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NEW LABOUR CODE.
WHAT YOU SHOULD KNOW?

After a long discussion, on the 6 June 2017, the Parliament of the Republic of Lithuania approved draft amendments of Labour Code. It is expected that the new Labour Code will enter into force on 1 July 2017.

The purpose of the new Labour Code is to update labour laws and principles as well as apply rules of labour law to changing market needs and create a more attractive investment environment.

How should we prepare for changes after the new Labour Code enters into force? We recommend to take the following actions:

1) Check what is the average number of employees working in your company (it will depend on what rules will be applicable);

2) Collect all current regulations and documents governing employment relations in your company at this moment;

3) Check what employment relations you have with your employees (we offer our assistance in considering any other alternatives set in the new Labour Code that could better correspond to current model of employment relations);

4) Review your standard employment contract (we will update current employment contract by taking into account the changed regulation and will help you to prepare new standard contracts for special cases, if there is a need to conclude relations as a new type of contract such as contract for project work, contract for job-sharing employment etc., also we will assist you in drafting the procedure of paid remuneration);

5) Review other agreements with employees such as non-competition and confidential agreements, contracts of full material liability, if they have been concluded (we will help to prepare a package of standard documents / update your current documents);

6) Adjust the current labour procedures, policies and rules as well as confirm additional necessary documents and initiate processes depending on the number of employees (e.g. election of labour council).

To save your precious time, below we list a summary of the most important information regarding new amendments of the Labour Code. Primus lawyers will kindly provide you with all necessary information, if you have any additional questions or if you need evaluation on specific case.

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TYPES OF EMPLOYMENT CONTRACTS

New types of employment contracts. One of the main changes of Labour Code is the new opportunity of forming employment relations. The new Labour Code implements types of employment contracts that have not existed before:

1. **Temporary employment contract** – the agreement is concluded between the temporary employee and employer (company of temporary employment), according to which the temporary employee undertakes to carry out employment activities for a certain period of time for the benefit and under the authority of a person (user of temporary employment), who is referred by the company of temporary employment, whereas the company of temporary employment commits to pay remuneration. Up to now temporary employment relations were regulated by the special law.

2. **Apprenticeship employment contract** – employee is employed for the purpose of acquiring qualifications or competences necessary for the position of a certain profession by the form of apprenticeship training program.

3. **Non-fixed employment contract** – without predetermined time allocated for work duties, however employee undertakes to carry out his duties as soon as employer requests for this, whereas employer undertakes to pay to the employee for the work done.

4. **Project work contract** – fixed-term employment contract, by which employee undertakes to carry out his work duty for the purpose of specific project's result and work on fixed working hours at his workplace or outside of it.

5. **Job-sharing employment contract** – 2 employees can agree with the employer on sharing 1 job position.

6. **Employment contract with several employers** – it allows to conclude an employment contract with 2 or more employers, taking into account that the duties carried out by the employee are the same.

Fixed-term contracts. More opportunities have occurred to agree with employee concerning organization of work which is more suitable for employer, since from now on employer has a possibility to conclude fixed-term contracts for permanent work (up to 20% of all employment contracts). Maximum term for fixed-term employment contract is 2 years for the same type of work and 5 years for the different type of work.

CONDITIONS OF EMPLOYMENT CONTRACTS AND ORGANIZATION OF WORK

The right to deviate from the provisions of the new Labour Code. A more liberal Labour Code will provide employer and employee with a right to agree and deviate from rules set out in the Labour Code (with certain exceptions, e.g. regarding minimum rest time and maximum working time), if employee's salary exceeds the size of 2 average salaries.

Working time and overtime. Unlike the old Labour Code, where maximum duration of working time (including overtime) per week could not exceed 48 hours, the new Labour Code implements a possibility for parties to agree on 60 working hours per week, taking into account the regular working hours, overtime and extra work (employee may agree in writing to work up to 12 hours overtime per week). Moreover, there has been set higher total number of overtime per year – no more than 180 hours, meaning 60 hours more compared to the old Labour Code. Also, parties may agree on one of the alternatives concerning the remuneration for overtime: by way of monetary salary or by providing additional holidays.

