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Changes and Amendments to the2020 Labour Code

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On 28 January 2020, the new edition of the Labour Code came into force in Belarus. The Labour Code has been subjected to many changes and amendments. Let us address the most important ones.

Hiring

1. There have been added extra requirements that regulate employment agreements.

Now ***each page of an employment agreement and annexes to it*** must be numbered and signed by the parties.

Previously, an employment agreement was only to be made in writing in two original copies and signed by the both parties.

2. The time period for documenting the act of hiring has been shortened.

The actual authorization for work must be documented ***no later than on the day following*** the day of authorization for work. In other words, an employment agreement must be signed and a CEO hiring order must be issued within this time period.

Previously, this period used to be three days following the employee's request for documenting the act of employment.

3. The matters of imposing a probation period have been clarified.

Article 28(1) of the new edition of the Labour Code of the Republic of Belarus clearly points out that a probation period may only be imposed on an employee ***when he/she is being hired***. This clarification eliminates the wrong and quite frequent practice of understanding the probation provision as the employer's right to impose a probation period on an employee who is transferred to another job with that same employer.

Dismissal

1. Days on which a fixed-term employment agreement is terminated have been defined more precisely.

A fixed-term employment agreement will terminate when its period of validity expires. Cases when fixed-term employment agreements (not contracts) are concluded have been defined more precisely, and days of their termination have been clarified. For more detail, please see the table below.

<table>
<tr><th rowspan="2">Cases for concluding a fixed-term employment agreement</th><th colspan="2">Day on which a fixed-term employment agreement terminates</th></tr>
<tr><th>New edition of the Labour Code</th><th>Previous edition of the Labour Code</th></tr>
<tr><td>for the period of specific work the completion of which cannot be defined precisely</td><td rowspan="2">on the day on which the work is completed</td><td>since the day on which this work is completed</td></tr>
<tr><td>with persons sent to perform paid public works</td><td>not specified</td></tr>
<tr><td>for the period of performing duties of a temporarily absent employee</td><td rowspan="3">on the day preceding the day on which this employee is back to work</td><td>since the day preceding the day on which this employee is back to work</td></tr>
<tr><td>with persons employed to fill the position occupied by a young specialist (worker/officer) before being conscripted for military/alternative service</td><td>not specified</td></tr>
<tr><td>with the CEO, deputy CEO or Chief Accounting Officer for the period of procedures specified by law and/or in the articles/memorandum of association</td><td>not specified</td></tr>
</table>

2. The date on which an employee is dismissed for unauthorized absence from work has been defined.

Employers are entitled to fire their employees for unauthorized absence for 2 or more consecutive days *since the first day of such unauthorized absence*.

Annual leave

1. The rules for aggregating leaves have been changed.

It has been clarified that ***an extra leave*** is combined with the main leave of ***24 calendar days*** (unless specified otherwise by law). This rule is also applicable to ***an extra incentive leave***.

Our note:

The collective bargaining agreement and/or employer may establish extra incentive leaves for all employees or separate staff categories. Personal incentive leaves are specified in employment agreements.

Similar to any other extra leaves, an incentive leave will be aggregated with the main leave of 24 calendar days for all employee categories.

If an employee is entitled to several extra leaves, they will be aggregated with one another and combined with the main leave of 24 calendar days.

It is a general rule. However, exclusions are specified, for example, an extra incentive leave for work under contract must be combined with the main leave to which the employee is entitled to.

It can be possible that an employee is entitled to a main leave longer than 24 calendar days and several extra leaves. There may be ***2 aggregation options*** in this case:

- according to the general rule and
- by exception.

If the aggregation using each of the options results in different lengths of the annual leave, the employee ***must be provided with the longer one***.

2. The employer may not notify the employee about the date on which his/her leave begins, where such leave is provided on an individual basis, i.e. not according to the company's annual leave time schedule.

There are individual cases, for example, where an employee is hired after the leave schedule has been made out. The schedule may also be not observed in cases of recall from leave or shift in leave dates, or the employer and employee ***may agree in advance*** that the leave is provided ***from a specific date***. In such cases the employer is not obliged to remind the employee about the beginning of his/her leave.

Previously, it used to be the employer's obligation to notify the employee about the beginning of his/her leave in writing no later than 15 days of the beginning date.

3. **It is allowed to replace a part of the leave by monetary compensation in cases of splitting the leave into parts.**

At the same time, a monetary compensation may replace not only a part of the leave but also an agreed number of days in this part. For that, all of the following ***conditions*** must apply:

- there must be an agreement between the parties on the replacement of a part/days of the leave by monetary compensation;
- the employee must use in kind not less than 21 calendar days of his/her annual leave in the current working year.

At the same time, the provisions which prohibit replacing the leave by monetary compensation will have to be taken into account, as previously.

Employment contract

The new edition of the Labour Code includes Chapter 18-1 which regulates the work of contracted employees. In general, the provisions of this chapter enshrine the requirements specified in already existing and effective normative documents (Decree No. 29 by the President of the Republic of Belarus, Order No. 180 by the President of the Republic of Belarus and Resolution No. 1476 by the Council of Ministers of the Republic of Belarus). Nevertheless, there are new provisions as well.

1. **The same size of pecuniary liability is set for employees working both under contract and under employment agreement.**

Previously, contracted employees were subject to ***full pecuniary liability*** for damages incurred by the employer through the employee's fault—excessive payments (except for calculation errors), wrong accounting and storage of monetary or non-monetary assets, their theft or destruction. No possibilities to limit it were provided for.

