CONCERN DIALOG
Law firm

AWARENESS

About the Law "On Amendments and Additions to the Labor Code of the Republic of Armenia"

+374 60 27 88 88 m2a@dialog.am www.dialog.am
1 Charents str., office 207, Yerevan 0025, Armenia

Two months after its official publication, on 31 July, 2023, except for a few articles, the Law No. ՀՕ-160-Ն "On Amendments and Additions to the Labor Code of the Republic of Armenia" (hereinafter also referred to as the Law) entered into force. Our observations on the most important changes to the Law for employers will be presented below.

Changes: as of 31.07.2023:

1. *In which cases are labor relations considered to have been originated in the Republic of Armenia?*

In terms of determining the applicable legislation for labor relations, the Law provides that the labor relations are considered to have originated in RA, if the labor contract was signed, or the individual legal act on hiring was adopted in the Republic of Armenia.

In contrast to the current regulation, the Law has specified that employment contracts can also be concluded by mail or by exchanging documents through a mean that provides electronic communication, which enables the parties to establish employment relations regardless of their location. Moreover, the RA legislation will be applied to the labor relations between the parties, in other words, the labor relations will be considered to have originated in the Republic of Armenia, if:

1) the location of the employer who is a resident legal entity (the location of its permanent operating body) is the Republic of Armenia;

2) the employer is the Republic of Armenia or the community or the state or local self-government body;

3) the place of state registration of the institution is the Republic of Armenia;

4) the location address (postal address) of separated divisions and institutions of organizations registered in a foreign country or of international organizations is in the Republic of Armenia;

5) the place of residence of the natural person employer is the Republic of Armenia.

It should be noted that these regulations on employment relations being considered to have originated in the Republic of Armenia apply to employment relations originating on the basis of employment contracts (individual legal acts on employment) signed **after the Law comes into force.**

2. *Clarification of regulations related to labor relations involving persons under eighteen years of age*

The Law envisages adding Article 17.1 to the RA Labor Code (hereinafter referred to as the Code), which will specify the regulations related to labor relations involving persons under the age of eighteen. By the Law, particularly:

1) it is defined the right to work of persons up to eighteen years of age, in accordance with their age capabilities, developmental characteristics and abilities,

2) the spheres are defined in which employment of persons under the age of eighteen is prohibited.

By this part, the norms regulating the short duration of working time are also changed, particularly, the duration of working hours of employees up to eighteen years of age is reduced and it is clearly defined that they can work **only out of the hours specified for compulsory education.**

3. *What information should an individual employment act or an employment contract contain?*

Certain changes were also made regarding the information to be included in the individual legal act or employment contract. Particularly, **it is mandatory to indicate the patronymics of the employee, as well as of the natural person employer, in the above-mentioned documents.**

It is also mandatory to indicate the place of work. A note concerning the place of work is especially important because:

- the place of work is considered an essential condition of work, the change of which may even lead to the termination of the employment contract,
- several articles of the Code contain rules for the employee and the employer to demonstrate certain behavior at the workplace, for example, to ensure labor discipline at the workplace, to furnish the workplace in accordance with the requirements of the normative legal acts on the safety and health of employees, from the point of view of ensuring such rules, a note on the workplace will provide certainty,
- if in the case of employees with a permanent location, specifying the place of work has almost no practical significance, then the problem is different if the employee performs work activities in different places due to work functions. In this case, specifying the place of work facilitates administrative and personnel processes, including facilitating accurate record keeping and applying relevant regulations.

It is also worth noting that from now on, **when specifying the amount of salary in an employment contract or in an individual legal act on hiring, it is necessary to clearly indicate the taxes paid from the salary, social or other mandatory payments defined by law, and when**

specifying the form of salary determination, it is necessary to specify how it is determined - whether by hourly, daily fee or monthly rate.

If the already concluded employment contracts or individual legal acts on hiring do not contain the above-mentioned information, then employers are advised to make appropriate changes to them (for example, by signing an agreement on amending the employment contract or by adopting a new individual legal act on making changes to an already adopted individual legal act) to ensure compliance of the specified documents with the requirements of the Law.

4. *Prohibition of concluding employment contracts for a certain period with persons of retirement age*

In contrast to the current regulations, from the moment the Law comes into force, employers will no longer have the right to conclude employment contracts for a certain period with persons entitled to retirement age and who have reached the age of sixty-three, or those who are not entitled to retirement age and who have reached the age of sixty-five, or to fire them on that basis.

In this regard, questions may arise in practice, for example, how to act, if before the Law enters into force, i.e. until 31 July, 2023, employers have concluded employment contracts for a certain period (for example, until 31 December, 2023) with employees mentioned above: do the employers have the right to terminate the employment contract on the basis of expiry of the period or should the contract be renewed for an indefinite period? Although there are different opinions on this matter, we believe that in all cases where employers have signed an employment contract for a certain period of time before the Law enters into force, they have the right to terminate the employment contract based on the expiration of that period, because Article 73, part 2 of the RA Constitution specifies that **laws and other legal acts that improve a person's legal status have retroactive effect, if this is provided by those acts**, and the Law has not established the possibility of applying retroactive effect to persons who have reached the retirement age.

However, the solution to the mentioned problem will become clear in judicial practice, as a result of the application (interpretation) of the discussed norms by the courts.

