



Insights

PRACTICE AREA ARTICLES

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KEY DEVELOPMENTS FOR 2020

Recent case law on holiday entitlement and reinstatement



The Court of Justice of the European Union ("**CJEU**") has recently addressed the question as to whether employees who are unlawfully dismissed and then reinstated into their previous positions are entitled to any annual leave accruing in the period from dismissal up to reinstatement. It was common practice for the Bulgarian Supreme Court of Cassation not to award compensation in such cases on the basis that the employee had not actually performed work during that period and as such, no annual leave had accrued. However, the CJEU noted that such dismissals are, in principle, unpredictable and beyond the control of the employee concerned. As a result, the CJEU held that employees should be entitled to annual leave accruing in the period between termination and reinstatement and should receive a payment in lieu of such annual leave to the extent their employment is subsequently terminated.

Implementation of Persons with Disabilities Act



The Persons with Disabilities Act recently came into force and introduces some key requirements aimed at improving access to employment for disabled persons.

The new legislation has introduced a mandatory quota for employers in respect of the hiring of individuals with permanent disabilities. This requirement applies to employers with more than 50 employees. Relevant employers must notify the Employment Agency to confirm that they fulfil the quota by 31 March each year. Certain exemptions apply depending on the circumstances (for example, if an employer purchases goods or utilises services that are produced, traded or provided by certain registered enterprises or cooperatives of disabled persons, they may not be subject to the quota requirements in respect of the month in which they purchase such goods or utilise such services).

National Tripartite Agreement

A National Tripartite Agreement was concluded on 17 June 2020 between the Council of Ministers, employer representatives and trade unions. The



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Agreement is valid for a period of two years and deals with various topics related to the labour market and immigration, such as minimum remuneration requirements and the repeal of minimum social contributions for certain industries and professions. It also foresees an expansion to the functions of the Employment Agency to manage the import of workers and specialists from other countries to satisfy the needs of the Bulgarian labour market from time to time.

KEY DEVELOPMENTS FOR 2019

New rules on electronic files for employees

In May 2018 the Council of Ministers adopted a new Ordinance on the Creation and Storage of Electronic Documents on Employee Files (“**Ordinance**”). The Ordinance permits electronic documentation for employment files and generally regulates the types of electronic documents that may be part of the employee's file and the requirements for the creation, transmission and storage of electronic documents.

The key changes include:



the type of employment-related documents which may be created and/or stored electronically must

- be specified in the internal labour rules adopted by the employer;

the documents must be created in compliance with Regulation (EU) No 910/2014 and the Bulgarian Act on the Electronic Document and Electronic Certification Services. Electronic documents should be signed by electronic signature whereas the ones created by the employer must always be signed by a qualified electronic signature. In addition, the Ordinance provides that an employer's electronic statements regarding electronic documents sent by the employee shall be served through an electronic registered delivery service;

- an employer may not refuse to accept a paper-based document from an employee and must provide the employee with paper copies of electronic documents if requested; and
- the Ordinance introduces certain requirements regarding the functionality of the information system used by the employer for creating and/or



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storing electronic documents in the employee's file including, among others, a qualified electronic time stamp, as well as other time certifications and record tracking mechanisms.

Employer's obligations under the new Disability Act

The new Disability Act, which was enacted by Parliament on 18 December 2018, imposes an obligation on employers to hire disabled workers according to the following quota:

- employers with 50-99 workers must employ one permanently disabled worker; and
- employers with 100 or more workers must ensure that 2% of their average staff are disabled workers.

Employers will be required to notify the Bulgarian Employment Agency of any vacant position and their quota.

These quotas are in addition to any occupational rehabilitee employees or workers. An employer who fails to comply with the quota requirements will be



liable to pay a monthly compensation contribution equating to 30% of the minimum monthly salary (currently BGN 560) for each vacant position for a permanently disabled worker.

Increase in the maximum monthly amount of contributory income

As of 1 January 2019, the maximum monthly social income over which employers and employees have to pay social security contributions increased from BGN 2,600 to BGN 3,000.

KEY DEVELOPMENTS FOR 2018

Posted Workers

Legislative changes have introduced express regulations on the posting of employees to the territory of another Member State of the EU or Switzerland. For the duration of the posting, the employer should provide at least the same minimum working conditions as the employees performing the same or similar work in the host country. The



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employer should inform the employee in writing of the relevant minimum working conditions in the host country at least one business day before the start date of the posting. The employer and the employee should execute a prescribed written additional agreement to the labour contract amending the employment relationship for the period of the posting.

Extended Categories of Individuals Entitled to Benefit from Child-Birth and Adoption Leave

The scope of the individuals entitled to a child-birth and adoption leave has broadened by virtue of amendments of the Bulgarian Labour Code effective as of 1 June 2017. This encourages a more flexible approach to parental leave, including the ability for ~~grandparents to use maternity/paternity leave in~~ certain circumstances.

Access to the Bulgarian Labour Market

Recently, the government authorities have been working towards implementing changes to the rules governing access to the Bulgarian labour market for non-EU nationals. The main goal of the proposed



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changes is to facilitate access by non-EU nationals to the labour market for research, study, training, voluntary service, pupil exchange schemes or educational projects, thus implementing the rules of Directive (EU) 2016/801.

New Employee Protections Impacting M&A Deals

Pursuant to a new law that came into force on 22 December 2017 shares in Bulgarian limited liability companies can only be transferred to buyers if the target has no outstanding employee debts or taxes in the 3 years prior to closing.

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