

საიას შენიშვნები შრომის კოდექსის პროექტთან
დაკავშირებით

GYLA'S OPINION REGARDING THE DRAFT LABOR LAW

GYLA presented its comments and opinions to the working group, established in the Parliament of Georgia, elaborating the draft Labour Code. GYLA, on the one hand, welcomes relevant legislative amendments to ensure the rights and standards guaranteed by the European directives and international agreements signed by Georgia, and on the other hand, we hope that the legislative package, as well as the projected legislative process for its further improvement, will guarantee the full harmonization of the objectives laid down in conventions and European directives to the national legislation.

Although the Draft Code significantly improves the legal situation of the employed, GYLA has submitted the comments regarding the draft Code. The first part of the comments is of a principled character and to reach an agreement thereupon is important prior to continuation of the legislative process, the second part concerns the issues that we think ought to be included in the draft bill and the third part of the comments, we believe, should be reviewed while further elaborating the draft.

We hereby express our readiness to take an active part in the development of the

draft Code and submit our views to Parliament.

Opinions regarding the draft Labour Code:

- The Draft Code stipulates that the Labour Inspector shall have the authority to establish a fact of discrimination in labour relations and draw up a relevant violation protocol thereupon. It is noteworthy that under the current legislation, the Public Defender and the Court shall have the right to establish discrimination in labour relations. We believe that assigning the power to three bodies on the same issue poses a significant risk of delivering different decisions on the same case, providing a non-uniform interpretation of legal norms and therefore establishing a different practice. Of note that an action violating a person's rights rather than public order should be handled based on a person's statement and not on the initiative of an administrative body. Noteworthy as well that if an alleged case of discrimination is identified in the body supervising the Inspectorate, the Inspector may encounter a conflict of interest, while in politically-motivated cases, there is a danger that executive government may wish to exert influence on the inspection under its subordination in the decision-making process.

- The provision of the draft Code which provides for the compensation of the unpaid salaries not fully but in a limited form is contrary to the Constitution of Georgia and the case-law of the Constitutional Court of Georgia and must be removed from the draft.

- The Draft Code states that employees of critically important services shall have a limited right to strike, and the list of such services shall be determined by a decree of the Minister. Providing the list of critically important services in a by-law (Minister's decree) is inadmissible and the list must be included in the Labour Code, as required by Article 26, paragraph 2 of the Constitution of Georgia.

- The Draft Code states that working for more than 48 hours in services that perform risk-related economic activities shall be forbidden. The provision shall specify whether this applies where both workplaces fall within the sector of risk-related economic activities, or the restriction only applies to cases where only one of the jobs falls within the sector.

- The Draft Code stipulates that the employment contract for more than one month shall be concluded in writing. In the event of a breach of this provision, unless both

parties confirm the validity of the agreement, the contract shall not be deemed valid and the employment relationship non-existent. Accordingly, the wording of Article 12 (2) of the draft law should be improved so that any employment agreement concluded orally for more than one month should not be deemed null and void.

- The Code should provide a comprehensive list of grounds for the termination of employment and should not allow for an employer to abuse the Code. However, it should be noted that the statutory content of Article 47 (1) (n) (termination of employment due to other objective circumstances) that may be specified and formulated in the Labour Code in such a way to serve the legitimate interests of the employer, should be provided in details and reflected in the above article.
- The draft law does not provide all forms of labour discrimination (e.g. intersectional (cross) discrimination, references to discrimination and victimization). Therefore, the legislation should include these forms of labour discrimination.
- In the definition of reasonable accommodation, the bill does not specify the "appropriate measures" that shall be taken to ensure equal treatment of persons with disabilities, which makes the measures somewhat vague. When assessing the proportionality of the burden, not only should state support programs be considered, but first and foremost the financial and intangible capabilities of a particular institution (public / private) so that the private sector, not only the state, can undertake the burden of ensuring reasonable accommodation.
- The Draft Code stipulates that unless there is an exception provided for in the law, the employment agreement shall be concluded for an indefinite period of time, which precludes the contract from being concluded for a fixed period, as it is envisaged by the current Code. We believe that imposing the above regulation may create a real risk that the employer will resort to legal remedies to circumvent these regulations, which, on the one hand, will aggravate the employee's condition and, on the other, lead to an increase the number of applications to the court.
- The Draft Code states that the internship period shall not exceed three months. The regulation, on the one hand, contradicts the current legislation, and on the other hand, is irrelevant to place the internship period under a single general standard without considering the specifics of a profession. We consider that regulating internships by working hours per week rather than by the total duration can be more

appropriate.

- The Draft Code provides that when the Government additionally announces a public holiday based on public needs, the employer may require the employee to work on another non-working day. We believe that it is inadmissible to deteriorate employees' conditions and put them in an adequate position compared with public officials.

- Temporary incapability should be added to the provision of the Code draft that stipulates the obligation to compensate in case of termination of employment, as the legislation already envisages such remuneration and it is important that the guarantee is provided by the organic law.

- According to the Draft Code, the three-year validity limitation on employment is reduced from three years to one. It is unclear why the terms of general contractual requirements are reduced to a specific one-year period, especially when it comes to payroll arrears.

Opinions regarding the Draft Law on Labour Inspection:

- According to the draft law, the Labour Inspector shall be a civil servant and his / her appointment, status, social security and guarantees, as well as the remuneration issues shall be determined by the Law of Georgia "On Public Service" and the Law of Georgia "On Remuneration in Public Service." The current provision in the draft law on granting the status of the public official to the labour inspector is not in line with the legislation in force and contradicts the regulation of legal issues related to labour activities in LEPLs.

- The draft law states that the Inspector may extend the time for reviewing and decision-making for a reasonable time necessary to handle a complaint. We believe that the current draft law should provide a specific timeframe for the decision-making process based on the review and resolution / inspection of a complaint. This will ensure to establish a uniform standard for handling complaints and inspections and eliminate different approaches in practice.

- According to the draft law, the Labour Inspectorate shall have discretionary power to determine when and which administrative sanctions and / or penalty amount should be imposed under the Organic Law of Georgia on Labour Code and Organic Law of

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Georgia on Labour Safety. We believe that imposing administrative sanctions on violations of labour standards requires further regulation; in particular, it is necessary to establish clear boundaries for the application of each sanction and to consider all circumstances when imposing an administrative penalty.

- Under the existing legislation, the Labour Inspector is not a public official and the requirements of the Law of Georgia "On Conflict of Interest and Corruption in Public Service" shall not apply thereto. Accordingly, it is important the proposed bill to regulate conflict of interest issues of the Labour Inspectorate. In particular, the draft bill should specify what is meant by "direct" or "indirect" interest and, in the event of a conflict of interest, how the labour inspector should report thereupon. In addition, the bill should clearly define what is meant under "any kind of benefit".

- The deadline for submitting annual reports by the Labour Inspector is unreasonably long and does not meet the standard for presenting annual reports by bodies accountable to Georgia. Furthermore, the comprehensive analysis of complaints or inspections and identification of key trends should be added to the list of the required information to be attached to annual reports, while the causes and the analysis thereof should be added to the statistics of accidents and occupational diseases.