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## Newsflash

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## Law 4635/2019 (Official Government Gazette A' 167/30.10.2019) "I Invest in Greece and other Provisions" - Important Amendments to Employment and Social Security Legislation

Law 4635/2019 (Official Government Gazette A' 167/30.10.2019) includes, among its current provisions, important employment and social security provisions, which are summarized as follows.

### Collective Employment Relations

- National and local professional and sectoral collective labour agreements may provide for special terms or exempt employees of certain businesses (for instance, social economy businesses, businesses facing serious financial problems and having been placed in bankruptcy/pre-bankruptcy or other equivalent status) from the application of certain of their terms. A decision of the Ministry of Employment and Social Affairs following an opinion of the Highest Work Council will determine the details and criteria for the implementation of the above provisions, including measures for the protection of the existing jobs in businesses taking advantage of these provisions.
- By exception to the general rules for the prioritization of collective agreements, the businesses collective labour agreement supersedes the sectoral one in case of businesses facing serious financial problems and having been placed in bankruptcy/pre-bankruptcy or other equivalent status provided that the sectoral labour agreement does not provide for deviations as to the scope of its application. The details for the implementation of the provision in question will be provided by virtue of a decision of the Ministry of Employment following the opinion of the Highest Work Council, which will determine the businesses to be exempted as well as the measures for the protection of the existing jobs in such businesses.
- As far the procedure for the extension and proclamation of a sectoral collective agreement as obligatory is concerned, the new framework provides that the extension and proclamation as obligatory of a collective labour agreement or an arbitrary decision is conditional upon the application of either party to the Minister and justification of the implications of the extension on the competitiveness and employment and notification of this justification to the Highest Work Council. After that, the Highest Work Council addresses the Minister of Employment with a justified opinion taking into account the application, the justified certification of the Ministry of Employment that the collective agreement in question already binds employers employing more than 50% of the employees of the sector or profession as well as the outcome of the parties' negotiations before the Highest Work Council on the necessity of extension and its implications on the competitiveness and employment. The extension applies as of the date of publication of the decision of the Minister of Employment with the Official Government Gazette and it is valid for 3 months following the expiry of the collective regulation.
- Businesses facing serious financial problems as above, can be exempted, on the basis of an opinion of the Highest Work Council, from the application of a sectoral collective agreement which has been extended and proclaimed as generally obligatory. The exemption applies to certain terms or the entire obligatory collective agreement or arbitrary decision, irrespective of whether the collective agreement/arbitrary decision provides for deviations from its applicability to certain employees. Exemptions from the above provision are determined by virtue of a decision of the Minister of Employment on the basis of the opinion of the Highest Work Council, which will determine measures for the protection of the existing jobs in such businesses.

- All employees' trade unions (including persons' unions) as well as employers' union, and precisely the ones that conclude collective labour agreements or appoint representatives in the management of institutions supervised by the Ministry of Employment as well as in its bodies, must be registered with the corresponding registries electronically maintained in the "ERGANI" Information System. More precisely, a General Registry of Employers' Unions and a General Registry of Employees' Trade Unions are established, in which all employers' and employees' unions respectively must be obligatorily registered with and in which certain data is maintained.

General meetings and other administration corporate bodies of the employers' and employees' unions decisions (including the decisions on strikes) can now be taken by electronic vote and confidentiality under terms safeguarding their transparency and confidentiality, in accordance to the terms of their Articles of Association. The special terms for the application of the provision in question are regulated by a decision of the Minister of Employment.

- The rules for the recourse to arbitration are amended, since under the new rules the cases where unilateral recourse to arbitration is permitted are explicitly provided (for instance, in case the collective dispute relates to the conclusion of a collective labour agreement and the negotiations fail definitively and the dispute's settlement is imposed on general social or public interest grounds connected to the operation of Greek economy). The special terms and rules of unilateral recourse to arbitration are specified in the new rules.
- The General National Collective Labour Agreement dated 28 March 2018 is extended until the conclusion of a new General National Collective Labour Agreement and not later than 31 December 2019.

### Individual Employment Relations

- Contrary to the previous legal framework which referred to "significant" delay, the new rules explicitly provide that delay of payment of accrued salaries for a period exceeding two months irrespective of the reason of delay qualifies as unilateral detrimental modification of employment terms.
- Measures for the protection of part time employees are introduced. More precisely:
  - a) The conditions of additional work in case of part time employment (exceptional need etc.) continue to apply, but it is also provided that the part time employee is entitled to the corresponding remuneration increased by 12% for each additional hour of work. In this regard, the additional work in case of part time employment (which can conceal full time employment) becomes more expensive as a disincentive for the infringing employers.
  - b) The additional work can be up to the completion of the full daily working hours of a comparable employee.

- Freelance services agreements of article 39 par. 9 of L. 4387/2016 (freelancers with up to two services' recipients) as well as personnel paid by the so-called "ergosimo" (εργόσημο) must be electronically registered with the "ERGANI" Information System of the Ministry of Employment. The details for the implementation of the provision in question are determined by virtue of a decision of the Minister of Employment.

- Most regulations for the non announced employment are maintained in force, but in addition it is now provided that at least one audit of the infringing employer must take place within 12 months from the date of assessment of the infringement.

Further, under the new provisions:

- a) the legal presumption of three months employment applying under the previous framework in case of non announced employment is abolished and
  - b) the penalty for non announced employment can be reduced to EUR 2 000 exclusively (in case of hiring of the non-announced employee within 10 days from the inspection date by virtue of a full time employment agreement with a duration of at least 12 months).
  - c) a Registry of Companies found to breach the rules in question is established with the "ERGANI" Information System with which the infringements related to non announced employment will be registered (by the employment and social security authorities). The businesses and employers found to infringe the related provisions will be excluded from favourable social security regulations.
- In addition to the other means of collection, the Social Security Contributions Collection Centre can suspend the use of electronic services for the filing of the Analytical Periodic Returns for employers who insure their personnel by means of Analytical Periodic Returns but fail to pay the corresponding social security contributions. In such a case:
    - a) the Social Security Contributions Collection Centre notifies the competent social security office to carry out an inspection,
    - b) the transactions of the employer (filing of Analytical Periodic Returns) are carried out before the competent social security office by digital-magnetic means, whereas the registration of the Analytical Periodic Return is conditional upon the prior payment of the social security contributions due (and under certain conditions, of a smaller amount of social security contributions).
  - Finally, aiming at the waiver of employment uncertainty related to the exit of the United Kingdom from the European Union, the new framework provides that assignments of employees to Greece from businesses registered in the United Kingdom which have already taken place or will take place by 31.12.2020, will be regulated by the provisions of the Greek applicable legislation (Presidential Decrees 219/2000 and 101/2016).

## General Comment

The law's employment and social security regulations, aiming for the widest possible balance between employers and employees, are anticipated to act partially in favour of the former and partially in favour of the latter. We will be able to reach safer conclusions on the impact of the new regulations on the social partners after the issuance of the Ministerial Decisions provided in the law which will clarify several issues.

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This Newsflash aims to provide the reader with general information on the above mentioned matters. No action should be taken without first obtaining professional advice specially relating to the factual circumstances of each case.

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