Partial work. The new Labour Code provides a new definition – partial work, which is used when employer cannot provide work for employees and there are assumptions of redundancy of group of employees' due to the important economic reasons, objectively present in the given territory or in the sector of economic activity and are recognized as such by the government. Working hours in the partial work are shorter by up to half of employee's normal working hours. Salary, which is lower due to the shortened working hours, is compensated by the Social Security Authority (SODRA), which pays the partial work payment.

Holidays. According to the new Labour Code, the annual holidays shall be accumulated taking into account working days, but not calendar days: 20 working days (if there is 5 working days per week) or not less than 24 working days (if there is 6 working days per week).

Idle time. Employer can declare the idle time for the employee, when the number of working days per week or the number of working hours per day is reduced. The rules concerning payment of remuneration during idle time have been changed. Remuneration for idle time depends on period of idle time and also if employee is present at work during the idle time. Remuneration for idle time must be paid despite employee's refusal to work in different position offered by the employer.

Employment contract with the manager of legal entity. Relations with the manager of the company are regulated in the separate section of the new Labour Code, also special rules apply.

THE DUTIES OF THE EMPLOYER DEPENDING ON THE NUMBER OF EMPLOYEES

After the new Labour Code comes into force, the employer's duties and requirements for formalization of relations will basically depend on the average number of employees at the workplace, meaning that the biggest majority of duties will be assigned to those employers, who employ 50 or more employees, and some less duties will be assigned, if the number of employees reaches at least 20, whereas for those who employ up to 10 employees some of the duties set out by the new Labour Code will not apply.

Disregarding the number of employees, the new Labour Code sets out the following duties: making sure employees are aware of the procedures and rules concerning usage of information and communication technologies, personnel monitoring and workplace control, taking measures in helping employee to carry out his family responsibilities, informing the work council on a regular basis but not less frequently than once per calendar year, informing the Territorial Labour Exchange in case dismissal of group of employees occurs, informing work councils and consulting with them regarding reorganization, transfer of business or part of business, etc.

20 and more employees. When the average number of employees is at least 20, employer will be required to:

1) Initiate the formation of work council within 6 months of entry into force of the new Labour Code;

2) Provide information to the trustee of employees regarding the remote work, fixed-term employment contracts, temporary work at the company; change working time upon the request of employee in case of partial working time; confirm selection criteria for dismissing employees (without any fault on the part of employee) and establish selection commission; announce schedules of work shifts no later than 5 working days in advance; apply rules concerning order of providing annual holidays and reimbursement by employer of educational leaves; provide annual holidays, if employment relations continue less than 1 year (compensation for the unused annual holidays must be paid in any event);

3) Provide work council and trade union with the updated information regarding average salary of employees (except managers) according to profession groups and sex as well as other information, which must be declared mandatory as per law, collective agreements or the agreements between employer and work council;

4) Confirm remuneration payment system and familiarize employees with it;

5) Carry out other duties set out in the Labour Code.

50 or more employees. Such employer will have the same duties as the one, who employs at least 20 employees. In addition, Labour Code provides, that employer must adopt and announce implementation and enforcement monitoring measures concerning policy on equal opportunities, as well as the policy on employees' personal data protection and its implementation measures.

Less than 10 employees. The Labour Code distinguishes the small companies, which employ less than 10 employees. Some of the mandatory procedures applicable for lager companies will not apply for small companies, e.g. the employer, who employs less than 10 employees is not required to confirm the selection criteria and establish the selection commission when dismissing employees (without fault on the part of the employee); or to change working time upon request of employee in case of partial working time etc. The rights and duties to represent employees may be carried out by the trustee elected by employees (instead of the work council).

TERMINATION OF EMPLOYMENT CONTRACT

Disciplinary sanctions. Unlike the old Labour Code, which set out disciplinary sanctions such as: notice, reprimand and dismissal, the new Labour Code provides only one disciplinary sanction – dismissal. Thus, the employment contract may be terminated immediately, if the serious violation of labour discipline is committed or if the employee commits the same violation of his job duties for the second time within the last 12 months.

Termination of the Employment Contract by the initiative of the employer. A more simplified termination of the Employment Contract by the initiative of the employer is established. The dismissal of employee shall be allowed not only for the serious reasons, but also when employee's functions of work becomes an excess due to changes of organization of work or because of other reasons related with the activity of employer. The new Labour Code also sets out new and urgent grounds for termination of the Employment Contract, when the employer notifies about the termination of the Employment Contract 3 working days in advance and pays to employee compensation not lower than the size of 6 average monthly salaries (not applicable for contracts with pregnant women or for those, who are on maternity or pregnancy leave, as well as for those, who are on parental leave).

