. See IV.B., below.

[441] *See* Labor Code art. 7(2) (providing that general meeting of employees may elect representatives to represent their mutual interests in regard to labor and social security issues before employer or state authorities).

[442] European Parliament and Council Directive 2002/14/EC, 2002 O.J. (L 80) 29. For a discussion of this Directive, see the chapter on the European Union, at III.B.2., in Volume IA, Part 1.

[443] *See* Labor Code arts. 7a–7d.

representatives (which is in proportion to the total number of the company's employees), their term of service, etc.[444]

Employers are obligated to provide information to and consult with the employee representatives, on matters such as the economic development of the company or changes in the company's structure or work organization. Employee representatives also are entitled to meet with the employer in order to inform the company of employees' questions and requests.[445] The Labor Code provisions for information and consultation apply only to the extent that the employer and the employees' representatives have not agreed to other procedures.[446]

Employee representatives may only be dismissed with advance authorization by the General Labor Inspectorate.[447] Employee representatives who have access to confidential information, and who have agreed to keep the information confidential, are liable for damages caused as a result of violating their obligation.[448]

B. European Works Councils

The Law on Providing Information to and Consulting with Employees of Multinational Enterprises, Groups of Enterprises, and European Companies (EWC Law) introduced the EU Directive on European Works Councils.[449] The EWC Law sets forth terms and procedures for the establishment and operation of European Works Councils (EWCs) in multinational companies, groups of companies, European companies, and European cooperative societies. This protection of employees' interests at the European level does not exclude existing mechanisms at the national level, but serves as their complement.

To qualify as a multinational within the meaning of the EWC Law, a company must have the following numbers of employees:

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[444]*Id*. arts. 7a, 7b.

[445]*Id*. art. 7c.

[446]*Id*. art. 130d.

[447]See I.F.7., above.

[448]Labor Code art. 7c.

[449]Council Directive 94/45/EC, 1994 O.J. (L 254) 64. For a discussion of this Directive, see the chapter on the European Union, at III.B.1., in Volume IA, Part 1.

- at least 1,000 employees in EU Member States; and
- at least 150 employees in each of at least two Member States.

A European company is a company established in accordance with Council Regulation 2157/2001/EC.[450]

For companies subject to the EWC Law, central management must conduct regular joint meetings with the EWC at least once each year, aimed at providing information and consulting on matters concerning the community-scale company or group of companies. These meetings may focus on the structure of the company or its branches, the economic and financial circumstances of the company or its branches, the probable development of the business, the situation and probable trend of employment, investments, significant changes concerning the organization, the introduction of new working methods or production processes, transfers of production, reductions in the volume of work, the closing of companies, branches, or other business units, planned collective dismissals, and other matters of interest to the parties.

In addition, in the event of exceptional circumstances that are likely to have a significant impact on employees' interests, particularly in cases of relocation, branch closings, or collective dismissals, the EWC has the right to convene extraordinary meetings with central management in order to be informed about measures affecting employees.

Employees who are members of an EWC are entitled to paid leave to be used for participation in EWC meetings.[451] EWC members also are entitled to paid time off to take educational courses required for performance of their obligations as EWC

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[450]For a discussion of this Regulation, see the chapter on Employment and Corporate Law Issues Applicable in Restructuring of Companies in the EU, at VI., in Volume IA, Part 1.

[451]Labor Code art. 157(1), subsec. 5a.

members.[452] EWC members may only be dismissed with advance authorization from the General Labor Inspectorate.[453]

IV. Redundancy and Transfers of Undertakings

A. Collective Redundancy

The term "collective dismissal" refers to a dismissal carried out by an employer for one or more reasons not related to performance of the affected employees, provided that within a period of 30 days, the employer has terminated the following numbers of employees:[454]

- at least 10 employees, where the total number of employees in the particular enterprise is between 20 and 100;
- at least 10 percent of the total number of the employees, where the total number of employees in the enterprise is not less than 100, but does not exceed 300; or
- at least 30 employees, where the total number of the employees is 300 or more.

When an employer is contemplating collective dismissals, it must begin consultations with the trade unions' representatives and with the employees' information and consultation representatives[455] no later than 45 days before the dismissals are to take effect. In the course of these consultations, the employer must make efforts to reach an agreement with the employee representatives so as to avoid collective dismissals or reduce the number of employees affected and mitigate the consequences of the dismissals.[456] Before the required consultations begin, the employer

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[452] *Id*. art. 161(3).
[453] See I.F.7., above.
[454] Labor Code §1, subsec. 9, add'l provisions.
[455] See III.A., above.
[456] Labor Code art. 130a(1).

must provide the trade unions' representatives and the employees' information and consultation representatives with written information on the following:[457]

- the reasons for the projected dismissals;
- the number of employees to be dismissed, and the principal economic activities, groups of occupations, and positions to which they belong;
- the number of employees employed in the principal economic activities, groups of occupations, and positions at the enterprise;
- the specific criteria for selection of the employees to be dismissed;
- the period over which the dismissals are to be effected; and
- the compensation due in connection with the dismissals.

The employer must provide this same information to the National Employment Agency within three days of providing the information to the union and employee representatives.[458] The Employment Agency then is obliged to inform the other interested parties, namely, the municipal administration, the territorial division of the National Insurance Institute, and the General Labor Inspectorate. The notification must contain all necessary information regarding the planned mass dismissal—including the reasons for the planned dismissal, the number and category of employees to be dismissed, the period during which the dismissal must be carried out, and the stipulated selection criteria—as it relates to preliminary consultations with representatives of the trade unions and employees.

Collective dismissals may not take effect earlier than 30 days after notification to the National Employment Agency.[459]

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[457] *Id*. art. 130a(2).
[458] *Id*. art. 130a(3).
[459] *Id*. art. 130a(7).

B. Transfers of Undertakings

Article 123 of the Labor Code states that the employment relationship with an employee is not terminated in the event of a change of employer as the result of the following:

- a merger of enterprises by the formation of a new enterprise;
- a 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 an enterprise to another;
- a change in the legal form of the business organization;
- a change in the ownership of the enterprise, in whole or in part;
- the ceding or transfer of activity from one enterprise to another, including the transfer of tangible assets; or
- the incorporation of a European company or a European cooperative society by way of merger.

In these cases, the rights and obligations of the transferor employer arising from the employment relationships existing on the date of the restructuring are transferred to the new employer.[460] Liability for obligations to employees created before the merger, distribution, change in ownership, or transfer are apportioned as follows:[461]

- in case of a merger of enterprises or change in legal form—on the new enterprise;
- in all other cases—on both enterprises jointly and severally.

In the event of a proposed transfer, the Labor Code requires the transferor and transferee employers to provide information to

[460] *Id*. art. 123(2).
[461] *Id*. art. 123(4), subsecs. 1, 2.

the trade unions' representatives and employees' information and consultation representatives[462] regarding the following:[463]

- the type of transfer and the date of its implementation;
- the reasons for the transfer;
- the possible legal, economic, and social consequences of the transfer; and
- the measures intended to be undertaken with respect to the employees.

The required information must be provided at least two months before the consequences of the transfer are set to occur. In cases where there are no employee representatives, the employer must provide the information directly to employees.[464]

If either employer intends to undertake certain employment measures, such as dismissals, it must consult with the trade unions' representatives and with the employees' information and consultation representatives and to make efforts to make agreements.[465] These consultations are not subject to any procedural requirements. The employer and the employees' representatives are free to agree on the procedure. The main aim of the consultations is to obtain the opinion of the employees' representatives regarding the transfer and, to the extent possible, to modify the parameters of the transfer to avoid any employment-related complications.

In the event of a transfer in which the enterprise remains entirely or partly independent, the employees' information and consultation representatives are entitled to keep their status and functions with the new employer for a period not longer than one year.[466] In all other cases, employees are entitled to participate in the discussion and resolution of enterprise issues through the elected employee representatives of the new employer.

Employees are allowed to terminate their employment relationship without notice in the event of a transfer of undertaking

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[462]See III.A., above.
[463]Labor Code art. 130b(1).
[464]*Id.* art. 130b(5).
[465]*Id.* art. 130b(4).
[466]*Id.* art. 7b(2).

that results in a "serious deterioration" of the employee's working conditions.[467]

Bulgarian law does not include any specific legal consequences for noncompliance with the statutory requirements for informing and consulting with employees regarding a transfer, in terms of invalidity of the transfer. However as per the latest 2012 Labor Code amendments noncompliance is subject to specific administrative sanctions for violation of the obligation to inform and consult with the employees with regard to transfers.[468] These sanctions are imposed on the employer of its officials by the competent Labor Inspectorate and are in the form of fines or pecuniary sanctions, varying from BGN 1,500 to BGN 5,000 for the employer and from BGN 250 to BGN 1,000 for each violation.

V. Wages, Hours, and Leave

A. Wages

1. Mandatory Compensation

Chapter Twelve of the Labor Code establishes detailed rules on employee compensation. The Code states the general rule that all work performed under an employment contract must be monetarily[469] compensated.[470] Parties may not avoid this provision by negotiating some other form of remuneration or for work to be performed without compensation.[471]

The Labor Code explicitly prohibits discrimination in the compensation of men and women performing the same or equivalent work.[472] Accordingly, men and women performing the same or equivalent work are entitled to equal remuneration.

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[467] *Id*. art. 327(1), subsec. 3a. See discussion at I.F.3., above.
[468] Labor Code art. 414(5).
[469] *Id*. art. 269(1).
[470] *Id*. art. 242.
[471] *Id*. art. 74(1).
[472] *Id*. art. 243. See also VI.A.2., below.

2. *Role of Trade Unions*

Trade unions may play a role in determining salaries to the extent that minimum salary amounts can be negotiated in a collective labor contract. However, they may not influence salaries that are established in an individual employment agreement.

3. *Minimum Wages*

A Bulgarian employee is entitled to basic compensation for the fulfillment of a given type of work under normal conditions and within legally established working hours. The amount of the basic remuneration is determined by mutual agreement of the parties under the individual employee's contract or under the collective labor agreement. Compensation also is based on the level of an employee's professional qualifications, experience, and skills.

The national minimum monthly wage is determined by an ordinance of the Council of Ministers from time to time upon its own discretion.[473] The ordinance is subject to promulgation in the *State Gazette*. Collective labor contracts and their provisions are not relevant to determination of the national minimum monthly wage.

The minimum monthly wage is uniform throughout the country. Any employment contract that attempts to provide for a monthly compensation below the established minimum limit is illegal.[474]

As of January 2013, the minimum wage in Bulgaria is set at BGN 310.

4. *Additional Work Remuneration*

a. *Overview*

Additional remuneration may be added to basic compensation in recognition of additional requirements for the quantity and quality of the work performed, or to compensate employees for specific conditions under which their work is performed.[475]

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[473]Labor Code art. 244, subsec. 1

[474]V. MRACHKOV, BULGARIA LABOR LAW 108 (1995).

[475]Labor Code art. 260.

The Council of Ministers is empowered to establish the types and minimum amounts of additional compensation to the extent they are not fixed in the Labor Code.[476]

According to the provisions of the Regulation on the Structure and Organization of Work Remuneration,[477] additional work remuneration usually is determined as a percentage of the basic salary under the labor contract and not on the basis of the national minimum monthly wage.

The most important types of work for which additional remuneration is provided include the following:

- internal replacement for an absent employee;[478]
- night work;[479]
- overtime work;[480]
- holiday work;[481] and
- long service.[482]

The Regulation on the Structure and Organization of Work Remuneration determines the minimum amounts and method for determining additional remuneration for overtime work, night work, the time during which the employee is at the disposal of the employer, scientific degrees, and length of service and professional experience. Additional remuneration for such things as achieved results, participation in company profits, or because of temporary changes in working conditions resulting in additional psychological burden to the employee may also be stipulated in the collective labor agreement, in the internal regulations adopted by the employer, or in the individual employment contract.

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[476]*Id*. art. 244.

[477]Regulation on the Structure and Organization of Work Remuneration, approved by the Council of Ministers by Ordinance No. 4, 9 STATE GAZETTE (Jan. 26, 2007).

[478]Labor Code art. 259(1).

[479]*Id*. art. 261. See also V.B.6., below.

[480]Labor Code art. 262. See also V.B.2., below.

[481]Labor Code art. 264. See also V.B.8., below.

[482]Regulation on the Structure and Organization of Work Remuneration art. 12.

b. Night Work

The law provides for increased compensation for night work,[483] largely because it is considered hazardous to the employee's health.[484] Night work rates may be negotiated between the parties under the employment contract, but strict compliance with the minimum rate as determined by the Council of Ministers is required.[485]

For each hour of night work (i.e., between 10 p.m. and 6 a.m.) or part thereof, the employees are entitled to an additional remuneration amounting to not less than BGN 0.25. Through the means of an individual or collective contract higher amounts of additional payment for night work can be negotiated.

c. Overtime Pay

The employer and employee may agree on the rate of premium pay for overtime, subject to the following minimum statutory premiums based on the employee's regular wage rate:

- 50 percent for every additional overtime hour;[486]
- 75 percent for overtime during the weekly rest period.[487]

The Labor Code expressly prohibits compensatory time off in lieu of overtime pay.[488]

d. Holiday Pay

Days classified as official holidays constitute paid days off for all employees.[489] An employee who works overtime on an official holiday is entitled to two times his or her regular day's wage.[490]

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[483]For a definition of night work, see V.B.7., below.