The new edition of the Labour Code includes no provisions about the full pecuniary liability of contracted employees. Accordingly, as the new edition of the Labour Code has entered into force, the pecuniary liability imposed on those working under contract will be the same as the liability of those working under employment agreement.

2. **The list of those who are entitled to compensation in cases of premature termination of their contract due to the employer's violation of employment law and/or the contract has been extended.**

As the new edition of the Labour Code has entered into force, now ***all employees*** are entitled to ***a minimum compensation of three average monthly salaries*** in the above-mentioned cases.

3. The procedure for extending contracts has been revised.

Contracts are extended by agreement between the parties for a period up to a maximum of five years but not less than one year. Contracts with employees who have not committed any breach of industrial/technological, performance or employment discipline must be extended for a period up to a maximum period of contract validity (five years). A shorter period of contract extension is subject to the employee's written consent.

Remote work

1. The Code now includes a new term, 'remote work'.

The previous edition of the Labour Code did not provide for such term. Now employers have the opportunity to hire remote workers. So, remote work is work which is done by an employee outside the employer's location (place of business). In this case, the employer and employee interact with one another *using information and communication technologies*. In other words, the communication between the employee and employer is maintained through personal computers, tablet computers, smartphones and other devices.

Our note

Home-based worker must perform his/her job functions either at home or on other specified premises at his/her discretion outside the employer's premises (Article 304(2) of the Labour Code of the Republic of Belarus). In contrast to home-based workers, a remote worker is not linked to any particular place to perform his/her job. He/she may do it wherever it is convenient for him/her to do it. Employers may still hire home-based workers.

Remote work is regulated by general provisions of employment laws (in particular, provisions regulating annual leaves, business trips, disciplinary action etc.) and specific provisions set forth in Chapter 25-1 of the new edition of the Labour Code of the Republic of Belarus.

2. The rules for concluding an employment agreement with a remote worker have been set.

To be hired on a remote basis, the employee must go to the employer *in person*. That is, an employment agreement may not be concluded remotely (by e-mail, Viber etc.) or through a representative acting under a power of attorney. *The employer's location* is the place for concluding an employment agreement (and any additional agreements thereto).

An employment agreement with a remote worker must include general *mandatory conditions specified in the Labour Code of the Republic of Belarus*. Where a contract is concluded, it must include other mandatory requirements specified for this type of employment agreement.

3. The procedure for the exchange of documents with a remote worker has been specified.

The employee and the employer have to exchange documents between each other, i.e. assignments, statements, orders, notices etc. Methods to be used for such exchange are different depending on whether the employee must sign a document or not.

Where documents do not require the employee's signature, the employer and employee may exchange them as files containing document texts in an electronic format (without a digital signature).

If the employee *must get familiarized with a document and affix his/her signature to it*, such document must be sent to him/her:

- ✓ as a digitally signed electronic document or
- ✓ as a file containing the text of this document in an electronic format (without a digital signature).

At the same time, the employer must send a hard copy of the document to the employee within two business days by registered mail with an advice of delivery (return receipt).

Please note:

Any additional agreement to the employment agreement *regarding changes to its conditions as well as* ***an order of dismissal*** *may only be dispatched to the employee in two ways:*

- ✓ *directly to the employee, i.e. when he/she appears in person;*
- ✓ *by exchange of digitally signed electronic documents.*

At the same time, the employer must send a hard copy of the document to the employee by registered mail with an advice of delivery (return receipt). A hard copy of an additional

agreement must be sent within two business days of its conclusion, and a dismissal order must be sent on the day on which the employment agreement terminates.

Employees' pecuniary liability

The conditions for holding employees pecuniarily liable have been changed.

1. The concept of actual damages has been defined.

Actual damages are understood as ***the loss or degradation/devaluation of assets*** which entail the employer incurring:

- ✓ ***costs*** to restore or purchase assets or other valuables;
- ✓ ***excessive payments*** (except for fines imposed on the employer).

Previously, questions often arose in practice as to how to determine the amount of monetary damages to be recovered from the employee liable for them. It was caused by the absence of the term and definition of actual damages in employment laws.

2. The employer has no right to deduct fines imposed on the organization from employee salaries.

Fines imposed on the employer will not *be considered as* ***excessive payments*** *and therefore* ***will not*** *be included in* ***actual damages.*** *Hence, employees will not have to reimburse them. As the provision about fines imposed on the employer contains no reservations, we believe they will also include fines imposed on the organization* ***through an employee's fault***.

Currently, fines imposed on an organization through an employee's fault are considered to be excessive payments and consequently are recognized as damages caused during the performance of job duties. As a rule, if a supervisory authority imposes a fine on an organization for a specific violation, the employer obliges the employee liable for the violation to reimburse such fine.

3. It is enshrined that damages to the employer in the amount of up to three employee's average monthly salaries may be deducted from his/her salary for reimbursement.

As for other cases of damage reimbursement, they will be, as previously, subject to court decision. That is, if the amount of damages caused by the employee to the employer

exceeds three employee's average monthly salaries, such damages will have to be taken to court for their recovery.

The new edition of the Labour Code clearly specifies that each time a damage reimbursement amount (or the total sum of all amounts, where several amounts are recovered under enforcement documents) is deducted from a salary that is due to the employee, it must ***not exceed 50 per cent of the salary*** (unless a possibility of larger deductions is provided by law).