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LABOR-LAW RELATED ASPECTS REGARDING THE NEW LAW ON MEASURES AND ACTIONS UNDER STATE OF EMERGENCY

In view of the promulgation of the **Law on Measures and Actions during the State of Emergency (MADSE) in the State Gazette No 28/24.03.2020**, it is necessary to update the information related to the employment relations, specifying the new provisions and distinguishing them from the previous ones. A separate, new section will look at the amendments made to the Labor Code.

Globally, due to the spread of the Coronavirus pandemic (COVID-19), people are facing a huge threat to their health and life. In addition to the uncertainty of how long the pandemic will last, how many "victims" it will take, we also have to ask about the economic consequences that will follow. At this moment, we witness decrease in certain sectors and at the same time increase in other regarding the volume of demand and work required.

I. Opportunities for the employer:

1. In case of reduction of workload:

Undoubtedly, the majority of businesses are affected by the pandemic towards reducing workload. In the case of a valid employment contract, the employer cannot rely on the crisis, no matter how enormous, in order not to pay his employees. In that regard some measures could be taken:

1.1. The employer could establish part-time work for his employees. In essence, it is shorter working hours than normal and reduced working hours. According to its mode of establishment and the source of its will, there are two types:

1. Contractually established;

2. Unilaterally introduced by the employer.

The first hypothesis does not raise any particular issues - the parties to the employment relationship agree on a part-time basis at the conclusion of the employment contract. Otherwise, reasons that may require amending already concluded contract we shall consider an additional agreement.
"Reducing the work volume" referred to in Art. 138a of the Labor Code (LC) is the economic basis, which causes the possibility for the employer to unilaterally make a decision to reduce the working time of the employees. Characteristic of the conditions under Art. 138a of the

Labor Code is that it is expected that the situation which led to this decrease in the work volume is transient and that the activity of the employer will return to its full volume and hence to full working time (the permanent reduction of the volume of work and its consequences will be discussed below).
Of course, as with the increase in working time and here, the "power" of the employer is framed by some boundaries: for employees in the company or in its unit who work full-time, **the reduction may take up to three months in one calendar year**. This duration may not be less than half the statutory one for the calculation of working time.

1.2. Another opportunity facing the employer is to unilaterally grant his employee a paid annual leave - Art.173, para. 4 CT:
The employer shall be entitled to grant the paid annual leave to the worker or employee even without the latter's written request or consent during an idling of more than 5 working days, where all workers or employees use leaves simultaneously, as well as in the cases, where the worker or employee, following an invitation by the employer, would have failed to request his/her leave by the end of the calendar year for which it is due.
The state of residence is the inactivity of the employee caused by the termination of employment in a particular section or workplace due to certain reasons. In the current situation and declared state of emergency in our country, on 13.03.2020 The Minister of Health has issued an Order, which stopped the activity of a large part of the commercial sites for a period up to 29.03.2020 (the period has been extended to 12.04.2020). Many are expected to have difficulty rebuilding their normal workflow.
The new law accepts the declared state of emergency as the sole condition for the application of this hypothesis, providing for a restrictive intervention in the sphere of the employee that is the latter may be obliged to use **up to one-half of his/hes paid annual leave (art. 7, para 2 of MADSE).**
The employee CANNOT be obliged by the employer to take unpaid leave!

1.3. As a last resort, when the amount of work is reduced, termination of employment may be terminated by dismissal. In the current situation many companies are expected to be closed down - in whole or in part, to terminate certain positions or not to close such separate units, but to result in a permanent reduction in the volume of work throughout the company. Art 328, para 1, it. 1, 2 and 3 of LC considers these hypotheses.

- The closure of the company is a complete cessation of its production and service activities. Since the employment relationship of the workers was created precisely for the purpose of carrying out this activity, it requires their dismissal. A valid decision must be taken by the relevant competent authority, following the appropriate procedure, which decision must indicate the date from which the undertaking will be considered closed. This date is also the date of termination of employment.

- Closure of part of the company differs from the above-mentioned hypothesis only in quantitative terms. Here, only one unit of the enterprise is terminated. A necessary prerequisite is that this unit has been differentiated, which could be different in different companies.