[484]V. MRACHKOV, BULGARIA LABOR LAW 94 (1995).

[485]Labor Code art. 261.

[486]*Id.* art. 262(1), subsec. 1.

[487]*Id.* art. 262(1), subsec. 2. For a description of the weekly rest period, see V.B.9., below.

[488]Labor Code art. 150(2).

[489]For a list of public holidays, see V.B.10., below.

[490]Labor Code art. 262(1), subsec. 3; V. MRACHKOV, BULGARIA LABOR LAW 750 (2007).

e. Additional Remuneration for Length of Service and Professional Experience

The Regulation on the Structure and Organization of Work Remuneration provides that the employee is entitled to additional remuneration if he or she has worked and still works in the employer's enterprise, including at different workplaces and positions, or if the employee has worked in the enterprise prior to a change of employer.[491] The minimum service period that should be completed by the respective employee for the purposes of availing from the right to additional remuneration for length of service and professional experience is one year. Calculation of this additional remuneration takes into account the service and professional experience of the employee acquired under an employment contract, or another type of relationship (e.g., state official or freelancer) constituting grounds for social insurance of the employee against all social security risks or against all social security risks except for labor accident, professional disease, and unemployment, in another enterprise but at the same or similar position, profession, or work or at a position, profession, or work of similar nature. The same rule applies if Bulgarian citizens or citizens of other Member States and the members of their families have worked or have practiced their profession in the territory of the EU Member States at the same or similar position, profession, or work or at a position, profession, or work of similar nature.[492]

The additional remuneration for length of service and professional experience is in the amount of at least 0.6 percent for each year of qualifying service and professional experience.[493]

5. Pay Reductions

The Labor Code provides specific rules for determining an employee's compensation in the event of failure to fulfill work quotas,[494] during a work stoppage or a transfer of work

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[491]Regulation on the Structure and Organization of Work Remuneration art. 12(2).

[492]*Id*. art. 12(4), subsecs. 3, 4.

[493]Ordinance No. 147 of the Council of Ministers of June 29, 2007, on Determination of the Minimum Amount of Work Remuneration for Long Service and Professional Experience, 56 STATE GAZETTE (July 1, 2007).

[494]Labor Code art. 266.

assignments,[495] or for poor quality of output due to fault or no fault of the employee.[496] These rules are summarized as follows:

- For failure to fulfill quotas where the employee is not at fault, the employee receives remuneration according to the output, but no less than the agreed remuneration for full output.[497]
- For failure to fulfill quotas where the employee is at fault, the employee receives remuneration according to the output.[498]
- For a work stoppage, an employee receives his or her gross remuneration when the stoppage is not the employee's fault and no remuneration if the stoppage is the employee's fault.[499]
- For performing work other than that regularly assigned to the employee, he or she receives the remuneration for the work done, but no less than the employee's regular gross remuneration.[500]
- For unfit products, an employee receives the remuneration for fit products when the unfitness is not the employee's fault, or no remuneration if the unfitness is the employee's fault.[501]
- For products that only partially meet quality standards, the employee's remuneration is reduced in proportion to the waste when the partial unfitness is the employee's fault.[502]

6. Methods of Computing Wages

The manner of determining wage rates may be based on a "time-work" (the length of working time) and/or a "piece-work" (work results) basis.[503] The time-work system of compensation is

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[495] *Id*. art. 267.
[496] *Id*. art. 268.
[497] *Id*. art. 266(1).
[498] *Id*. art. 266(2).
[499] *Id*. art. 267.
[500] *Id*. art. 267(3).
[501] *Id*. art. 268(1), (3).
[502] *Id*. art. 268(2).
[503] *Id*. art. 247(1).

applied in cases where productivity cannot be measured by the quantity of work performed and where great accuracy and high quality work performance is needed. The piece-work system may be applied where productivity and performance can be precisely measured, evaluated, and controlled. Under this system, the compensation actually due is determined in proportion to the work done, which in turn is measured by the output produced.

7. Remuneration of State Employees

The Council of Ministers is empowered to adopt an ordinance under which the minimum and maximum remuneration of individuals employed in the state administration will be determined.[504]

The 2012 Labor Code amendments establish criteria for determining the remuneration of state employees. These criteria are the level of the position occupied, the employee's qualifications, and his or her professional experience.[505] The remuneration package can be increased on the grounds of the following criteria:[506]

- annual assessment of performance in the relevant position;
- return to work after a period of pregnancy and maternity leave or childcare leave;[507]
- expiration of the probation period;
- upon return after a period of leave or after an official mission which lasted more than one year, or upon reinstatement of employment after dismissal;
- promotion to a position at a higher remuneration level.

The 2012 amendments also establish provisions regulating the additional remuneration for this category of employees, i.e., additional remuneration for night work, for overtime work, for work on public holidays, for stand-by availability, and for good

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[504] *Id*. art. 107a(7).
[505] *Id* .art. 107a(10).
[506] *Id*. art. 107a(11).
[507] See V.C.2.b., below.

performance. These grounds are exhaustively listed[508] and on no other grounds for payment of additional remuneration may be introduced.

8. Form of Payment

Bulgarian employees typically are paid in Bulgarian Leva, or in the corresponding national currency for employees abroad. The Council of Ministers, the collective agreement, or the labor contract may permit payment in kind (e.g., food, clothing, etc.), but only for the additional remuneration part of an employee's pay, not for the basic compensation.[509]

Under the Law on Obligations and Contracts,[510] contractors may negotiate the price of a contract in foreign currency and make payments in the agreed currency. This rule extends to the payment of labor compensation.

9. Place and Time of Payment

Article 270 of the Labor Code provides that compensation must be paid to an employee at the place of business where the work is performed.[511] It must be paid in person or, upon signed authorization by the employee, to his or her relatives or to other authorized persons.[512] An employee's compensation may be paid either in advance or after the work is performed, twice every month.[513]

Under Bulgarian law, employees who perform their obligations under an employment contract in good faith are guaranteed to receive a certain wage amount. This guaranteed amount is equal to 60 percent of the monthly compensation specified in their employment contract, but in no event less than the national minimum monthly wage.[514] The balance, to the full amount specified

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[508]Labor Code art. 107a(13).
[509]*Id*. art. 269(2).
[510]Law on Obligations and Contracts art. 10(1).
[511]Labor Code art. 270(1).
[512]*Id*. art. 270(3).
[513]*Id*. art. 270(2).
[514]*Id*. art. 245(1). For a description of the minimum wage, see V.A.3., above.

in the employment contract, remains payable and is subject to legal interest.[515]

The amount of interest payable on outstanding employee remuneration is equal to the basic interest rate specified for the country plus 10 percent.[516]

10. Withholding of Compensation

Two provisions in the Labor Code provide employees with legal protection against the recovery or withholding of compensation by an employer. First, the Code provides that any remuneration received by an employee in good faith is not reimbursable.[517] Second, deductions from an employee's remuneration may be made only for certain specified reasons, as follows:

- to repay compensation advanced to the employee;[518]
- to repay compensation paid to the employee above the amount due as a result of a technical error;[519]
- for authorized taxes;[520]
- for insurance premiums;[521]
- pursuant to attachments authorized in accordance with established legal procedures;[522] or
- to satisfy the limited financial responsibility for losses caused by the employee.[523]

11. Tax on Employment Remuneration

As per the Law on Taxation of Incomes of Individuals,[524] income from work performed on the Bulgarian territory is tax-

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[515]Labor Code art. 245(2).

[516]Ordinance No. 100 of the Council of Ministers of 29.05.2012 laying down the amount of statutory interest on overdue payables denominated in foreign currency art. 1.

[517]*Id*. art. 271(1).

[518]*Id*. art. 272(1), subsec. 1.

[519]*Id*. art. 272(1), subsec. 2.

[520]*Id*. art. 272(1), subsec. 3.

[521]*Id*. art. 272(1), subsec. 4.

[522]*Id*. art. 272(1), subsec. 5.

[523]*Id*. arts. 210(4), 272(2), subsec. 6. See also I.E.8., above.

[524]95 STATE GAZETTE (Nov. 24, 2006).

able in Bulgaria notwithstanding the employee's and employer's tax residency (i.e., whether they are Bulgarian or foreign tax residents) and where the income has been received. Thus, irrespective of whether the employees will be employed by a Bulgarian entity or a foreign one, the fact that they will receive income from work in the territory of Bulgaria triggers personal income tax liability with respect to such income.[525] No other taxes are applicable regarding income from work under an employment agreement in Bulgaria.

The employer is liable for the calculation, withholding from the respective employee's remuneration and remittance to the budget of advance personal income tax on the remuneration of the respective employee.[526] The tax due on employment remunerations is to be withheld and paid to the budget by the employer on the account of the employee. Said obligation for transfer of the tax due arises only for employers, qualifying as Bulgarian employers under Law on Taxation of Incomes of Individuals, i.e., any local entity, or a foreign entity having a permanent establishment or a base on the territory of Bulgaria. If the employer does not fall under any of the above categories, no obligation for transfer of taxes would arise and the employees will be solely liable for declaring and paying the taxes due. Due personal tax payments should be remitted to the budget until the 25th day of the month following the month in which the respective deductions have been made.[527]

A flat rate of 10 percent is applicable and chargeable on the personal income of the employees.[528] For proper tax calculation of the advance payments due leviable income includes all types of income from employment for the respective month (in cash or in-kind) decreased, before applying the tax rates, by: (a) the social and health security contributions paid on the account of the employee (including contributions made abroad), and (b) some other deductible amounts exhaustively specified by law[529] (e.g.

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[525]Law on Taxation of Incomes of Individuals art. 8(2).
[526]*Id*. art. 42(1), (5), (9).
[527]*Id*. art. 65(11).
[528]*Id*. art. 42(4).
[529]*Id*. art. 42(2).

the value of: (i) free food and/or food additives, antidotes provided in kind within the meaning of the Labor Code, (ii) working clothes, uniforms, and presentable clothing according to relevant statutory instruments, (iii) travel and accommodation expenses, where documented according to the procedure established by effective legislation, etc.[530]).

The monthly tax base can also be reduced by (if applicable):[531]

- a tax relief for disabled workers in the amount of BGN 660;
- a tax relief for personal contributions for voluntary social security and insurance when the amounts are withheld by the employer at the moment of payment of the remuneration of the respective employee.

12. Guaranteed Payment of Remuneration in Case of Employer Bankruptcy

The Law on the Guaranteed Payment of Employees in Case of Employer Bankruptcy (Guaranteed Payment Law) provides a guarantee that employees will receive their compensation in the event that bankruptcy proceedings are initiated against their employer. The employees of a Bulgarian company, which a self-standing part of a company performing its business activity in another EU or EEA Member State, are entitled to the same compensation under the Guaranteed Payment Law if the non-Bulgarian company is in bankruptcy under the laws of the respective EU or EEA Member State, and the bankruptcy also applies to the Bulgarian self-standing part.[532]

For purposes of the Guaranteed Payment Law, a Guaranteed Receivables Fund (GRF) was established within the structure of the National Social Security Institute (NSSI). The amount of contributions to, and payments from, the GRF are to be determined annually by the Law on the Budget of State Social Security. However, monthly contributions may not exceed the larger of 0.5

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[530] *Id.* art 24(2).

[531] *Id.* art 42(3).

[532] Law on the Guaranteed Payment of Employees in Case of Employer Bankruptcy (Guaranteed Payment Law), add'l provisions §1.

percent of the employee's gross remuneration or the maximum social security income set for the particular year. Contributions are made entirely by the employer. In return, the employee is entitled to a guaranteed payment. For 2012, the maximum guaranteed payment was BGN 1,000.[533]

The Ordinance on the Procedure for Informing Employees about Granting and Effectuating Guaranteed Payments in Case of Employer Bankruptcy[534] specifies the procedures for informing employees and for granting guaranteed payments.

In order to receive payment from the GRF, the employee must file a written application with the local division of the NSSI within 30 days of the date that the court publishes its decision to open bankruptcy proceedings against the employer or of the date on which employees are informed by their Bulgarian employer that a bankruptcy proceeding has been opened pursuant to another country's laws.

The 2012 amendments to the Guaranteed Payment Law provide that the contributions to the GRF are to be paid together with the contributions for social insurance.[535]

B. Hours

1. Normal Working Time

The regular time for performance of the work entrusted to an employee is defined in Article 136 of the Labor Code as "working time." The legal workweek is a 40-hour, five-day week.[536] The workday must be a maximum of eight hours per day.[537] For minors, working time is limited to 35 hours per week and seven hours per day.[538]

The Labor Code requires working time to be calculated on a daily basis. However, employers are allowed to introduce aggregate reporting based on a cumulative calculation for a certain

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[533]*See* 98 STATE GAZETTE (Dec. 14, 2010).
[534]*See* 3 STATE GAZETTE (Jan. 11, 2005).
[535]Guaranteed Payment Law art. 20, subpara 4.
[536]Labor Code art. 136(1).
[537]*Id.* art. 136(3).
[538]See VI.B.1., below.

period not exceeding six months.[539] Under an aggregate reporting system, there may be certain deviations from normal working time, e.g., one week an employee may work 50 hours, and another week only 30 hours. However, if an aggregate reporting system is used, the average working time during the reported period may not exceed a maximum of 56 hours per week.

