

**ACTS AMENDING AND COMPLEMENTING THE LABOUR CODE
(IN FORCE AS OF 22 DECEMBER 2008 AND 2 JANUARY 2009)**

In State Gazette No. 108/19.12.2008 and No. 109/23.12.2008 were promulgated Acts amending and supplementing the Labour Code which enter into force respectively on 22.12.2008 and on 02.01.2009r.

Some of the most important amendments introduced by the Acts are summarized below.

1. Applicable Law to Employment Relations

The provisions on applicability of Bulgarian labour law to employment relations have been amended. The Bulgarian Labour Code is applicable in the following cases:

- (a) to employment relations of Bulgarian citizens, European Union ("EU") and European Economic Area ("EEA") member-state citizens, and Swiss citizens with employers in Bulgaria or with Bulgarian employers abroad;
- (b) to employment relations of Bulgarian citizens, EU and EEA member-state citizens, and Swiss citizens delegated by Bulgarian employers to work in another state in a foreign or joint enterprise;
- (c) to employment relations of foreign citizens working in Bulgaria.

Besides, the parties are given the right to choose another state's law to apply to their employment relation.

2. Overtime Work

To a greater extent the admissibility of overtime work has been facilitated in cases where commenced work cannot be finished during the regular working time. In this case the requirement that the interruption of the work should be able to bring about danger to human life or health or damage of machines and materials has been abolished.

3. Maternity Leave

(a) increase of the maternity leave

As of 2-nd January 2009 maternity leave is increased from 315 to 410 calendar days.

Employees whose leave of 315 calendar days has not elapsed as at 2-nd January 2009, are entitled to a leave for the remainder of 410 calendar days following that date.

Employees whose leave of 315 calendar days has elapsed as at 2-nd January 2009, following that date are entitled to a leave for the difference between 410 calendar days and the sum of the used maternity leave and the used or due child bringing-up leave for the period up to 1-st January 2009.

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In pending cases the remainder of the leave is permitted following a written application of the employee to the employer. As of the day of the maternity leave permission the leave for bringing-up a child up to 2-year's age, which the employee uses, is terminated.

In coordination with the Labour Code amendments the Social Security Code has been introduced as well to provide for payment of a compensation for 410 calendar days.

(b) use of the leave by the father

By virtue of the Act it is now possible for the father to use the remainder of the maternity leave of 410 calendar days when the child turns 6 months with the mother's consent.

(c) 15-day paternity leave

Under the amendments a new type of leave which the father enjoys upon child birth is introduced. The leave amounts to 15 days from the child leaving the hospital and the condition for using the leave is the father and the mother being married or sharing a household. The Social Security Code provides that the father is entitled to a compensation for the term of the leave upon certain conditions.

(d) dismissal protection

Dismissal protection is now enjoyed not only by the mother (adoptive mother) using maternity leave but also by the father (adoptive father) using the 15-day paternity leave or using the remainder of the maternity leave after the 6-months' age of the child. Those persons could be dismissed only upon the enterprise closing down.

4. Obligation to Issue Internal Labour Order Regulations

The right which the employer had to issue Internal Labour Order Regulations has been transformed into an obligation. The Regulations must contain the employees and the employer's rights and obligations and provide for the labour organization in the enterprise according to the enterprise activities specifics.

The Internal Labour Order Regulations are issued by the employer after consulting the trade unions' representatives in the enterprise and the employees elected by the employees' general assembly.

5. Expanding the Scope of Cases where Dismissal Compensation is Due

By virtue of Art. 222, para. 1 amendments the employer must pay a compensation upon dismissal in the following cases:

- dismissal due to employee's refusal to follow the enterprise or the department where the employee works when the latter is transferred to another town or place;
- dismissal due to vacancy of the employee's position due to restoration of unlawfully dismissed employee, who has previously taken that position.

The compensation amounts to the gross labour remuneration for the time during which the employee has been unemployed but not longer than 1 month.

6. Recognition of Employment Service for Work up to 5 Days per Month

Unlike the provisions in force up to now, when an employee works for the same employer not more than 5 working days or 40 hours per month, the working time will be recognized as employment service.

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7. Employer's Obligations to Issue Documents

Employer's obligations to provide documents to employees have been expanded. The employer is obliged to issue the following documents:

- (a) job description – the job description should now be handed to the employee against signature and the date of its handing should be indicated;
- (b) documents evidencing facts related to the employment relation – those should be issued by the employer within 14 days from the employee's written request;
- (c) employment record and recommendation – they are issued upon employee's written request within 14 days from the request. The employment record must be objective and just and must concern the employee's professional qualities and work results. The recommendation is issued when the employee applies for a job with another employer;
- (d) dismissal order – the employer's obligation to issue a dismissal order or another documents evidencing the employment relation termination is now expressly set forth.

8. Obligation to Maintain and Increase Professional Qualification

The provisions concerning the employees' professional qualification have been extended so that the employer is obligated to create conditions for the employees' professional qualifications maintaining and increase and to make sure that employees who were absent continuously from work are rendered familiar with the novelties in work.

On the other hand, employees are obligated to participate in educational events organized or financed by the employer and to make efforts to increase their qualification level.

9. Labour Legislation Compliance Control

The powers of the bodies responsible for the labour legislation compliance control have been extended and the amounts of the fines and pecuniary sanctions for breaching the labour legislation have been significantly increased. There is an option for the person in breach and the penalizing body to reach an agreement and to defer liabilities under penal acts which have entered into force.

10. Other Amendments

- (a) Paid annual leave remuneration is already calculated on the basis of the accrued and not of the paid average daily gross labour remuneration for the last calendar month preceding the leave during which the employee has worked for at least 10 working days. When there is not a month, during which the employee has worked for at least 10 working days with the same employer, the labour remuneration is determined based on the basic labour remuneration and the additional labour remunerations of permanent nature as agreed upon under the employment agreement.
- (b) There have been amendments to the Healthy and Safe Working Conditions Act under which the legal and natural persons who independently employ persons, the legal and natural persons who use employees provided to them by temporary employment agencies as well as the persons who work at their own account alone or in partnerships are obligated to submit an annual declaration with the territorial directorate of the Labour Inspection by 30-th April of the following year. The form and the contents of the declaration should be set forth in a regulation of the Labour and

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Social Policy Minister (such a regulation has not been adopted yet). A declaration needs not be filed if the circumstances subject to declaration have not changed.

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