- In redundancies, individual units of the total number of employees will be reduced/eliminated in the future. The decision to remove a full-time position is a matter of economic and managerial expediency.

- Reducing the volume of work means a decrease in the production program, a decline in turnover. This reduction in the volume of work should be relatively lasting and not short-lived - this reveals the difference with the decrease in the volume of work, which is the reason for the unilateral reduction of working time by the employer. Contrary to the reasons stated above, there is no closure of a particular unit of the enterprise, but a general and proportionate reduction of the staff of all or certain units.

In these three hypotheses, as well as in other statutory provisions that fall outside the present analysis, the employee is entitled to receive compensation. The compensation shall be the amount of his gross remuneration for the time during which he has remained out of work, but for no more than 1 month. An act of the Council of Ministers, a collective agreement or an employment contract may provide for compensation for a longer term (Article 222 of the Labor Code).

2. In the case of an increase in workload:

On the other hand, there is an increase in the volume of work for some part of the branch organizations - companies such as laboratories, hospitals, pharmacies, manufacturing of protective clothing, masks and other materials. In order to meet the needs of the community, they must be able to cover the required volume of work through the mechanisms provided by law. To achieve this, there are several options for employers:

2.1. The employer could resort to the so-called extension of working time in the enterprise (Art. 136a LC). Working time is extended, when a longer duration than the statutory one is considered - more than 8 hours/day, respectively over 40 hours/week.
In order to select this option, several prerequisites must be met:

- First of all, production reasons must require an extension of working time. In the current global market, there is a growing interest in purchasing disinfecting gels, wet towels, face masks, and therefore it is necessary to take measures to increase the production of these products.
- In order to extend working hours in a particular company, the employer must issue a written order.

However, the freedom to extend working time is limited by certain legal limits: it may not exceed 10 hours, and for part-time workers up to 1 hour above their reduced working time; the length of the working week may not exceed 48 hours, and for part-time employees 40 hours. The third paragraph of Art. 136a of the Labor Code refers to two more restrictions, namely: Extension of the working hours under para. 1 and 2 shall be allowed for up to 60 working days in one calendar year, but for no more than 20 working days in succession.

The purpose of extended working hours is for the employer to be able to cope with his activities in the event of changes in the conditions in which he generally develops, through more intensive use of the available workforce.

Extension of working time becomes mandatory for the employee. It is subject to the same rules as normal business hours, incl. the reception of the remuneration agreed in the employment contract. Compensation shall be effected by a corresponding reduction of working time up to 4 months for each extended working day. The implication of the invariability of the rights and obligations of part-time employees also applies here. They will not receive a lower remuneration, though they will work less hours. In this way, equalization of the corresponding extended part of working hours is achieved, with corresponding reduction of working hours on other days.
2.2. Another possibility facing employers is for employees to work overtime. Overtime is work that is done by order or with the knowledge and without opposition of the employer, outside the hours fixed for the employee. Overtime is generally forbidden. The hypotheses exhaustively enumerated in the law allow its use as in certain categories of employees, even in the presence of these prerequisites, it is not allowed (e.g. under 18 years of age; pregnant workers; mothers with children up to 6 years of age or with children with disability, etc.).

In the situation created on the territory of the Republic of Bulgaria and around the world, the pandemic could be considered a natural disaster that needs to be managed (art. 144, item 3), as well as an event requiring medical assistance (4).
Overtime is paid extra.

The new law (MADSE) abolishes the restrictions on overtime employees and its duration for part-time workers who support or provide the provision of medical care, respectively for public officials who, by virtue of their job descriptions or orders, facilitate the provision of medical assistance.

2.3 The employer may proceed to conclude fixed-term employment contracts. Such a contract shall be concluded for a fixed term, which may not be longer than 3 years, unless otherwise provided by law or by an act of the Council of Ministers (Article 68, paragraph 1, item 1), the purpose of which shall be: the contract is to perform temporary, short-term or seasonal work and activities.

The employer may decide to enter into such a contract in order to complete a specific job (item 2). In this case, the employment contract should indicate exactly which work should be completed, since at its conclusion the contract is terminated.