Article 111 of the Labor Code allows an employee to enter into an employment contract with another (second) employer in addition to his or her primary employment. For employees over the age of 18 who work under primary and secondary labor agreements, the total hours are limited to 48 per week.[540] However, employees may consent to an increase in the total working time in excess of 48 hours.[541]

2. *Overtime Hours*

The Labor Code defines overtime work as "work performed by the employee over and above his agreed working hours under the order of, or with the knowledge of and with no objection from, the employer or the respective superior."[542]

As a general principle, overtime work is prohibited.[543] However, the Labor Code allows certain exceptions, including the following:

- work that is related to the national defense;[544]
- work performed for the prevention, management, and mitigation of the effects of disasters;[545]
- work that is necessary to restore water and electrical supply, heating, sewage, transport, and communication, and for medical assistance;[546]

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[539] Labor Code art. 142.
[540] *Id*. art. 113(1), subsec. 2.
[541] *See id*. art. 113(2).
[542] *Id*. art. 143(1).
[543] *Id*. art. 143(2).
[544] *Id*. art. 144(1).
[545] *Id*. art. 144(2).
[546] *Id*. art. 144(3).

- emergency repairs of machinery or other equipment on the work premises;[547]
- work that cannot be performed during regular working hours;[548] and
- intensive seasonal work.[549]

Employers may also extend business hours for reasons related to the production process.[550] In order to exercise this right, the employer must, in advance of the extension, consult the trade unions' representatives and the employees' information and consultation representatives,[551] unless otherwise agreed in the collective bargaining agreement, and must notify the General Labor Inspectorate.[552] When extended, business hours may not exceed 10 business hours per day or 48 hours per week. For employees working under a reduced working hours arrangement,[553] extended business hours may not exceed one hour over their reduced working time, and the extended workweek may not exceed 40 hours.[554] In addition, extended business hours may not exceed more than 20 consecutive days or more than 60 days annually.[555]

Extension of the business day must be compensated within four months by a reduction in the number of business hours on other days, and these reductions in the normal duration of the business day should be recorded by the employer in a specially designated book. If the employer fails to compensate employees within the four-month period, then each employee may choose at his or her own discretion the moment to exercise the right of compensation by providing two weeks' advance notice to the employer.[556] If the employee terminates employment before receiving reduced-hour compensation, monetary compensation equal to

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[547] *Id*. art. 144(4).
[548] *Id*. art. 144(5).
[549] *Id*. art. 144(6).
[550] *Id*. art. 136a.
[551] See III.A., above.
[552] Labor Code art. 136a(1).
[553] See V.B.3., below.
[554] Labor Code art. 136a(2).
[555] *Id*. art. 136a(3).
[556] *Id*. art. 136a(4).

that payable for overtime work must be paid to the employee for the additional hours of work.[557]

The Labor Code places strict maximum amounts on the duration of overtime work, allowing no more than the following: [558]

- 30 hours of day work, or 20 hours of night work, to be performed within one calendar month;[559]
- six hours of day work, or four hours of night work, to be performed in one calendar week;[560]
- three hours of day work, or two hours of night work, to be performed in two consecutive working days.

An annual cap of 150 hours is placed on accumulated overtime work.[561] However, these restrictions do not apply in cases of (i) national defense, (ii) natural and social disasters, or (iii) urgent public needs for the restoration of the water or electrical supply.[562]

The following categories of persons are prohibited from working overtime:

- employees younger than 18 years of age;[563] and
- pregnant employees and female employees in an advanced stage of in vitro treatment.[564]

Employers are prohibited from requiring overtime work by the following types of employees, unless the employee consents to the assignment:

- mothers of children under six years of age;[565]
- mothers of handicapped children regardless of the child's age;[566]

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[557] *Id*. art. 136a(5).
[558] *Id*. art. 146(2), subsec. 3.
[559] *Id*. art. 146(2), subsec. 1.
[560] *Id*. art. 146(2), subsec. 2.
[561] *Id*. art. 146(1).
[562] *Id*. art. 146(3).
[563] *Id*. art. 147(1), subsec. 1.
[564] *Id*. art. 147(1), subsec. 2.
[565] *Id*. art. 147(1), subsec. 3.
[566] *Id*.

- employees who have been reassigned due to medical disability, but only if medical authorities determine that it will not be detrimental to their health;[567] and
- employees who are continuing their education while employed.[568]

Overtime work also is prohibited for employees whose working time has been reduced due to hazardous working conditions,[569] with exceptions allowed for work in (i) national defense, (ii) natural and social disasters or dangers, and (iii) public works sectors when urgently necessary.[570]

An employee has the right to refuse to perform overtime work if it is in violation of the law or the collective agreement.[571]

3. Reduced Work Hours

Article 137 of the Labor Code provides for reduced working hours for employees who are under age 18 and for those who work under hazardous conditions for more than four hours per day. The reduced workday is designed to protect employees from the dangerous impact of the work environment by reducing the length of time they are exposed to such conditions.

For employees working under hazardous conditions, reduced working hours must be established where the harmful environment or specific working conditions cannot be removed or reduced regardless of other measures taken by the employer, and where a reduction in working time would, in fact, limit the risks to employees' health.[572] The Council of Ministers is charged with adopting an ordinance specifying the types of work appropriate for reduced working time.[573]

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[567] *Id*. art. 147(1), subsec. 4.
[568] *Id*. art. 147(1), subsec. 5.
[569] See V.B.3., below.
[570] Labor Code art. 147(2).
[571] *Id*. art. 148.
[572] *Id*. art. 137(1), subsec. 1. See also VII.A., below.
[573] Labor Code art. 137(2).

The amount of reduction in the workday depends on the degree of the danger posed to the employee.[574] The determination of reduced working time is based on the opinions of medical and technical experts and is regulated by numerous acts of the Council of Ministers. Regulation of work time is subject to change following the introduction of new technology and equipment that significantly improves the work environment.[575]

For employees entitled to reduced working time, the Labor Code explicitly prohibits a reduction in remuneration or other benefits, such as the right to a paid annual leave.[576]

4. Part-Time Work

The Labor Code defines "part-time work" as work of a shorter monthly duration than the monthly duration of normal working time, for performance of the same or similar type of work.[577] The parties are free to negotiate the duration and allocation of any part-time work assignment.[578]

An employer may introduce part-time work for all or some of its employees, for a term of not more than three months per year and conditioned on a reduction in the volume of work.[579] The introduction of part-time work must be agreed to in advance with the trade unions' representatives and the employees' information and consultation representatives.[580] Where a part-time work arrangement is implemented, working time should not be reduced to less than one-half of the normal working time, as reflected in the parties' employment contract.[581]

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[574]Ordinance of the Ministry of Labor & Social Policy and Ministry of Health Providing Free Food to Employees Working in Conditions Dangerous to Their Health, *DV* No. 58 (1993).

[575]Ordinance for Reduced Working Time, *DV* No. 59 (1993).

[576]Labor Code art. 137(4).

[577]*Id*. art. 138(2).

[578]*Id*. art. 138(1).

[579]*Id*. art. 138a(1).

[580]*Id*. art. 138a(1). For a description of information and consultation representatives, see III.A., above.

[581]Labor Code art. 138a(2).

With a view to creating possibilities for transfer from full-time to part-time work or vice versa, the employer must do the following:[582]

- give consideration to employees' requests for transfer from full-time to part-time work;
- give consideration to employees' requests for transfer from part-time to full-time work or for an increase in the amount of part-time work;
- make information regarding vacant full-time and part-time positions available to employees as well as trade union representatives and employees' information and consultation representatives;
- facilitate access to part-time work at all levels of the enterprise, and where possible, facilitate the access of part-time employees to vocational training.

Part-time employees may not be placed at a disadvantage based on the part-time nature of their working relationship as compared to employees who work on a full-time basis and who perform the same or similar work.[583]

As per the 2012 Labor Code amendments, an employment contract concluded for part of the statutory working time will be construed as a contract concluded for normal working time where the supervisory authorities find that the employee actually works longer than contractually prescribed.[584]

5. Work on Particular Days of the Month

Article 114 of the Labor Code provides that an employment agreement may be concluded for work on particular days during the month. The time under such an employment agreement must be recognized for purposes of calculating length of employment service.

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[582] *Id*. art. 138a(3).
[583] *Id*. art. 138(3). See also VI.A.2., below.
[584] Labor Code art. 138(4).

6. Stand-By Duty

Certain categories of employees may be required to be on duty or on stand-by status during specified hours in a 24-hour period. The categories of employees, maximum duration of hours, and accounting procedures for stand-by duty are determined by the Minister of Labor and Social Policy.[585]

7. Night Work

Article 140 of the Labor Code defines "night work" as at least three hours of working time between the period from 10:00 p.m. until 6 a.m.[586] The normal duration of a night shift is seven hours for employees on a five-day workweek.[587]

Because night work is considered hazardous, the Labor Code prohibits the assignment of the following employees to night work:

- employees younger than age 18 (for whom work performed between 8 p.m. and 6 a.m. is considered to be night work);[588] and
- pregnant women and female employees in an advanced stage of in vitro treatment.[589]

The prohibition also applies to the following employees, but exceptions are allowed with the employee's consent:

- mothers of children younger than age six;[590]
- mothers taking care of handicapped children;[591]
- employees with disabilities;[592] and
- employees who are continuing their education while employed.[593]

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[585] *Id.* art. 139(5).
[586] *Id.* art. 140a.
[587] *Id.* art. 140(1).
[588] *Id.* art. 140(4), subsec. 1.
[589] *Id.* art. 140(4), subsec. 2.
[590] *Id.* art. 140(4), subsec. 3.
[591] *Id.*
[592] *Id.* art. 140(4), subsec. 4.
[593] *Id.* art. 140(4), subsec. 5.

The Labor Code also requires that an employer provide hot food, refreshments, and facilities to night shift employees.[594] This provision reflects the legislative finding that night work is considered "harmful to the employee's well being because of the changes in the normal cycle of the physiological functions in the human body."[595]

Employers' ability to employ individuals to work at night or on night shifts is subject to a prior medical examination made at the employer's expense.[596] Employees who work at night are subject to regular medical examinations, and if their health deteriorates due to working at night, they must be transferred to suitable day work or reassigned.[597]

8. Rest Periods

Article 151 of the Labor Code provides that employees are entitled to daily rest breaks, including a rest break for a meal, which may not be shorter than 30 minutes.[598] As a rule, rest breaks are not counted as working time.[599] However, an employee working in an enterprise with continuous production is entitled to a paid rest period for one meal during each workday.[600] Employees also are entitled to at least 12 hours rest between two working days.[601]

Article 153 of the Labor Code provides for a weekly rest period equal to an uninterrupted 48-hour period or two consecutive days, one of which is to be a Sunday.[602] The law does allow some exceptions to this weekly rest period requirement. For example, the weekly rest period may be reduced to 24 hours in certain industries that have continuous production processes and

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[594]*Id*. art. 140(3).
[595]V. MRACHKOV, BULGARIA LABOR LAW 94 (1995).
[596]Labor Code art. 140a(2).
[597]*Id*. art. 140a(3), (4).
[598]*Id*. art. 151(1).
[599]*Id*. art. 151(2).
[600]*Id*. art. 151(3).
[601]*Id*. art. 152.
[602]*Id*. art. 153(1).

therefore require the uninterrupted use of the work force through shift work.[603]

For employees whose working time is reported on an aggregate basis,[604] the minimum period of uninterrupted weekly rest must be at least 36 hours.[605] In case of shift rotations, employees whose work is reported on an aggregate basis may be allowed a weekly rest of less than 36 hours if required by the actual and technical organization of work in the enterprise, but in no event may the weekly rest be less than 24 hours.[606]

When overtime work is performed on both days of the weekly rest, in addition to premium pay for overtime,[607] the employee is entitled to an uninterrupted rest of at least 24 hours during the next workweek.[608]

The Council of Ministers is authorized to specify the duration of rest periods for employees performing work of a special character and/or subject to a special work organization system.[609]

9. Open-Ended Working Time

Due to special characteristics of the work and after consultations with the trade unions' representatives and the employees' information and consultation representatives,[610] the employer may establish an open-ended working time system for some positions. Employees working under an open-ended working time system, if necessary, must continue their performance after expiration of the normal working time and, therefore, are entitled to an additional break of at least 15 minutes, which must be used after the end of the normal working time.[611] For hours worked in excess of the normal working time, the employees are entitled to an additional paid leave or additional remuneration for overtime

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[603] *Id*. art. 153(2).
[604] See V.B.1., above.
[605] Labor Code art. 153(2).
[606] *Id*. art. 153(3).
[607] See V.A.4.c., above.
[608] Labor Code art. 153(4).
[609] *Id*. art. 154a.
[610] See III.A., above.
[611] Labor Code art. 139a.

work depending on whether they worked during business days, rest days, or legal holidays, respectively.[612]

Employees who are employed under conditions of reduced working hours[613] or who perform work from home[614] may not work on an open-ended basis.[615]

10. Legal Holidays

Official Bulgarian national public holidays, listed in Article 154(1) of the Labor Code, are as follows:

January 1	New Year
March 3	National Day
Holy Friday, Holy Saturday, Easter Sunday, and Easter Monday	Easter (4 days)
May 1	Labor Day
May 6	St. George's Day
May 24	Education, Culture and Slavonic Alphabet Day
September 6	Reunion Day
September 22	Independence Day
November 1	National Revival Day
December 24	Christmas Eve
December 25 and 26	Christmas

As a rule, it is within the discretion of the Council of Ministers, during the course of the year, to declare some days to be public holidays (in addition to the public holidays specified by law) or to rotate the days declared as public holidays. However, if such a rotation occurs, the duration of the workweek is limited to a maximum of 48 hours, and the weekly rest must be at least 24 hours.[616]

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[612]See V.A.4.c. and V.A.4.d., above.
[613]See V.B.3., above.
[614]See I.C.6., above.
[615]Labor Code arts. 107f, 139a(2).
[616]*Id*. art. 154(2).

