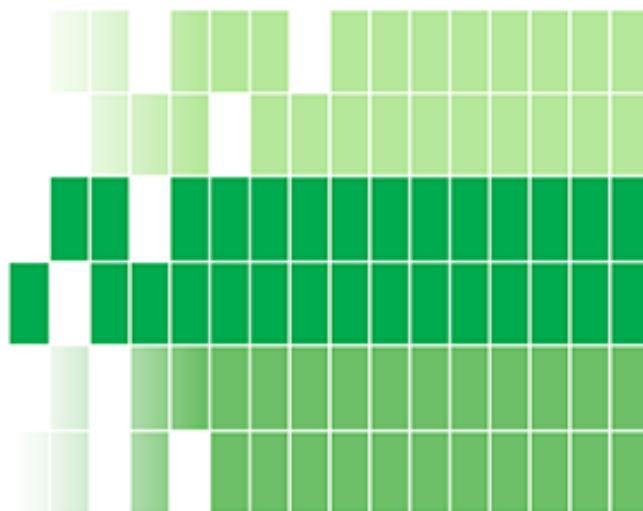




Legal News

KPMG in Bulgaria



Amendments to the Labor Code and extension of the 60/40 mechanism

January 2021

Extension of the 60/40 mechanism and amendments to the conditions for its application

Amendments to the Labor Code

Other amendment

How can we help?

The Bulgarian parliament adopted amendments to the Labor Code which have a major impact on employers and the relations with their employees. Additionally, as part of the emergency economic measures related to COVID-19 the government resolved on extending the period of receipt of funding under the 60/40 mechanism.

Below is a summary of some of the more important aspects of the new amendments.

Extension of the 60/40 mechanism and amendments to the conditions for its application

The Council of Ministers adopted amendments to Decree No 151 dated 3 July 2020 on the conditions and procedure for payment of funds to employers for the purpose of maintaining employment. The amendments were published in the State Gazette, Issue No 2 dated 8 January 2021.

The amendments became effective as of 1 January 2021. However, it is explicitly prescribed that all applications for receipt of funding for the period from 1 October until 31 December 2020 submitted before 15 January 2021, will be reviewed and funded under the conditions prior to the amendments.

The funding of employers under the 60/40 mechanism will continue during the period from 1 January until 31 March 2021, but under amended terms. The amount of the funds received under the mechanism as well as the amount of the remuneration which employers are obligated to pay to the

employees for whom funding is received, will be determined on the basis of the insurance income of the employees for October 2020.

The scope of employees for whom employers may apply for receipt of funding is extended. As per the amendments this scope includes all employees with regard to whom measures have been implemented (suspension of work or unilateral reduction of the working hours) during the period from 13 March until 31 December 2020. Prior to the amendments said measures had to be implemented during the period from 13 March until 30 June 2020 in order for the respective employer to be eligible to apply.

Additionally, the amendments to the decree affect the requirement for establishing a decrease in revenue the specifics of which are dependent on the date of incorporation of the employer – before or after 1 December 2019.

As to date the Employment Agency is yet to issue new templates of application documents and instructions for applying for funding for the period from 1 January 2021.



Amendments to the Labor Code

The Law on Amendments of the Labor Code was promulgated in the State Gazette, issue No 107 dated 18 December 2020, and the changes come into force as of 22 December 2020, with the exception of some provisions listed below.

The law provides for a number of amendments aimed at improving labor legislation with regard to labor market trends, globalization and digitalization, socio-economic conditions in the country and international acts and standards to better guarantee the rights and interests of the parties to the employment relationship.

Social dialogue and collective bargaining

The procedure for extending the application of the concluded branch or industry collective labor agreements (“CLA”) is being improved. A procedure for registering the CLA in the labor inspection as per the registered seat and address of the employer is being regulated, while the branch and industry CLA are envisaged to be registered in a central register of the Executive Agency “General Labor Inspectorate”.

It is possible through the mechanism of collective bargaining at the branch and industry level to negotiate a longer duration of overtime work of an employee, but not more than 300 hours within one calendar year. The restrictions established in the Labor Code for overtime work within a month, a week and two consecutive working days still apply. In addition, a branch or industry collective agreement may set a period of up to 12 months for the summarized calculation of working hours. The last two amendments enter into force as from 1 January 2021.