The conclusion of a fixed-term employment contract is also very suitable in case of absent employees (item 3). As a considerable part of society is quarantined, such contracts are very appropriate.

2.4. Next, the employer may unilaterally change the place and nature of the employee's work. A prerequisite for this is that there is a need for production or downtime. The term may be up to 45 days for one calendar year, and in the case of a stay, for the duration of the calendar year. The qualification and health status of the employee shall be taken into account, and the qualification of the employee may be "neglected" if so required for compelling reasons (Art. 120, Para. 3).

3. Work at home and Remote work:

In the above-mentioned hypotheses, the spread of the virus is not seen as a prerequisite for changing the volume of work of a company, but as a reason to limit the accumulation of many people in one place. This can be both a workplace and a place directly related to contacting other people that cannot be avoided during the work process (for example, using public transport to get to work). Here are two options for the employer:

The first possibility is relates to the fulfillment of work obligations related to the production of products and/or the provision of services. This can be done either at the home of the employee, or in another premises outside the workplace of the employer. The necessary means and materials are provided by the latter - Work at home (Article 107b of the Labor Code).

The second possibility is to organize work out-side of the employer's premises using information technology - Remote work (Art. 107h of the Labor Code).

Unlike the previous arrangements for remote work and work at home, where these conditions were agreed:

1. Upon conclusion of the employment contract;

or

2. With an additional written agreement under Art. 119 CT

The provision of Art. 7 of the new law (MADSE), the assessment of home at work/remote work is given to the employer. Consent from the employee is not required. The only condition is that the work can objectively be done in this way. In order to incur an obligation for the

employee, the employer or the appointing authority is obliged to issue an order specifying the terms and conditions for the assignment, performance and control.

In this case, only the place of work is changed, without changing the other conditions of the employment contract.
These two hypotheses can be considered in this section as well as in the next one, since, there also specific measures for protecting the health of employees, to the employers themselves, as well as to all other members of society with whom potential contact can be made and to which each person has a moral duty.

Of course, the options listed are not exhaustive; there are others that, depending on the nature of the work, can be implemented, e.g. flexible working hours, shift work, etc.

Special attention is paid to the employees in the field of education - both teachers and pedagogical specialists and school directors are exempted from the obligation to conclude an additional written agreement under Art. 119 LC to fulfill their obligations under their distance employment contract.
The Minister of Education and Science has been given the opportunity by order to introduce provisional rules regarding training and support for personal development under para. 1, including on the workplace, the working hours of the teachers and pedagogical specialists, the technical means for organizing and conducting the training and support for personal development.

II. Health and safety measures at work:

Occupational health and safety measures could be divided into two groups: measures that are, in principle, part of the labor process (we will call them general) and those that the emergency caused by the spread of the pandemic implies (we will call them special).

1. "General":
The supplementary provisions of the Health and Safety Act provide a legal definition of health and safety at work, namely:
"Healthy and safe working conditions" are those working conditions that do not lead to occupational diseases and accidents at work and create a prerequisite for the full physical, mental and social well-being of the employees.
The subject of protection of safe and healthy working conditions is the human body, which is the source of labor. These conditions cover the environment of the employee where work is performed.

The legal framework for safe and healthy working conditions is an institute of labor law, which, unlike the others, has one peculiarity - the obligations are imposed on entities in employment relationship.
1. The state has an obligation to establish regulations for safe and healthy working conditions, as well as to monitor its compliance. The control is carried out by the State Labor Inspectorate;
2. For the employer, the obligation to ensure healthy and safe working conditions stems from two provisions of the Labor Code. First, this is Art. 275, which states that the employer is obliged to ensure healthy and safe working conditions, so that the dangers to the life and health of the employee are eliminated, reduced or reduced. However, this obligation is also governed by the general regulation of the basic obligations of the employer as a party to the employment relationship, namely that the employer is obliged to provide the employee with normal conditions for the performance of the work for which he was employed.