C. Leave

1. Paid Annual Leave

An employee's basic right to paid annual leave is guaranteed by Article 48(5) of the Constitution, and implemented by Articles 155, 156, 156a, 162, 163, 164 and 172-178 of the Labor Code.

Employees are entitled to paid annual leave irrespective of the duration of their service. Thus, even employees just commencing their first employment acquire the right to paid annual leave as of their very first day of work. However, employees are entitled to use paid annual leave only after they have effectively worked for more than eight months.[617] If the employment contract terminates before completion of the first eight months, then the employee is entitled to receive cash compensation in lieu of paid leave.[618]

a. Leave Accrual

The Labor Code establishes a uniform requirement for at least 20 business days of annual paid leave, notwithstanding the employee's age or duration of employment.[619]

b. Extended Annual Leave

Extended annual leave is provided for certain categories of employees (e.g., teachers, professors, pilots, scientists, etc.), depending on the nature of their activities and the extent of their responsibilities.[620] These categories are expressly enumerated in an ordinance approved by the Council of Ministers.[621]

In addition, employees with a permanently reduced working capacity of 50 percent or more are entitled to annual leave of at least 26 working days per year.[622]

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[617] *Id.* art. 155(2).
[618] *Id.* art. 155(3).
[619] *Id.* art. 155(4).
[620] *Id.* art. 155(3).
[621] *See* Ordinance for Working Times, Rest Periods and Leaves, *DV* No. 6 (1987) (Working Time Ordinance), arts. 24, 26, 28, 30.
[622] Labor Code art. 319.

c. Additional Paid Annual Leave

Additional paid annual leave may be awarded for hazardous work and irregular work schedules imposed by the needs of the enterprises. Specifically, the following employees are entitled to no less than five additional working days of annual leave:[623]

- employees who work under hazardous conditions which cannot be eliminated, restricted, or reduced regardless of the measures taken;
- employees who work under an open-ended working time arrangement.[624]

Additional types of work for which additional paid annual leave is available may be established by an ordinance of the Council of Ministers.[625]

An employer and employee may agree on a longer duration of leave and may include the agreement in either the individual or collective labor contract.[626]

d. Use of Annual Leave

Paid annual leave must be granted to employees in a single uninterrupted period or in a piecemeal way during the calendar year in which the leave is accrued.[627]

Annual paid leave must be used in accordance with a schedule for the respective year, approved by the employer after consultations, held in advance with trade union representatives and with the employees' information and consultation representatives.[628] This schedule must be drafted in a way that allows all employees to use their annual paid leave during the year for which it is due.[629]

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[623] *Id.* art. 156(1).

[624] See V.B.9., above.

[625] *Id.* art. 156(2).

[626] *Id.* art. 156(1).

[627] *Id.* art. 172.

[628] For a description of information and consultation representatives, see III.A., above.

[629] Labor Code arts. 172, 173.

The schedule for use of annual paid leave should be approved by the employer by December 31 of the previous year.[630]

Annual paid leave must be used with the written authorization of the employer.[631] The employer is obligated to authorize use of the employee's annual paid leave if the leave has been requested for the period specified in the schedule, unless use of the leave has been postponed in accordance with the mandatory rules of the Labor Code as specified below. If the employer has not authorized use of the leave during the period specified in the schedule, the employee is entitled to determine his or her own time for use of that leave and must inform the employer thereof in writing at least two weeks in advance.[632]

The employer is entitled to order an employee to use his or her scheduled paid leave (i.e., annual paid leave which is included in the vacation schedule), if the employee does not request its use before the first scheduled day of the leave.[633] Annual paid leave also may be ordered by the employer, without the employee's request or consent, in the event of a business closing of more than five business days' duration, where paid annual leave is used by all the employees during the same period of time.[634]

Annual paid leave may be postponed and carried forward to the next calendar year under the following circumstances:[635]

- if postponement is due to important production reasons, not more than 10 working days of paid annual leave may be carried forward to the next year;
- upon the written request of the employee and with the consent of the employer, the use of part of the paid annual leave, not exceeding 10 working days, may be postponed for the next calendar year in case of important reasons;
- in case the employee was not able to use his or her entire annual paid leave due to the use of pregnancy, maternity, adoption, or childcare leave, temporary disability leave, or

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[630] *Id*. art. 173(1).
[631] *Id*. art. 173(6).
[632] *Id*. art. 173(8), (9).
[633] *Id*. art. 173(7), subsec. 3.
[634] *Id*. art. 173(7).
[635] *Id*. art. 176.

the use of another statutory leave during the same year; there is no limitation on the amount of annual leave that may be postponed.

The right to use unused annual paid leave lapses after two years' time from the end of the year to which the leave pertains. Where the annual paid leave has been postponed due to the use of another statutory leave, the right of the employee to use annual paid leave lapses in two years' time from the end of the year in which the reason for the non-use of the leave ceases to exist.[636]

On November 11, 2010, the Constitutional Court of the Republic of Bulgaria adopted a decision whereby certain provisions of the Labor Code concerning the use of annual paid leave were declared as violating the Bulgarian Constitution.[637] In view of that decision, annual paid leave, accrued and not used up to 2010, may be used until termination of the employment agreement. In other words, that leave will not lapse after a certain period of time.

e. Rate of Compensation

The amount of compensation received when annual leave is taken is based on the remuneration received by the employee during the month preceding the leave.[638] The Labor Code prohibits payment of cash compensation in lieu of annual leave except in the case of termination of the employment contract,[639] when the employee is entitled to monetary compensation for the unused portion of his or her annual leave. This figure is determined in accordance with Article 224(1) of the Labor Code and the Ordinance on Working Time, Rest Periods, and Leave.[640]

For an employee who has not worked at least 10 days during any month preceding annual leave, the rate of compensation is calculated on the basis of the basic and additional labor

[636] *Id.* art. 176(3).
[637] *See* 91 STATE GAZETTE (Nov. 19, 2010).
[638] Labor Code art. 177.
[639] *Id.* art. 178.
[640] Working Time Ordinance art. 42.

remuneration of a permanent nature,[641] as agreed in the employment contract.[642]

2. *Other Types of Paid Leave*

The Labor Code provides additional paid leave for the following purposes:[643]

- performance of public duties;[644]
- marriage;[645]
- trade union activities;[646]
- service or sabbatical leave;[647]
- temporary disability;[648]
- pregnancy, childbirth, and adoption of a child;[649]
- nursing a child;[650]
- childcare (for a child under age two);[651]
- childcare (mothers of two or more children);[652]
- death of a parent, child, spouse, brother, sister, spouse's parent, or other lineal relative;[653]
- educational purposes;[654] and
- preparation for an examination for admission to a higher educational institution.[655]

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[641]For a discussion of basic and additional remuneration, see V.A.3. and V.A.4., above.

[642]Labor Code art. 177(2).

[643]Additional regulations on the various types of paid leave are found in the Working Time Ordinance.

[644]Labor Code art. 157.

[645]*Id*. art. 157(1).

[646]*Id*. art. 159. See II.E., above.

[647]Labor Code. art. 161. This leave may be paid or unpaid and is granted in accordance with the terms of the applicable collective bargaining agreement or individual employment agreement.

[648]*Id*. art. 162.

[649]*Id*. art. 163.

[650]*Id*. art. 166.

[651]*Id*. art. 164.

[652]*Id*. art. 168.

[653]*Id*. art. 157, subsec. 3.

[654]*Id*. art. 169.

[655]*Id*. art. 170.

The following types of leave are paid by the employer: (i) trade union activities,[656] (ii) temporary disability, but only for the first three days from the date the disability has occurred,[657] (iii) nursing a child.[658] Next, leave for educational purposes and for preparation for an examination for admission to a higher educational institution should be paid by the employer only if agreed between the employee and said employer.[659]

Furthermore, a differential approach is adopted with regard to leaves for performance of public duties.[660] Thus, depending on the specific type of leave for performance of public duties the leave could be either paid by the employer, or paid by the employer only where such an agreement is reached or where a collective bargaining agreement provides for such an agreement or a compensation from the social security system will be paid. The following leaves will be paid by the employer only where an agreement is concluded between the employee and the employer or where the collective bargaining agreement provides for that: (i) leaves for marriage;[661] (ii) death of a parent, child, spouse, brother, sister, spouse's parent, or other lineal family member.[662] The service or sabbatical leave as well as the childcare leave (mothers of two or more children) are also subject to the foregoing rule.[663] Payment by the employer is made under the same rules and rates established for paid annual leave,[664] and is based on the average wage received during the month preceding the leave.

Leaves for (i) temporary disability,[665] (ii) pregnancy, childbirth, and adoption of a child,[666] and (iii) childcare (for a child under age two)[667] are paid in by the National Social Security Institute under the form of social security compensations.

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[656] *Id*. art. 159(2).
[657] Social Security Code art. 40(5).
[658] *Id*. art. 166(4).
[659] *Id*. arts. 169(1), 170(1).
[660] *Id*. art. 157(3).
[661] *Id*. art. 157(3) subsec. 1.
[662] *Id*.
[663] *Id*. arts. 161(2), 168(1).
[664] *See id*. art. 177.
[665] Social Security Code art. 40(3).
[666] *Id*.
[667] *Id*.

a. Temporary Disability Leave

Employees are entitled to leave for temporary disability due to the following reasons:[668]

- general sickness;
- occupational disease or employment injury;
- sanitarium treatment;
- urgent medical examination or tests;
- quarantine;
- absence from work prescribed by the health authorities;
- need to attend to a sick or quarantined member of the family or to accompany a sick member of the family to a medical examination, test, or treatment; or
- taking care of a healthy child dismissed from a childcare facility because of a quarantine imposed on the facility or on the child.

As per the Regulation on medical expertise,[669] temporary disability may be established only by the competent health authorities:

- doctors and dentists;
- medical advisory committees;
- Labor-Expert Medical Committees;
- the National Expert Medical Committee.

The state of temporary disability is established by the aforementioned competent health authorities after medical examination and issuance of a special certification document—a document showing temporary incapacity for work. Before issuance of a document for temporary incapacity for work the social security status of the person subject to the exam is checked.

The document for temporary incapacity for work is generally issued on the day on which the temporary disability is established. The only exception to this rule is if temporary disability is established on a day when the person was working.

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[668] *Id*. art. 162(1).

[669] See 36 STATE GAZETTE (May 14, 2010).

The person suffering from temporary disability should submit the document for temporary incapacity for work to the employer or should inform the latter for the issued document within two working days of the day of issuance.

Provided the medical authorities prescribe sick leave, the employer may not oppose to its use, moreover, it is obliged not to allow the employee to come back to work before expiry of the leave period.

The employee is entitled to a daily compensation for the complete period of the sick leave, which amounts to 80 percent of the average daily gross remuneration or the average daily insurance income on the basis of which social security contributions are made or are due for a temporary disability due to general disease, and 90 percent for a temporary disability due to labor accident and professional disease,[670] as these amounts are capped by the maximum amount of such social security income set for the period based on which the compensation is calculated (currently, such maximum amount is BGN 2,200). Such compensation, however, shall not be more than the average daily net remuneration of the employee for the period during which the compensation is calculated nor less than the minimum daily salary determined by the Council of Ministers. The compensation is due, provided the employee has acquired at least six months of social security on record during which period he/she has been ensured (or even if the contributions have not been effectively paid such were due) against all ensured social risks, or against all ensured social risks save for labor accident, occupational disease and unemployment, or against all ensured social risks save for unemployment.