Limitations. The Employment Contract with pregnant women or from the time employee gives birth until the baby is 4 months old, may be terminated by the following procedure: by agreement of parties or by initiative of employee (including the trial period), without the will of parties of Employment Contract and if the fixed-term Employment Contract comes to the end. The same as it was before, contracts with employees, who take care of a child under 3 years of age, shall not be terminated without a fault of the employee.

The periods of notice regarding the termination of the Employment Contract. Time periods of some notices on termination of the Employment Contract are shortened in the new Labour Code. When the Employment Contract is terminated by the initiative of employer without any fault on the part of the employee, employee shall be notified 1 month in advance, whereas if the employment relations last less than 1 year – employee shall be notified 2 weeks in advance. The notification periods are doubled (when employee takes care of a child or adopted child under the age of 14, as well as if less than 5 years left until retirement age) or even tripled (for disabled employees and if less than 2 years left until retirement age) for socially most vulnerable groups specifically described in the new Labour Code.

Severance pay. The employer's burden is facilitated by significantly reducing size of the severance payments to employees. When an employee is being dismissed by the initiative of employer without any fault on the part of the employee, also by the initiative of the employee because of important reasons, employer should pay a severance pay in the amount equal to 2 average salaries, whereas if the employment relations continue less than 1 year – a severance pay would be equal to half of 1 average salary. Thus, the amount of severance pay in the new Labour Code is not counted by the length of service by employee, however, there is additional compensation mechanism provided – the pay for long-term work, the size of which depends on the length of uninterrupted service by employee.

OTHER AGREEMENTS WITH EMPLOYEES

Non-compete and confidentiality agreements. Labour Code precisely defines agreements of non-compete, according to which the employee shall not carry out commercial or production activities related to his work functions, as well as confidentiality agreements, which forbid disclosing any information during the working time or after it if such information is recognized as confidential.

The maximum duration of non-compete term - 2 years after employment relations have been terminated. Compensation paid during the non-compete period must constitute not less than 40 percent of employee's average salary. It is possible to agree on penalties applicable for employee, however it shall not exceed the size of 3 monthly compensations for non-compete. Besides, agreements of non-compete shall be allowed only to those employees, who have special knowledge and skills, that might be applied in the company competing with employer or if the harm is done to the employer when the employee carries out the sole proprietorship.

Full material liability agreement. There is no opportunity in the new Labour Code to conclude a contract of full material liability any more, but the limits of employee's liability in case of inflicted damage are expanded. The liability of employee will be unlimited only in special cases defined by the Labour Code such as: damage done intentionally; damage caused by activities having elements of a crime; damage caused by drunk or intoxicated employee; damage caused by a breach of confidentiality agreement or agreement of non-compete; inflicted non-pecuniary damage; if it is provided in the collective agreement.

LABOUR DISPUTES

Arbitration. The new Labour Code provides for the possibility to resolve labour disputes concerning the matters of law in the commercial arbitration, provided, however, that both parties agree on such way of dispute resolution after the dispute arises.

Mediator. There are rules established, when both parties may refer the dispute to the mediator.

Mandatory pre-litigation procedure for labour disputes. The fundamental change in the process of resolution of labour disputes is that Labour Disputes Commission becomes mandatory pre-litigation institution for labour disputes concerning the matters of law and at the same time it's competence is being expanded. The Labour Disputes Commission, contrary to what was before, will also resolve labour disputes, which concern the illegal suspension or dismissal (until now these disputes could have been resolved only by courts).

Disputes concerning the illegal suspension or dismissal. The concept of decision concerning the illegal suspension or dismissal has been changed. When it is decided that employee was dismissed from work illegally, institution hearing the labour dispute awards dismissed employee the average salary for the period of involuntary idle time, but for no longer than a period of 1 year, as well as suffered pecuniary and non-pecuniary damage. The provision that employer must compensate only the difference of salary if employee worked a less-paid job after the illegal dismissal, has been abolished. It is important to note, that in the disputes concerning the illegal suspension – 1 year limitation period for awarding employee the average salary for involuntary idle time does not exist.

Primus lawyers will be happy to assist you in any matters related to the amendments of new Labour Code.

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