3. The situation of employees is peculiar. There is no legislature that directly obliges them to take any active behavior to create healthy and safe working conditions. However, for them, the obligation, once provided by the state and the employer, is to respect them in order not to endanger the health and life of both the employee himself/herself and the rest of the staff.

2. "Special"

Regarding the spread of COVID - 19 virus, additional measures have to be taken to protect the health and life of humans. The World Health Organization (WHO) and the Ministry of Labor and Social Policy (MLSP) have made recommendations to employers to take specific actions to limit, as far as possible, the risk of Coronavirus spread. These recommendations could be found at the following two websites:

> https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf?sfvrsn=359a81e7_6 ;
> https://www.mlsp.government.bg/index.php?section=PRESS2&prid=1947&lang

Therefore, the State has already fulfilled one of its obligations and by the end of the viral period it will be obliged to fulfill the second one, namely to exercise control over compliance with the requirements introduced by the Order of the Minister of Health, and to monitor whether employers have considered the recommendations and how they have implemented them.
The employer is obliged, in view of the specificity of the activity carried out in the company, to take certain measures that he considers most appropriate, in order to achieve the most

important objective currently facing each of us, namely the protection of health and life of people.

III. Changes and additions to the Labor Code, in accordance with the MADSE:

As is apparent from the provisions of para. 4 of the transitional and final provisions of the MADSE, the following amendments, clarifications and additions are made to certain provisions in the Labor Code, namely:
-In connection with the declared state of emergency, the employer is given the opportunity to issue an order suspending the work of the company, its parts or individual employees (for the whole period or its parts) until the state of emergency is lifted. When the work of the company is terminated by an order of a state body, the employer is obliged not to allow the employees to do their jobs for the period specified in the order.

-In connection with the reduced working hours, in Art. 138a of the Labor Code, a new para. 2 is created, providing for a new hypothesis, in which the employer may establish part-time work for its employees, namely in cases of such a state of emergency, which may be the case for the whole period of the state of emergency or for part of it, for the whole company or for a separate unit.
-In the event of termination of the work of the company, part of the company or individual employees due to the state of emergency, the employer is given the opportunity to provide the employee, including those who have not obtained 8 months at the job, his/hers paid annual leave (in full) without his consent. Here the legislator explicitly states the three main hypotheses in which the employer could enter into the personal sphere of its employees and oblige them to use all their paid annual leave, unlike Article 7, paragraph 2 of the MADSE, where, as a rule, the restriction on the employer is to require up to ½ of the paid annual leave.

-The employer is obliged to allow the use of paid annual leave or unpaid leave in case of declared state of emergency at the request of some of these categories of employees - a pregnant employee in advanced stage of in vitro treatment; mother or adoptive parent of a child up to 12 years of age or a disabled child, regardless of age; employee who is a single father or adoptive parent of a child up to 12 years of age or a disabled child, regardless of age, etc.

During the validity of the Law on Measures and Actions during the State of Emergency, but for a period not exceeding 3 months, the National Social Security Institute (NSSI) shall transfer 60 percent of the amount of insurance income for January 2020 for persons insured under Art. 4, para. 1, item 1 of Social Insurance Code (SIC) by insurers meeting the criteria that is determined by an act of the Council of Ministers.

IV. QUESTIONS RELATING TO THE PROVISION OF STATE AID TO EMPLOYERS, RELATING TO THE ANNOUNCED STATE OF EMERGENCY ON 13.03.2020 AT THE TERRITORY OF THE REPUBLIC OF BULGARIA:

The above-mentioned issue is a topic that needs to be further elaborated and specified by a Council of Ministers Decree. The draft of that decree has already been prepared and sent for consultation with employers and unions and follows its adoption in the coming days. Below, in this presentation, we will develop the main points governing the criteria, procedure, documentation and all that is relevant to the applicant-employer regarding this State aid. The writing is on a project basis that is pending final adoption.
CRITERIA TO WHICH EMPLOYERS SHOULD MEET:
1. As stated in para. 6 of the MADSE, the State, represented by the National Social Security Institute, will cover, through the Unemployment Fund, 60% of the salaries of employees who would otherwise lose their jobs. Against this assistance, employers are obliged to retain their jobs, cover the remaining 40% of the remuneration and not to dismiss those employees within 3 months after the 3 months in which they received compensation.