Sick leaves are compensated from the state social security funds. However, the employers are obliged to pay 70 percent of the daily gross remuneration of the respective employees for the first three days of their temporary disability to work, but not less than 70 percent of the agreed daily remuneration.[671] Respectively, the National Social Security Institute shall pay the compensations due for the rest of the period after the fourth day of the temporary disability to work.

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[670] Social Security Code art. 41(1).

[671] *Id* art. 40(5).

b. Parental Leave

The Labor Code prescribes paid leave for parents in the form of pregnancy, childbirth, and adoption leave, nursing leave, childcare leave for a child under age two, and childcare leave for mothers of two or more children.

i. Pregnancy, childbirth, and adoption leave

Employers are required to allow paid time off to pregnant employees and female employees who are in an advanced stage of in vitro fertilization for medical examinations that are scheduled during work hours. Compensation for these periods of time off is calculated according to the rules for payment of paid annual leave.[672]

The Labor Code further entitles female employees to pregnancy, birth, and adoption leave of 410 calendar days per child; 45 of these days should be used prior to the childbirth date.[673] During this leave, however, instead of the labor remuneration, the employee receives payment of compensation from the state social security funds at the amount of 90 percent of the average daily gross remuneration.

Where the mother and father are married or share a household, the father is entitled to a 15-day paid childbirth leave, beginning on the date the child is discharged from a medical facility.[674]

In the case of an adoption, the employee is entitled to leave in an amount equal to the difference between the child's age on the day he or she is delivered for adoption and the expiration of the 410-day leave period.[675]

With the consent of the mother or female adopter, a father or male adopter may use the balance of the 410-day leave period, in place of the mother, after the child reaches six months of age.[676] In this event, the mother's leave is interrupted for the time it is used by the father.[677]

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[672] *Id*. art. 157(2).
[673] *Id*. art. 163(1).
[674] *Id*. art. 163(7).
[675] *Id*. art. 163(6).
[676] *Id*. art. 163(8).
[677] *Id*. art. 163(9).

If the mother or female adopter dies or contracts a severe illness which prevents her from taking care of her child, the father or male adopter is entitled to use the balance of the childbirth or adoption leave. With the father's consent, these leaves may be used by one of the child's grandparents.[678]

ii. Nursing leave

A female employee who breastfeeds her child is entitled to a paid nursing break until her child reaches eight months of age. The nursing break must be granted for one hour twice each day or, with the employee's consent, two hours in a single uninterrupted period. For an employee whose daily working time is seven hours or less, the daily nursing break is one hour. Once the child reaches eight months of age, a nursing break of one hour daily must be granted to the employee, at the discretion of the health authorities, for as long as necessary for nursing the child.[679]

iii. Childcare leave for a child under age two

After the use of the pregnancy, childbirth, and adoption leave, if the child is not placed in a childcare establishment, a female employee is entitled to an additional paid childcare leave for a first, second, or third child until the child reaches the age of two, and six months for each additional child.[680]

With the consent of the mother or female adopter, a father, male adopter, or one of the child's grandparents is entitled to use the childcare leave.[681]

The right to paid childcare leave extends to employees with whom a child is placed under the provisions of the Child Protection Act.[682] This type of paid childcare leave is available until the child reaches two years of age. If a child is placed with a family, only one of the spouses is entitled to paid childcare leave.

If the mother or female adopter of a child who has not attained the age of two dies or contracts a severe illness which

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[678]*Id*. art. 167(1).
[679]*Id*. art. 166.
[680]*Id*. art. 164(1).
[681]*Id*. art. 164(3).
[682]48 STATE GAZETTE (June 13, 2000), last amended and supplemented, 115 STATE GAZETTE (Aug. 10, 2006).

prevents her from taking care of her child, the father or male adopter is entitled to the balance of the leave for childbirth, adoption, or nursing, respectively. Which type of leave will be used is a question of fact and depends on the specific situation. With the father's consent, the childcare leave may be used by one of the child's grandparents.[683]

Compensations depend on the type of leave that the father or male adopter is using.

If childcare leave is not taken or is interrupted, a working mother is entitled to additional compensation (added to her monthly salary) in the amount of 50 percent of the national minimum wage.[684]

iv. Childcare leave for two or more children

Where provided in a collective labor agreement, a female employee with two children under age 18 is entitled to two working days of paid leave each calendar year. A female employee with three or more children under the age of 18 is entitled to four days of paid leave each calendar year. This leave must be used at a time of the employee's choosing and may not be compensated in cash, except upon termination of employment.[685]

v. Return from parental leave

The Law on Protection Against Discrimination[686] protects female employees who have returned to work from their pregnancy, childbirth, or adoption leave and fathers who have returned to work from their childbirth and adoption leave, due either to expiration or interruption of the leave. The employer in these cases is obliged to provide the employee the same or an equal position as the one occupied by the employee prior to the leave, as well as access to any improvement to which the employee would have been entitled if he or she had not used the leave.[687] In addition, employees who have returned from pregnancy, childbirth,

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[683]Labor Code art. 167(1).

[684]*Id*. art. 164(5). For a discussion of the minimum wage, see V.A.3., above.

[685]Labor Code art. 168(1).

[686]*See* 86 STATE GAZETTE (Sept. 30, 2003), last amended and supplemented, 68 STATE GAZETTE (Aug. 2, 2013).

[687]Law on Protection Against Discrimination art. 13(3).

or adoption leave are entitled to receive training according to the amended professional qualification if a technological change has been implemented during their absence.[688]

Under the 2012 Labor Code amendments, an employee who returns to work at the end of a period of parental leave (including pregnancy, childbirth, adoption and childcare leave), or earlier due to an interruption of that period, is entitled to propose to the employer changes in the length and distribution of the working time for a certain period or other changes in the employment relationship to facilitate his or her return to work.[689] With a view to facilitating a better balance between an employee's professional and family duties, the employer is under an obligation to take into consideration the employee's proposal for changes in the length and distribution of working time, provided that the circumstances in the enterprise allow that.[690] The employee and the employer may agree to change the employment relationship even while the employee is on leave.[691]

c. Educational Leave

Employees who are studying in secondary or higher educational institutions with the consent of their employer are entitled to a paid leave of 25 business days per year.[692] Qualifying students are also entitled to a one-time additional paid leave of 30 days for preparation and sitting for a matriculation examination or a state certification examination.[693]

3. Unpaid Leave

Upon request by an employee, an employer may permit the employee unpaid annual leave for up to 30 working days, which will be considered as service time for purposes of length of service requirements.[694] Any unpaid leave in excess of 30 working days will be considered as service time only if expressly provided

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[688] *Id*. art. 15(2).
[689] Labor Code art. 167b, subsec. 1.
[690] *Id* art. 167b, subsec. 2.
[691] *Id* art. 167b, subsec. 3.
[692] *Id*. art. 169(1).
[693] *Id*. art. 169(3).
[694] *Id*. art. 160.

by law.[695] Other types of unpaid leaves recognized in the Labor Code include the following:

- childcare leave (four or more children);[696]
- childcare leave (child under age eight);[697]
- leave for working students;[698]
- leave for preparation of a thesis or dissertation, or for other educational or professional requirements;[699]
- leave for employment with an international organization;[700] and
- leave for active duty in the volunteer reserve.[701]

There is an obvious overlap between the entitlements to paid leave and unpaid leave, and the Labor Code does not provide adequate guidance as to how the two may be reconciled.

a. Childcare Leave

i. Mothers with four or more children

After using all paid parental leave (including pregnancy, childbirth, and adoption leave and paid childcare leave),[702] a mother or female adopter with four or more children is entitled to take unpaid leave until the child reaches age two, unless the child is placed in a childcare facility.[703] With the mother or female adopter's consent, this leave may be used by the father, male adopter, or one of the child's grandparents.[704]

ii. Parents with child under age eight

After exhausting paid parental leave and any unpaid childcare leave available to mothers with four or more children, each

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[695] *Id*. art. 160(3).
[696] *Id*. art. 165.
[697] *Id*. art. 167a.
[698] *Id*. art. 171.
[699] *Id*. art. 161(1).
[700] *Id*. art. 160(2).
[701] *Id*. art. 158.
[702] See V.C.2.b.i. and V.C.2.b.iii., above.
[703] Labor Code art. 165(1).
[704] *Id*. art. 165(1).

parent or adoptive parent is entitled to six months of unpaid leave for raising a child under eight years of age.[705] However, this leave is not available to parents whose child is placed in a childcare facility at full state expense.

The 2012 Labor Code amendments entitle each parent or adoptive parent with the right to use up to five months of the other parent's or adoptive parent's leave, subject to the other parent's or adoptive parent's consent.[706]

b. Employment With International Organization

The Labor Code imposes an obligation on employers (and thus an entitlement for employees) to grant a one-time unpaid leave of up to one year to any employee who has a current employment relationship with a European Union institution, the United Nations, the Organization for Security and Co-operation in Europe, the North Atlantic Treaty Organization, or any other international governmental organization.[707]

c. Volunteer Military Reserve

With the 2012 Labor Code amendments, an employee must be considered to be on an unpaid service leave for the duration of the event/duty, including the travel days to and back from the destination, when called up for active duty in the volunteer reserve. In case active duty in the volunteer reserve continues for more than 15 calendar days, the employee is entitled to two calendar days of unpaid leave prior to the departure and after the return. The employee receives remuneration from the budget of the Ministry of Defense for the time period of the leave.[708]

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[705] *Id*. art. 167a(1).
[706] *Id*.
[707] *Id*. art. 160(2).
[708] *Id* art. 158.

VI. ANTIDISCRIMINATION

A. Protection Against Discrimination

1. Constitution

The Constitution outlines the legal status of the citizens of the Republic of Bulgaria by establishing certain principles, one of which is the principle of equal treatment and thus a ban on discrimination. The principle of equal treatment applies in the field of labor relations as well. Article 6(1) of the Constitution of the Republic of Bulgaria proclaims that "All persons are born free and equal in dignity and rights." Paragraph 2 of that same article adds that all citizens are equal before the law." The so proclaimed constitutional equality of all citizens is in fact equality before all types of legislative instruments (i.e., including the legislative pieces regulating the labor law relations).

Next, the Constitution does not allow any restriction of rights or granting of privileges on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status, or property status. If privileges based on those specified social features are granted to any person, such entitlement would amount to a violation of the principle of equal treatment of all citizens before the law.

These general principles are further developed into detail by the statutory instruments regulating the labor law relations.

2. Labor Code

Article 8(3) of the Labor Code prohibits both direct and indirect discrimination based on race, nationality, origin, sex, sexual orientation, age, color, political or religious beliefs, membership in a trade union or other public organization, family or financial status, existence of mental or physical disabilities, or differences in the duration of an employee's employment contract or the number of the employee's working hours. The term "indirect discrimination" is defined to mean discrimination that occurs where ostensibly legal means are used to carry out employment rights and obligations but are applied in a way that actually places some

employees in less favorable or more privileged positions as compared to others.[709]

Discrimination is not prohibited where it is based on the qualification requirements for performing a particular job, or where it is a means of carrying out the special legal protections accorded to certain employees, such as minors, pregnant women and mothers of young children, or the disabled.[710]

3. Law on Encouragement of Employment

The Law on Encouragement of Employment[711] introduces specific prohibitions on discrimination on its own. Said prohibitions are directly related to the scope of the Law on Encouragement of Employment (i.e., in general job recruitment and vocational training). In exercising the rights and obligations under the Law on Encouragement of Employment, no direct or indirect discrimination, privileges, or restrictions based on nationality, origin, gender, sexual orientation, race, skin color, age, political or religious beliefs, membership in trade unions and other public organizations and movements, family, social and property status, and mental and physical disabilities are allowed.[712]

This list introduces new criteria that are not listed in the Constitution. These are sexual orientation, skin color, age, membership in trade unions and other public organizations and movements and the presence of mental and physical disabilities.

Based on these criteria, the interests of the disadvantaged persons are further protected. The most specific supplement relating to labor law is that concerning membership in trade unions and other public organizations and movements. This specific criterion is used to directly protect the rights and interests of the members of the trade unions and thus to indirectly protect the interests of the non-members of the trade unions, benefiting from their protection provided by the latter.

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[709]Law on Protection Against Discrimination art. 4(3).
[710]*Id*. art. 7.
[711]*See* 112 STATE GAZETTE (Dec. 29, 2001).
[712]*Id*. art. 2.

4. Law on Protection Against Discrimination

The Law on Protection Against Discrimination,[713] which was adopted in 2003, further develops the principles laid down in the Labor Code and the Employment Encouragement Law. The Law also harmonizes Bulgarian law with the requirements of the EU antidiscrimination directives.[714]

The Law on Protection Against Discrimination prohibits any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political affiliations, personal or public status, disability, age, sexual orientation, marital status, or property status.[715] Direct discrimination is defined as any less favorable treatment of a person than another person is, has been, or would be treated under comparable circumstances.[716] Indirect discrimination occurs where a person is placed in a less favorable position in comparison with other persons by means of an apparently neutral provision, criterion, or practice, unless that provision, criterion, or practice is objectively justified in view of achieving a lawful objective and the means for achieving that objective are appropriate and necessary.[717]

The Law imposes obligations on employers with respect to job vacancies, hiring, remuneration, training opportunities, promotion, and disciplinary sanctions.[718] In addition, employers must adapt the workplace to the needs of a person with a disability unless the expenses for the adaptation are unreasonably excessive and would impose a serious burden on the employer.[719] Employers, in cooperation with the trade unions, must also take efficient measures to prevent any form of discrimination in the workplace.[720]

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[713] *See* 86 STATE GAZETTE (Sept. 30, 2003).