Reference period for summarized calculation of the working hours

The period for which summarized calculation of the working hours could be established has been amended, eliminating the possibility for summarized calculation of the working hours to be established on a weekly basis. Upon the amendments the summarized calculation of the working hours could be established only on monthly basis for a period from 1 up to 4 months. The provision enters into force as from 1 January 2021

Introduction of the principle of equal pay for equal work

The amendments establish the rule that for the period of posting in the framework of the provision of services the employee is entitled to remuneration not lower than the established amount of the remuneration in the host country for the same or similar work. In practice this means that when an employee is posted to the territory of the Republic of Bulgaria, all mandatory elements that are part of the gross remuneration according to the Bulgarian legislation are included when calculating the remuneration. This ensures compliance with the principle of equal pay for equal work performed in the same country.

Free food for night work

Prior to the amendments the employers were obliged to provide the employees with warm food during night work. Now the word “warm” is replaced by “free”. The aim is to ensure greater flexibility in providing free food, incl. vouchers or money.

Length of service for acquiring the right to use annual paid leave

The minimum required length of service for acquiring the right to use paid annual leave is reduced from 8 to 4 months for employees who commence work for the first time.

Unpaid leave in 2021

The Transitional and Final Provisions of the State Social Security Budget Act for 2021 have supplemented the Act on the Measures and Actions during the State of Emergency declared by a resolution of the National Assembly on 13 March 2020 whereas the unpaid leave under Art. 160, Para. 1 of the Labor Code up-to 60 business days and used in 2021 is recognized as length of service.

Entitlement to retirement benefits

The employees shall be entitled to the compensation under Art. 222, Para. 3 of the Labour Code in the maximum amount of 6 gross salaries if they have acquired 10 years length of service with the same employer or in the same group of enterprises during the past 20 years. The amendment explicitly stipulates that the 10 years of service may be acquired during one or more separate consecutive employment relationships with the same employer or in the same group of enterprises, with or without an interval between them, but within the last 20 years.

Deadline for imposing disciplinary sanctions

The terms for imposing disciplinary sanctions do not run from the submission of the request for receiving the opinion of the labour expert

medical commission and/or the preliminary permission for dismissal from the labour inspection in the cases under Art. 333, Para. 1 of the LC.

Legal definition of systemic violation

A legal definition of the term “systemic violations of labour discipline” is introduced in the Labour Code. Three or more violations of labour discipline, committed for a period of one year, will be considered as such provided that (i) for at least one of them no disciplinary sanction has been imposed (ii) the deadlines for sanctioning the violations have not expired and (iii) for those for which sanctions have been imposed – said sanctions have not been expunged. The legal definition is in consistency with the legal doctrine and the constant case law on this issue.

Control and sanctions regarding the compliance with the labor legislation

The minimum and maximum amount of the penalty for committing a repeated violation related to non-fulfilment of the obligations for ensuring healthy and safe working conditions is reduced and the sanction is envisaged to be from BGN 15,000 to 20,000 and a fine from BGN 5,000 up to BGN 10,000, respectively.

In case of repeated violation related to breaches of the provisions of the labor legislation outside the rules for ensuring healthy and safe working conditions, as well as for violations related to undeclared work (work without a concluded written employment contract or without registering the employment contract within the statutory deadline), the penalty is in the amount from BGN 15,000 to 20,000, for the liable official - a fine in the amount of BGN 5,000 to 10,000, respectively.

Sanctions have been imposed for non-compliance with any coercive administrative measure imposed, not only for incompliance with a prescription imposed as was prior to the amendments.

A qualified provision is established for the cases of non-assistance to a labour controlling authority while performing its functions for monitoring the compliance with the provisions of labour law.



Other amendment

The adopted amendments to the Labor Code establish the will of the parties, the place of establishment of the employer and the place of work as criteria for determining the applicability of the Bulgarian labor legislation to the labor relations with an international element. The citizenship of the employee has lapsed as a criterion for determining the applicability of the Bulgarian labor legislation.

Upon posting or sending a temporary employee to a business trip under Art. 121 or Art. 121a of the Labor Code, the user undertaking must notify the temporary work agency for the posting of the employee not later than 5 business days before the posting/business trip. This will ensure that the temporary work agency can meet all the requirements on posting/business trip under the national and European law.

As of 1 January 2021 the amount of the additional remuneration for night work shall be increased. Accordingly, for each hour of night work or part of the hour the employer shall pay an additional remuneration in the amount of not less than 0.15 per cent of the minimum wage, established for the country, but not less than BGN 1 (one lev).



How can we help?

The KPMG team remains at your disposal if you have any questions or need assistance in interpreting and applying the amendments to the Labour Code and the 60/40 mechanism.



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