2. The right to support by the State will be granted only to companies which have ceased to operate at least 50% of their personnel on the date of issuance of the order that is ceasing all or part of the activity due to the state of emergency. At least 50% of their employees must work in one of the 16 economic activities listed in the table below (Annex 1).

3. Another condition for applicants is that they have not made redundancies in the period during which they will receive compensation. It will be given for a period of up to 3 months and is scheduled to take effect retroactively on March 13 i.e. if the company wants full compensation, it should not have fired staff since March 13.

4. It is also essential that companies have no budgetary obligations at that date, meaning for taxes and insurances, to the municipality, not declared bankruptcy or are not in liquidation proceedings, they must not receive funds under European programs or from the budget, have no penal decree entered into by the NSSI for the last 6 months and should not have committed violations of labor law.

APPLICATION PROCEDURE:

The Executive Director of the Employment Agency will issue an order to open a procedure for applying for employers to pay compensation. Information on the terms and conditions for applying will be published on the website of the Employment Agency and on the information boards in the Directorates of the Labor Office.

1. The employer shall submit, including by electronic means, to the Directorate "Labor Office", servicing the territory of employment of his employees, an application for payment of compensations in accordance with a model approved by the Executive Director of the Employment Agency.

The application shall be accompanied by:
- Order for termination of employment in connection with a state of emergency;
- a model declaration that the employer fulfills the conditions for applying;
- a list of employees for whom an application for compensation is submitted in accordance with the Decree of the Council of Ministers. The list contains data on persons (three names and personal identification number) and the number of working days for the termination of employment.

- a statement containing details of the employer's payment account.

2. A committee appointed by an order of the Director of the "Labor Office" shall examine and verify the documents submitted within 7 working days of the submission of the application. The Commission shall decide on the compliance or non-compliance of the employer with the compensation requirements.

It is the duty of the Director of the Labor Office Directorate to send to the Employment Agency a list of employers who meet the requirements for compensation, the decisions of the commission and the lists of employees provided by the employers.
The Employment Agency should send electronically to the National Social Security Institute, a summary information on the approved candidates, and the Labor Office Directorate to inform the employers about the Commission decision.

3. The National Social Security Institute shall pay employers compensation on the basis of the summary information provided by the Employment Agency.

CONSEQUENCES:

It is the obligation of the employers, in the case of reimbursement of work during the period of payment of the compensation, to notify in writing the Employment Agency within 3 days from the date of issuance of the order for reinstatement of work.

Also, an employer who has received compensations under the Decree of the Council of Ministers and has not fulfilled his obligation to keep the employment of the persons for

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whom he has received compensation for a period not less than 3 months after the expiry of the period for which he is paid compensations and fails to fulfill its obligation not to terminate employment contracts of employees on the grounds of Art. 328, para. 1, items 2, 3 and 4 of the Labor Code, for the period for which compensation is paid, shall reimburse the compensations provided, together with the statutory interest rate from the moment of receipt until their final payment.

(Appendix № 1).

List of economic activities under art. 2, item 2, according to the Classification of Economic Activities (NACE.BG-2008)

Code under NACE-2008	Title of the position
47	Retail trade, except of motor vehicles and motorcycles ☐ except 47.11 (Retail sale in non-specialized stores with food, beverages and tobacco) and 47.2 (Retail sale in specialized stores of food, beverages and tobacco)
49.1	Passenger rail transport, long distance
49.3	Other passenger land transport
50.1	Passenger sea and coastal transport
50.3	Inland passenger water transport
51.1	Passenger air transport
55.1	Hotels and similar accommodation
55.2	Tourist and other short-term accommodation
56.1	Activity of restaurants and fast food establishments
56.3	Activity of drinking establishments
59.14	Film projection
79	Travel agency and operator activity; other travel and booking activities
90	Artistic and creative activity
91	Other cultural activities
93	Sports and other recreational activities
96.04	Maintaining good physical condition

For more information, please contact attorney-at-law assistant Neli Poprelkova by the following email n.poprelkova@tzp.bg