[714] For a discussion of these directives, see the chapter on the European Union, at VI., in Volume IA, Part 1.

[715] Law on Protection Against Discrimination art. 4(1).

[716] *Id*. art. 4(2).

[717] *Id*. art. 4(3).

[718] *Id*. arts. 12–15, 20–21.

[719] *Id*. art. 16.

[720] *Id*. art. 18.

The Law Against Discrimination provides that the introduction of requirements for minimum age, professional experience, or length of service for recruitment or for access to certain advantages linked to employment, the special protection measures benefiting pregnant women and mothers, requirements for age and length of service provided for purposes of retirement, and the measures provided for under the Employment Encouragement Law do not constitute discrimination.[721] Occupational activities for which gender is an essential and determining professional requirement are to be defined in ordinances issued by the Minister of Labor and Social Policy in coordination with the Minister of Internal Affairs and also by the Minister of Defense regarding professional military service.[722]

The Law establishes an Antidiscrimination Commission, consisting of nine members, five elected by Parliament and four appointed by the President, which has the power to receive and investigate complaints, issue binding rulings, and impose sanctions on violators.[723]

The 2012 amendments to the Law on Protection Against Discrimination establish that any difference of treatment resulting from initiatives aimed exclusively or primarily at encouraging entrepreneurship among women in cases where women are under-represented, or at preventing or compensating for disadvantages in women's professional careers, does not amount to discrimination.[724]

The 2012 amendments also provide that, in the course of creating and implementing new legislation, state and public bodies and bodies of local self-government should take into account the substantive aim for prevention of any direct or indirect discrimination.[725]

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[721] *Id*. art. 7(1).
[722] *Id*. art. 7(2).
[723] *Id*. art. 47.
[724] *Id* art. 7(1), subsec. 19.
[725] *Id*. art. 6(2).

B. Special Protections

1. Minors

The special protection accorded to minors under Bulgarian law is based on consideration of their age, health, and their need for special care. The Labor Code requires that all employees be at least 16 years of age.[726] Exceptions are provided for light work not performed under dangerous or harmful conditions.[727]

The Ministry of Labor and the Ministry of Public Health are empowered to prohibit children younger than age 16 from working in certain designated industries.[728] The employment of persons younger than age 15 is allowed only for film and theatrical work, circus performances, and related work.[729] The terms of such employment are determined by the Council of Ministers.[730]

The Labor Code further requires that children younger than age 16 undergo a mandatory medical examination before the commencement of employment.[731] Special pre-employment authorization by the General Labor Inspectorate is also required for persons younger than age 16.[732] An employment contract concluded with a minor in violation of these requirements is considered null and void.[733] The conditions and procedure for obtaining permission to work for employees younger than age 16 are to be further regulated by an ordinance issued by the Minister of Labor and Social Policy and the Minister of Public Health.[734]

The Labor Code prohibits persons younger than age 18 from performing the following:[735]

- activities that are unsuited to their physical or mental capacity;

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[726]Labor Code art. 301(1).
[727]*Id*. art. 301(2).
[728]V. MRACHKOV, BULGARIA LABOR LAW 160 (1995).
[729]Labor Code art. 301(3).
[730]*Id*.
[731]*Id*. art. 302(1).
[732]*Id*. art. 302(2).
[733]*Id*. art. 74(2).
[734]*See id*. art. 303(4).
[735]*Id*. art. 304.

- activities that involve exposure to harmful physical, biological, or chemical effects, especially toxic agents, carcinogens, or agents causing genetic or intrauterine damage;
- activities that involve harmful conditions that, in any way whatsoever, have unfavorable effects on the employee's health;
- activities that involve conditions of radiation;
- activities subject to exceptionally low or high temperatures, noise, or vibrations;
- activities presenting a risk of labor accidents, which may not be realized or avoided by a minor due to his or her physical or mental immaturity.

The Labor Code also prohibits the employment of minors between the ages of 16 and 18 in work which is hard, hazardous, or harmful to their health or to their proper physical, mental, and moral development.[736] In addition, minors between the ages of 16 and 18 may only be employed after a thorough medical examination and with the permission of the Labor Inspectorate.[737]

The employer is obliged to inform employees younger than age 18, as well as their parents or guardians, about risks related to their work and about the measures taken for procuring safe and healthy work conditions.[738] In addition, minor employees are permitted to work only 35 hours per week, seven hours per day.[739]

2. Women

Female employees are given increased protection under Bulgarian law from hazardous conditions that might prove to be harmful to their health. For example, where a pregnant woman, nursing mother, or female employee in an advanced stage of in vitro treatment is performing work unsuitable for her condition, and upon a prescription issued by the health authorities, employers are required to undertake the necessary measures to adjust existing working conditions and/or working hours in order to

[736] *Id*. art. 303(1).
[737] *Id*. art. 303(2), (3).
[738] *Id*. art. 305.
[739] *Id*. art. 305(3).

eliminate the risk for the employee. If an adjustment is technically or objectively impossible, the employer is required to reassign the employee to a new suitable position.[740] Pending the adjustment or transfer, the employee must be excused from the obligation of performing work unsuitable for her condition, and the employer must pay her remuneration in the amount received for the month preceding the issuance of the health prescription.[741]

The Labor Code also provides that pregnant employees and employees in an advanced stage of in vitro treatment may not be assigned to overtime or night work.[742] Overtime and night work restrictions also apply to mothers with young or handicapped children.[743]

Employers may send a pregnant employee, an employee in an advanced stage of in vitro treatment, or a mother of children younger than age three on business trips only with the employee's written consent.[744]

Under Article 313a of the Labor Code, the specific rights granted to pregnant employees are subject to the employee's notice to her employer regarding her status, evidenced by a certificate issued by the appropriate health authorities. In the event of an abortion, the employee is obliged to inform the employer within seven days.

3. Persons With Reduced Work Capacity

Articles 314-320 of the Labor Code contain regulations protecting "persons with reduced work capacity" by providing them with more suitable working conditions and an opportunity to remain with the same employer. Employees who are unable to perform the job assigned to them due to a disease or an employment injury, but who may execute without any health risk another suitable job within the enterprise or the same job under lightened conditions, must be reassigned upon prescription of the health

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[740] *Id*. art. 309.
[741] *Id*. art. 309(2).
[742] *Id*. art. 147(1), subsec. 2. See V.B.2. and V.B.7., above.
[743] Labor Code arts. 147(1), 149(4). See V.B.2. and V.B.7., above.
[744] *Id*. art. 310(2).

authorities through a transfer to another job or to the same job under suitable conditions.[745]

An employer with more than 50 employees must designate 4 to 10 percent of the total number of jobs, depending on the economic sector, for labor reassignment of employees with reduced work capacity.[746] Employers with more than 300 employees must establish workshops for employees with permanently reduced work capacity.[747]

Overall, the Labor Code provisions are aimed at ensuring a higher level of protection, including higher compensation, to persons with reduced working capacity.

VII. Occupational Safety and Health and Workers' Compensation

A. Safety and Health Protections

1. Constitutional Protections

Article 48(5) of the Bulgarian Constitution guarantees all employees the right to safe and healthy working conditions. Safety and health rules must be uniformly applied regardless of the type and duration of the employment relationship. The state's goal is to guarantee a healthy and safe working environment for the entire working population.

2. Statutes and Regulations

The general rules applicable in all economic sectors are contained in the Labor Code and in implementing legislation. Detailed regulation of healthy and safe conditions is also provided by the Law on Safe and Healthy Working Conditions.[748] Additionally, special rules are established for different sectors of the economy.

Labor Code rules regulating employee health and safety are designed to protect all employees from the harmful effect

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[745]*Id*. art. 314. See VII.B., below.
[746]Labor Code art. 315(1).
[747]*Id*. art. 316(1).
[748]*See* 124 STATE GAZETTE (Dec. 23, 1997).

of hazardous substances, noise, vibrations, high temperature, extreme moisture, and other dangerous conditions. These conditions are taken into consideration by a special state commission, with the participation of government controlling bodies, before any plan for construction, reconstruction, or modernization is approved.[749]

The Labor Code requires that all employees must be instructed and trained on safe methods of work. No person without the knowledge and skills necessary to maintain healthy and safe work conditions may be admitted to work in the enterprise.[750]

Reduced working hours may be used as a safety and health measure only in cases where harmful and specific working conditions cannot be removed or reduced regardless of measures undertaken by the employer and where a reduction in working time would actually limit the risks to employees' health.[751] The types of work for which reduced working time is appropriate are to be determined by an ordinance adopted by the Council of Ministers.[752]

Under Article 219 of the Labor Code, an employee has the right to refuse or to stop working because of a legitimate, serious, and direct threat to his or her life and health. An employee has a right to compensation in cases of lawful refusals to perform the job under existing conditions.[753]

a. Provision and Use of Protective Clothing and Equipment

Employers are obliged to provide employees with protective clothing and equipment such as gloves, goggles, masks, etc.[754] Protective gear is required by law in situations where production processes involve the operation of dangerous machinery. Employees involved in these occupations have a legally imposed duty to use the protective clothing and equipment during the

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[749]Law on Safe and Healthy Working Conditions arts. 5, 6.
[750]*Id*. art. 281.
[751]*Id*. art. 137(1) subsec. 1. See also V.B.3., above.
[752]Labor Code art. 137(2).
[753]*Id*. art. 219(1), (2).
[754]*Id*. art. 284.

performance of work assignments.[755] Employers are prohibited from paying employees as a substitute for providing protective clothing and equipment.[756]

Regulation No. 3 on the Minimum Requirements for Safe Working Environments and Protection of Employees' Health by Use of Personal Means of Protection[757] provides a list of activities that entitle employees to use personal protective means and identifies personal protective means and parts of the human body that are at risk. Under Regulation No. 3, personal protective means must meet the norms and requirements provided by law for such products, as if intended for market release.

b. Production of Hazardous Materials

Pursuant to the Labor Code, employees engaged in the production of hazardous and toxic substances are entitled to a free meal, and if necessary, to antitoxins to neutralize the harmful effects of the work environment.[758]

Regulations protect employees from the risks related to exposure to asbestos, noise, chemical agents, carcinogens, and mutagens at work. These are as follows:

- Regulation on the protection of workers from the risks related to exposure to asbestos at work;
- Regulation No. 3 on the minimum requirements for protection of workers from the risks related to exposure to vibrations at work;[759]
- Regulation No. 6 on the minimum requirements for protection of workers from the risks related to exposure to noise at work;[760]
- Regulation No. 10 on the protection of workers from the risks related to exposure to carcinogens and mutagens;[761] and

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[755] *Id.* art. 284(2).
[756] *Id.* art. 284(4).
[757] *See* STATE GAZETTE 46 (May 15, 2001).
[758] Labor Code art. 285(1).
[759] *See* 40 STATE GAZETTE (May 12, 2005).
[760] *See* 70 STATE GAZETTE (Aug. 26, 2005).
[761] *See* 94 STATE GAZETTE (Oct. 24, 2003).

- Regulation No. 13 on the protection of workers from the risks related to exposure to chemical agents at work.[762]

The potential risks related to the working environment are dealt with in a similar way in all of these regulations, which provide for regular assessment of risk, special training for employees, and planning measures to limit the dangerous impact on people in contact with the hazardous substances. The employer is obliged to keep employees and their representative bodies informed of the risk levels and to further exercise all steps available to reduce exposure to the lowest level reasonably practicable.

c. Physical Examinations and Medical Services

Pursuant to the Labor Code, mandatory periodic medical checkups are required for every employee.[763] The frequency of these checkups is determined by the Minister of Health, based on the characteristics of the particular work environment.[764]

The Law on Safe and Healthy Working Conditions requires employers to establish a medical services department within the enterprise or assign the provision of medical services to qualified outside contractors.[765] The activities of outside medical services contractors and the requirements applicable to their activities are governed by Regulation No. 3 on the terms and conditions for the operation of the occupational health services, issued by the Minister of Health and the Minister of Labor and Social Policy.[766]

d. Monitoring Workplace Safety and Health

Article 24 of the Law on Safe and Healthy Working Conditions requires the employer to appoint one or more employees to organize and carry out activities related to the protection and prevention of occupational risks or, alternatively, to establish a specialized department within the enterprise to deal with these issues.

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[762] *See* 8 STATE GAZETTE (Jan. 1, 2004).
[763] Labor Code art. 287.
[764] *Id*.
[765] Law on Safe and Healthy Working Conditions art. 25.
[766] *See* 14 STATE GAZETTE (Feb. 12, 2008).

e. Recordkeeping and Reporting Requirements

Employers must record and report all occupational injuries and registered occupational illnesses as part of a prevention plan for labor-related accidents.[767] The procedure for registration of incidents of occupational illnesses is governed by a special law,[768] the Ordinance on Registration and Accounting of Occupational Illness.[769]

3. Implementation of EU Directives on Safe Working Conditions

Amendments to the Law on Safe and Healthy Working Conditions implement the provisions of Council Directive 89/391/EEC of June 12, 1989, on measures to encourage improvements in the safety and health of workers at work.[770] Pursuant to the current provisions of the Law on Safe and Healthy Working Conditions, all employers (including both entities and individuals) are obliged to file an annual declaration with the General Labor Inspectorate, no later than April 30 of the year following the year for which the circumstances are declared. This declaration must include information regarding the type and character of the work that is being performed for the respective employer, working conditions, risk factors, and certain other matters.[771]

In addition, according to Article 36a of the Law on Safe and Healthy Working Conditions, every five years, the Minister of Labor and Social Policy, after consulting the employer and employee organizations recognized as being representative on a national scale, must submit to the European Commission a common report on implementation of the following:

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[767]Labor Code art. 289(2).

[768]*Id.* art. 290.

[769]*DV* No. 5 (1985), amended by *DV* Nos. 34 and 87 (1994).

[770]Law on Safe & Healthy Working Conditions, supp. provision 1(a). For a discussion of Council Directive 89/391/EEC, see the chapter on the European Union, at VII.A.2., in Volume IA, Part 1.

[771]*Id.* art. 15.

- Council Directive 89/391/EEC of June 12, 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work;[772]
- individual directives under Article 16, Paragraph 1, of Directive 89/391/EEC, which apply to the following areas: work equipment; work with video displays; handling of heavy loads involving the risk of spinal damage; temporary and mobile work platforms; and fishing and agriculture;
- Council Directive 91/383/EEC of June 25, 1991, supplementing measures to encourage improvements in the safety and health at work of workers with a fixed-duration or temporary employment relationship;[773]
- Council Directive 92/29/EEC of March 31, 1992, on the minimum safety and health requirements for improved medical treatment on board vessels;[774]
- Council Directive 94/33/EC of June 22, 1994, on the protection of young people at work;[775] and
- Council Directive 83/477/EEC of September 19, 1983, on the protection of workers from risks related to exposure to asbestos at work.[776]

B. Reassignment and Compensation of Employees Following Illness or Injury

Following an employee's illness or injury, the employer must comply with recommendations for reassignment given by the health authority and with the requirements established in the 1987 Ordinance on the Reassignment.[777] If the compensation of the reassigned employee is less than that earned by the employee in his or her previous assignment, the social security system compensates the employee for the difference.[778] Terminating the

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[772] 1989 O.J. (L 183) 1.
[773] 1991 O.J. (L 206) 19.
[774] 1992 O.J. (L 113) 19.
[775] 1994 O.J. (L 216) 12.
[776] 1983 O.J. (L 263) 25.
[777] *See* 7 STATE GAZETTE (Jan. 27, 1987). See also VI.C., above.
[778] Labor Code art. 320(2).

employment relationship of a reassigned employee is allowed only upon consent of the General Labor Inspectorate.[779]

Employees who are permanently disabled due to a job-related illness or injury are categorized into levels by the Central Labor Expert Physician Commission according to the extent of their disability.[780] They are eligible to be placed in specialized companies employing persons with disabilities, with remuneration equal to that paid to healthy employees, plus additional compensation in the following amounts:[781]

- employees categorized as having established reduction in their working ability within the range of 50 percent to 70.99 percent receive an additional 30 percent of their regular monthly salary;
- employees categorized as having established reduction in their working ability within the range of 71 percent to 90 percent receive an additional 30 percent—up to 50 percent of their regular monthly salary; and
- employees categorized as having established reduction in their working ability beyond 90 percent receive an additional 40 percent—up to 60 percent of their regular monthly salary.

Under the Social Security Code, compensation following work-related illness or injury is due both to employees covered by social security, even in cases when they have fewer than six months of service, and to employees younger than age 18. Compensation for the first three working days of the illness or injury is paid by the insurers.[782]

VIII. PENSIONS AND BENEFITS

Bulgarian employees have participated in public programs providing pensions, recreational facilities, and welfare benefits

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[779]*Id*. art. 333(1), subsec. 2.
[780]Ordinance on the Reassignment art. 1(3).
[781]*Id*. art 13.
[782]Social Security Code art. 40(5).

since 1957. The system of social security, health security, and unemployment benefits contributions currently is governed by the Social Security Code,[783] the Law on the Budget of the Social Security Fund,[784] and the Law on Health Security.[785]

A. Social Security Contributions

For 2012, mandatory social security contributions were allocated to the different state social security funds as follows:[786]

- 17.8 percent to the State Pension Fund, for employees born before January 1, 1960, and 12.8 percent for employees born after December 31, 1959;
- additional obligatory social security contributions in the amount of 5 percent to the Private Pension Funds for employees born after December 31, 1959;
- 3.5 percent for the General Disease and Maternity Leave Fund;
- 1 percent for the Unemployment Benefit Fund;
- from 0.4 to 1.1 percent for the Labor Accident and Occupational Disease Fund, depending on the economic activity performed by the employer.

For 2012, the contribution to the State Pension Fund for persons born before January 1, 1960 is distributed as follows: 7.9 percent (out of the total contribution of 17.8 percent) is paid by the insured employee; and 9.9 percent is paid by the employer. The contribution to the State Pension Fund for persons born after December 31, 1959 is distributed as follows: 5.7 percent (out of the total contribution of 12.8 percent) is paid by the insured employee; and 7.1 percent is paid by the employer.

The payment obligation for the obligatory additional social security contributions to the Private Pension Fund is distributed

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[783] *See* 110 STATE GAZETTE (Dec. 17, 1999).
[784] The referenced law is adopted on an annual basis.
[785] *See* 70 STATE GAZETTE (June 19, 1998).
[786] Social Security Code, art. 6(3).

between the employer and the employee, with 2.8 percent paid by the employer and 2.2 percent paid by the employee.

For the year 2012, the payment levy for contributions to the Maternity Leave and General Disease Fund and the Unemployment Benefit Fund is distributed between the employer and the employee, with 60 percent paid by the employer and 40 percent paid by the employee.

For 2012, contributions to the Labor Accident and Occupational Disease Fund are paid entirely by the employer.

B. Health Security Contributions

Contributions for health security are payable to the National Health Security Fund. This obligation applies to the following groups:[787]

- Bulgarian citizens, including those with double citizenship who permanently reside in Bulgaria;
- foreign citizens or persons without citizenship who are granted permission to reside in Bulgaria permanently;
- refugees;
- foreign students or graduate PhD students; and
- other persons to whom Bulgarian law applies.

For 2011 and 2012, health security contributions amount to 8 percent of the employee's social and health security income.[788] The levy for payment of health security contributions is distributed between the employer and the employee, with 60 percent paid by the employer, and 40 percent paid by the employee.[789]

C. Pensions

Under the Social Security Code, the right to retire on an old-age pension is acquired upon reaching the age of 60 for women and

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[787]Law on Health Security art. 33(1); Council Regulation No. 1408/71/EEC, 1971 O.J. (L 149) 2.

[788]Law on the Budget of the National Health Security Fund for 2012, See 101 STATE GAZETTE (Dec. 18, 2012).

[789]Law on Health Security art. 40(1), subsec. 1.

the age of 63 for men and recorded years of social security—34 years for women and 37 years for men. As of December 31, 2011, the age will increase from the first day of each calendar year by four months, until reaching the age of 63 for women and 65 for men.[790]

Provided that individuals are not entitled to retire with an old-age pension pursuant to the above rules, until December 31, 2011, they may acquire pension rights upon reaching the age of 65 for both women and men, if they have not less than 15 years of actual recorded years of social security. From December 31, 2011, the age will increase from the first day of each calendar year by six months, until reaching 67 years.[791]

The Social Security Code also establishes a system of additional pension security for all individuals born after December 31, 1959, who are covered by the state social security system. The additional pension security contributions are accumulated in a personal account maintained for each covered individual by the private security fund designated by the employee.[792] Said persons are entitled to receive supplementary lifetime old age pensions. The right to an additional lifetime retirement pension arises when the insured person reaches the pension age as per the general rules explained in the preceding paragraph.[793] Upon request of the insured person the respective fund for supplementary mandatory pension insurance may start to pay the additional lifetime retirement pension, five years before the relevant age is reached, provided that the moneys accumulated in the respective account are sufficient to grant pension at an amount that is not less than the minimum amount of the old-age pension.[794]

D. Unemployment Benefits

Unemployment benefit contributions are payable toward a fund for unemployment and professional qualification and amount

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[790]Social Security Code art. 68(1).
[791]*Id*. art. 68(3).
[792]*Id*. art. 129.
[793]*Id*. art. 167(1).
[794]*Id*. art. 167(2).

to 1 percent of an employee's social security income.[795] The payment levy is pro-rated between the employer and the employee. For 2011 and 2012, contributions were payable at a ratio of 60 percent to 40 percent.[796]

Employees eligible to receive unemployment compensation are those who have been obligatorily insured against any and all insured social risks for a period of at least nine months during the last 15 months prior to the suspension of the insurance. The period of payment of unemployment compensation depends on the years of participation in the social security system noted in the employee's records, but in no event may the period of unemployment compensation exceed 12 months.

There are several forms of unemployment benefits, including the following:

- financial assistance for encouragement of entrepreneurship;[797]
- free professional qualification;[798]
- use of intermediaries for acquisition of information and for hiring;[799] and
- financial incentives for employers who hire unemployed persons.[800]

The 2012 Social Security Code amendments provide that unemployment compensation will be 60 percent of the average daily remuneration or the average daily contributory income on which insurance contributions to the Unemployment Fund are due or have been paid for the period of 24 calendar months preceding the month in which the insurance has been terminated.[801]

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[795] *Id*. art. 2(2), subsec. 4, art. 6(1), subsec. 1.
[796] *Id*.
[797] Employment Encouragement Law art. 47.
[798] *Id*. art. 63.
[799] *Id*. art. 27.
[800] *Id*. art. 50.
[801] Social Security Code art. 54b.

E. Welfare Benefits

The welfare program is supported by contributions from employers, and the welfare fund is budgeted in the national budget. Parents with children are entitled to modest monthly allowances from the government. The Ministry of Health has jurisdiction over matters of health and medicine, and health services are provided free to all.

Under the Law on Family Support for Children,[802] in the event of the birth of a child, parents are entitled to a one-time monthly allowance payment payable upon request filed by the parent within three years of the month of birth, funded from the national budget.[803] The amount of the allowance is as follows:[804]

- for the first child, BGN 250 (approx. €125);
- for a second child, BGN 600(approx. €300);
- for the third and each subsequent child, BGN 200 (approx. €100).

The Law on Family Support for Children provides higher benefits for parents of twins.[805] Namely, the mother (or the adoptive mother, single father, single adoptive father, family of relatives, or foster family) is entitled to a one-time payment for raising twins who are under the age of one, regardless of the income of the family and conditional upon the children not being placed in a specialized childcare institution. The amount of the benefit for 2012 is BGN 1,200 (approximately €600) for each twin.

Pregnant women and parents with children up to 20 years of age are entitled to a monthly allowance provided that their family income falls below BGN 350 per month.[806] In 2007, the monthly family allowance amount was BGN 18 for the first child and BGN 35 for the second and each next child.

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[802] *See* 32 STATE GAZETTE (Mar. 29, 2002).

[803] Law on Family Support for Children art. 2(1) subsec. 2.

[804] Law on the State Budget of the Republic of Bulgaria, 99 STATE GAZETTE (Dec. 16, 2012), §10(5), transitional and final provisions.

[805] Law on Family Support for Children art. 6(a).

[806] Law on the State Budget of the Republic of Bulgaria, §10, transitional and final provisions.

Parents are entitled to a monthly allowance or social investments until their children graduate from secondary school, but not beyond 20 years of age. "Social investments" are a nonpecuniary form of family support for rearing children, provided in the form of goods and/or services.[807]

Provided that family income falls under BGN 350, families whose children are registered in the first grade of a state or municipal school also are entitled to a one-time payment, at the beginning of the school year, to cover part of their expenses.[808] The amount of this payment is determined annually by an act of the Council of Ministers. This benefit also is available with respect to children who are living with families of relatives or foster families, regardless of the family's income.

The 2012 amendments to the Law on Family Support for Children provide that, once all criteria are met, the monthly allowance for children with only one living parent[809] is provided without regard to the income of the family.[810] This family allowance also is provided to a child who has finished his or her secondary education until the age of 18.[811]

Under the 2012 amendments, the families of children who were enrolled in first grade in state or municipal schools are entitled to a one-time fixed-purpose benefit to cover part of the upfront expenses at the beginning of the school year, without regard to the monthly income of family in the following cases: [812]

- children with permanent disability;
- children with only one living parent;
- children hosted with families of relatives and foster families.

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[807] Law on Family Support for Children art. 7.
[808] *Id*. art. 10a.
[809] *See id*., add'l provisions §1, item 9.
[810] *Id*. art. 7, subpara 9; *id*. art. 8, subpara 9.
[811] *Id*. art. 7, subpara 10.
[812] *Id*. art. 10a, subpara 4.

IX. IMMIGRATION

Article 26 of the Constitution proclaims that "foreigners who reside in the Republic of Bulgaria have all the rights and obligations guaranteed by this Constitution, excepting those rights and obligations for which the Constitution and the laws require Bulgarian citizenship."[813]

The employment of foreign nationals is regulated by the Law on Encouragement of Employment (Employment Encouragement Law).[814] The legal framework is further detailed by the Regulation on the Terms and Procedure for Issuance, Refusal, and Withdrawal of Work Permits to Foreigners in the Republic of Bulgaria[815] and the Ordinance on the Terms and Procedure for Admission of Expatriates in the Republic of Bulgaria for Provision of Services.[816]

A. Access of Foreign Nationals to the Labor Market

The Minister of Labor and Social Policy may, after consultations with the social partners and upon a recommendation by the National Labor Migration Council, impose restrictions on the access of foreign nationals, including highly qualified ones, to the labor market in accordance with the condition, development, and public interests of the labor market.[817]

In addition, the Employment Encouragement Law provides that, based on a risk assessment, the General Labor Inspectorate must exercise control over the employment of foreign nationals. The risk assessment must be performed with a view to identifying the businesses and sectors where employment of illegal foreign nationals occurs or is very likely to occur. The risk assessment must be performed based on analysis of the available data concerning the demand and supply of workforce, the levels of offered

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[813] CONST. art. 26(2).
[814] *See* 112 STATE GAZETTE (Dec. 29, 2001).
[815] *See* 39 STATE GAZETTE (Apr. 16, 2002).
[816] *See* 68 STATE GAZETTE (July 16, 2002).
[817] Employment Encouragement Law art. 73a.

remuneration, any registered violations, and other data that might be of relevance.[818]

B. Work Permit

1. General Rules

Foreign nationals may work in Bulgaria only after obtaining a work permit, unless otherwise provided by law.[819] Work permits should be requested by the Bulgarian employer and are issued by the Bulgarian Employment Agency.

Work permits are issued by the Bulgarian Employment Agency if the following pre-conditions are, among others, proved to be satisfied:[820]

- no Bulgarian citizenship is required under the law for the occupation of the respective position to be occupied by the employee;
- the situation, development and public interest at the national labor market have been taken into consideration;
- the total number of foreigners employed by employer does not exceed 10 percent of the average number of personnel, employed by the employer under a labor law agreement for the previous 12 months, whereas such requirement must be fulfilled during the whole 12 month period;
- the employer presents proof that it has been actively searching for the specialist it needs, at the labor market, during a period of minimum 15 days before the application for the work permit is submitted. This search should have been performed via advertisements in the national and local mass media as well as in the Labor Office of the Employment Agency; the employer should also state the reasons for not hiring Bulgarian citizens, EU citizens, citizens of an EAA state, Swiss citizens, or foreigners having long-term or permanent residence status in Bulgaria,

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[818] *Id*. arts. 78a, 78b.

[819] *Id*. art. 70.

[820] Regulation on the Terms and Procedure for Issuance, Refusal, and Withdrawal of Work Permits to Foreigners in the Republic of Bulgaria art. 6.

refugees, or foreigners with humanitarian status, for the specific position;
- the employee holds as a minimum a special high school education, or any higher degree and/or possesses special professional qualification and experience, which meet the objective requirements for the respective job position and the performed activity;
- there are no Bulgarian citizens, EU citizens, citizens of an EAA state, Swiss citizens, or foreigners having long-term or permanent residence status in Bulgaria, refugees, or foreigners with humanitarian status, who possess the required professional qualification or specialty, and there is no possibility for employer to timely educate the specialist needed, the latter fact being established following a survey of the labor market in respect of the objective requirements to take that particular position and the specifics of the activities to be performed.

The assessment of the fulfilment of these requirements is performed by the EA.

Only as an exception and in special cases, a work permit may be issued to a foreigner without complying with the above requirements. In particular the requirements for:

- active search for a specialist; and
- the one requesting that there are no Bulgarian citizens, EU citizens, citizens of an EAA state, Swiss citizens, or foreigners having long-term or permanent residence status in Bulgaria, refugees, or foreigners with humanitarian status, who possess the required professional qualification or specialty, and there is no possibility for employer to timely educate the specialist needed,

may be waived but the other shall continue to apply.

Within the meaning of the foregoing the exceptions include:[821]

[821] *Id*. art. 7.

- foreigners the employment of whom results from the execution of international treaties to which Bulgaria is a party;
- the secondment of individuals belonging to the senior management of a foreign legal person established in the territory of the Republic of Bulgaria, hired upon an intra-group transfer, or
- specialists of a foreign legal person established in the territory of the Republic of Bulgaria, who possess special knowledge for mastering production technologies, equipment or management techniques and are hired under an intra-group transfer and are proved to have an education and qualification degree corresponding to the respective position, or
- guest lecturers, lecturers and teachers in Bulgarian high schools and universities provided that a decision of the academic councils of the universities and of the regional inspectorates of the Ministry of Education and Science have been adopted, or
- secondment of employees of a foreign legal person for the purposes of coordinating or enhancement of the activities of a company or a branch of the said foreign legal person, or
- secondment of foreigners who are specialists for the purposes of installing, putting into operation and repair of imported equipment, introduction of special technology, know-how, application of specialized and unique technique, as agreed under a contract, or
- secondment of persons who preserve their habitual residence abroad for the purposes of:
  – training with regard to maintenance or accepting of commissioned equipment, machinery or other property;
  – training under an export contract or a license agreement, or
- athletes and coaches with professional sports clubs where the Bulgarian national sports federations and unions interested in hiring them because of their particular personal qualities and high degree of professional knowledge and skills have confirmed willingness to hire, or

- persons with properly proven Bulgarian origin are hired on a position for which they have relevant education and/or professional qualifications and experience until permanent residence permit is obtained, or
- employees of foreign tour operators who are posted to the territory of the Republic of Bulgaria in order to control and coordinate the implementation of a contract with a Bulgarian tour operator or hotelier under the Law on Tourism, or
- participants in circus performances and dancers with proven professional competence.

2. Exceptions to Work Permit Requirement

As of the Accession Treaty's effective date (January 1, 2007), nationals of any EU Member State are entitled to work in Bulgaria under the same terms as Bulgarian citizens.[822] In fact, provisions of the Employment Encouragement Law apply equally to Bulgarian and EU countries' nationals.[823]

According to the Regulation on the Terms and Procedure for Issuance, Refusal, and Withdrawal of Work Permits to Foreign Nationals in the Republic of Bulgaria (Work Permit Regulation), a foreign national who has been assigned to work in the Republic of Bulgaria by a foreign employer for a term of up to three months may perform concrete assignments without a work permit, within 12 months after registration at the Employment Agency, in the following cases:[824]

- performance of installation and warranty repair of machines and equipment shipped from abroad;
- training on maintenance, or acceptance of ordered equipment, machines, or other articles; and
- attendance of a course within the framework of an export delivery contract or a licensing agreement.

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[822]European Parliament and Council Regulation No. 492/2011 on freedom of movement for workers within the Union (codification), 2011 O.J. (L 141) 1.

[823]*See* Employment Encouragement Law art. 2.

[824]Regulation on the Terms and Procedure for Issuance, Refusal, and Withdrawal of Work Permits to Foreign Nationals in the Republic of Bulgaria, art. 4(3).

The registration must be accomplished before the foreign national enters Bulgaria except where provided by an international agreement signed by the Republic of Bulgaria.

The Work Permit Regulation also provides that foreign nationals who are in Bulgaria on assignments related to the implementation of contracts for tourist services between a foreign tour operator and a Bulgarian tour operator or hotel operator, under the terms and procedures of the Law on Tourism, may work without a work permit, after registration with the Employment Agency, for six months within a 12-month period.[825]

3. EU Blue Card Program

The 2011 amendments to the Law on Encouragement of Employment and the Law on Foreigners in the Republic of Bulgaria[826] allow highly-qualified citizens of non-EU countries to live and work in Bulgaria under what is known as the EU Blue Card Program.[827] For purposes of the blue card, a highly-qualified employee means a person who has the competence required for the job concerned, i.e., higher education evidenced by a diploma, a certificate, or another document issued by a competent authority after training for a period of at least three years provided by an educational institution recognized as a higher education institution by the relevant country.[828] The blue card is issued by the Bulgarian Ministry of Labor and Social Policy for a term of one year or, if shorter, for the term of the contract. If the term of a labor contract is longer than one year, or if it is prolonged after the expiry of one year, then the EU Blue Card can be renewed for another one year term maximum, and this is done every year until the foreigner specialist has the employment position. No restrictions or limitations of the number of renewals are present.

A blue card holder enjoys equality with Bulgarian citizens in terms of the following:[829]

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[825]*Id.* art. 4(4).

[826]*See* 153 STATE GAZETTE (Dec. 23, 1998).

[827]Law on Encouragement of Employment art. 74, and Law on Foreigners in the Republic of Bulgaria art. 33k.

[828]Law on Encouragement of Employment, add'l provisions, item 27a.

[829]*Id.* art. 74c(2).

- working conditions, including payment, dismissal, health and safety at work, terms of access, observance of obligations, and social security rights within the laws of the European Union;
- access to goods and services, including public ones;
- education and vocational training;
- payment of income-related acquired statutory pensions on retirement;
- recognition of education diplomas;
- recognition of certificates and other proofs of professional qualification;
- freedom of association, affiliation, and membership in employer organizations or of any professional or trade organizations, including the benefits conferred by such membership, unless Bulgarian citizenship is required by a law, statute, or other regulation.

During the first two years of legal employment of a highly-qualified foreign national, a blue card holder may practice in the territory of the Republic of Bulgaria only activities that satisfy the conditions under which the blue card has been issued. During this period, a blue card holder may change his or her employer only after obtaining written approval from the National Employment Agency.[830]

C. Employment

1. Registration With National Employment Agency

Services provided by the National Employment Agency,[831] such as information on job vacancies and vocational training, are only available upon registration. The Law on Encouragement of Employment extends the right to register with the National Employment Agency as an individual looking for a job to the following:[832]

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[830] *Id.* arts. 74d(1)(2), 74e.

[831] See the Introduction at D., above.

[832] Law on Encouragement of Employment art. 18(3), subsecs. 1, 6, 7.

- foreign nationals who have been issued a long-term or permanent residence permit for the Republic of Bulgaria;
- family members of foreign nationals who have been granted a long-term residence permit; and
- European Union blue-card holders who have remained jobless for three months or wish to change their employer.

2. Documentation

The Law on Encouragement of Employment requires that, if a foreign national is employed, the employer must request him or her to present a valid residence document; a notarized, certified copy of this document must be kept for the period of employment.[833] The employer is not liable if the document turns out to be invalid.

The employer must also report to the National Revenue Agency the date that a foreign national actually commences work.[834] The 2012 amendments to the Law on Encouragement of Employment require that this report must be made within seven days of the actual commencement of work.[835]

3. Researchers Who Have Acquired Long-Term Stay Visa

A 2012 amendment to the Law on Encouragement of Employment provides that foreign persons who have acquired a residence permit for long-term stay in their capacity as researchers pursuant to the provisions of Law on Foreigners in the Republic of Bulgaria can avail themselves from the right to be treated equally with regard to the following:[836]

- working conditions, including payment, dismissal, health and safety at work, terms of access, observance of obligations and enjoyment of rights of social security within the law of the European Union, etc.;
- access to goods and services, including public ones;

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[833] *Id.* art. 72a.
[834] *Id.* art. 72a.
[835] *Id.*
[836] *Id.* art. 74c(2).

- payment of acquired statutory, income-related, old-age pensions at the rate applied by virtue of the law of the debtor Member State(s), when moving to a third country, without prejudice to existing bilateral agreements;
- recognition of educational diplomas;
- recognition of certificates and other proofs of professional qualification in accordance with the Law on Recognition of Professional Qualifications.[837]

4. Illegal Employment of Foreign Nationals

The employment of foreign nationals who are illegally in the territory of the Republic of Bulgaria is prohibited. If an employer hires such a person, the employer must pay him or her the amount of the agreed remuneration but not less than the minimum wage[838] for a period of three months, unless the employer or the foreign national proves a different duration of employment. The payment of remuneration remains due even after return of the foreign national to the country of his or her usual residence. The payment of taxes and social security contributions due under Bulgarian legislation apply with regard to the payment of such remuneration.[839] The "illegal employment of a foreign national" means the employment of a foreign national illegally staying in the territory of the Republic of Bulgaria, as well as the employment or admission of a foreign national without the relevant authorization by or registration with the National Employment Agency.[840]

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[837] *Id*. art. 72c(2), subsec. 7.
[838] See V.A.3., above.
[839] Law on Encouragement of Employment art. 73.
[840] *Id*. add'l provisions, item 38.