5. *Clarification of the procedure for concluding an employment contract*

The procedure for concluding an employment contract is clarified: it is defined that the parties have the right to conclude the employment contract also by mail or by exchanging it between themselves through a connection that provides electronic communication, which make it possible to confirm its authenticity and precisely determine that it is issued by the employment contract. In case of choosing this option, signed copies of the Agreement must be exchanged in one of the following ways:

1) by sending a signed copy of the employment agreement to the address or place of residence provided by the other party by registered letter with notification of receipt,
2) rendering (facsimile reproduction) of the signed copy of the employment agreement by sending a facsimile (telecopy) connection,
3) by sending a signed and electronically scanned copy of the employment contract or a copy of the employment contract with an electronic digital signature by official e-mail.

In the event of signing an employment contract in this procedure, the employment agreement will be considered concluded from the moment when both parties who signed the contract receive the copy of the employment contract signed by both parties.

6. Termination of the employment contract on the initiative of the employee

According to the current regulations, the employee has the right to terminate the employment contract by notifying the employer in writing form at least thirty days in advance, and in cases provided by law, five days in advance.

From now on, the Law allows employees to skip the specified notice periods if the employer does not object.

If the employer objects, the employment contract is terminated after the expiration of the notice period, and if the employee still wants to be dismissed before the expiration of the notice period, and the employer objects to this, the employee is obliged to compensate the employer the losses for each overdue day of warning in the amount of the average daily wage, but not more than the average monthly wage. In other words, if under the current legislation, only the employer is obliged to compensate for the damage in case of violation of the notice period, the amended Law envisages an equivalent obligation for the employee.

7. Termination of the employment contract at the initiative of the employer

While terminating an employment contract at the initiative of the employer, it is necessary to pay attention to the fact that according to current regulations, the employer has the right to terminate the employment contract on the basis of long-term disability, in the case when the

employee did not go to work for 120 consecutive days or more than 140 days in the last twelve months, now according to the Law, stricter criteria are established for the exercise of this right of the employer, in particular, this right arises for the employer if the employee is temporarily unable to work for more than six consecutive months or more than 180 days in the last twelve months, not counting the days of maternity leave.

In the context of this issue, it is also necessary to pay attention to the fact that while terminating an employment contract due to a reduction of the number of employees and (or) positions, the Law determines the circle of persons who have the right of preference to remain at work. This right is enjoyed by former military personnel who are entitled to a disability pension, as well as a family member (husband, child, father, mother, sister, brother, grandmother, grandfather) of a former soldier receiving a disability pension with a deep degree of functional limitation or deceased, or declared missing or dead, if he:

1. is engaged in the care of a former soldier receiving a disability pension with a deep degree of functional limitation, or caring for the children, grandchildren, brothers or sisters of a deceased, missing or declared dead soldier until they reach the age of eighteen;

2. has a disability;

3. is the only worker of the family having active legal capacity who has reached the age established by this Code.

The collective agreement may define other categories of employees enjoying the right of preference to stay at work in equal conditions.

8. Expansion of grounds for loss of trust in an employee

Currently, the grounds for termination of an employment contract at the initiative of the employer for loss of confidence in the employee envisage rather limited rules, in particular, the employment contract is subject to termination if:

1) while servicing monetary or commodity values an employee has committed such actions, as a result of which material damage was caused to the employer;

2) an employee performing educational functions has committed an act incompatible with the continuation of this work;

3) an employee has published a state, commercial or technical secret or divulged it to a competing organization.

With pending changes, these rules will be expanded to include the following violations in any sphere:

1) failed to comply (violated) the requirements of legal acts to ensure the safety and health of workers, the rules for organizing and performing work, and instructions, which caused or could cause serious consequences that endanger the life and health of workers or create a real threat to the life and health of persons or harming their life and health;

2) unlawfully (without consent or notification) used the computer equipment or information systems of the employer or other employees (means of access to information systems (login, password, etc.), through which he received labor or personal data, carried out illegal use of data, recording, destroying, converting, blocking, duplicating, distributing or performing digital activities, including the installation of viruses or software that may disrupt or have disrupted the normal operation of the employer.

Thus, with this amendment, the legislator removed sectoral restrictions and supplemented the grounds for terminating an employment contract due to a loss of confidence in an employee.

9. Changing the determination of the condition of part-time childcare workers

With the planned changes, part-time work will be defined at the request of an employee caring for a child under two years old instead of one. In addition, it is provided that a woman with a child under the age of two years, in addition to the break hours provided for rest and feeding, is provided with an additional break of at least half an hour every three hours. At the request of the woman, these breaks can be combined with a break for rest and meals, provided at the beginning of the working day or transferred to the end of the working day with a corresponding reduction in the duration of the working day. During the established breaks, the employee is paid the average hourly wage.

Expected changes: as of 31.11.2023:

1. Changes in the rules governing duration rest

Prior to these changes, the Code did not provide a time limit for an employee to accumulate leave time and did not allow an employer to force an employee to take their annual leave. With the proposed change, employers are given the opportunity to determine the period of leave to the employee without the employee's application for leave, if the employee avoids or **refuses to use the annual leave or a part of it available to them for two and a half working years in a row**. It is also planned to apply a sanction in case the employer does not provide deferred annual leave: the obligation to pay compensation to the employee for each missed day in the amount of 0.15 percent of the employee's average monthly salary, but not more than the average monthly salary.

2. Introduction of the regulations regarding trainees and their professional training

At the moment, the Code does not provide the organization of labor practice by the employer, there is only the Article 202.1, according to which the employer has the right to organize an internship or vocational training for an employee in an organization or other place on a contractual basis at his own expense, for up to six months and paying scholarships to the trainee during the training period: not less than the minimum monthly wage established by law.

With the expected changes, it is planned to introduce regulations regarding trainees, which determine the procedure for organizing work practice by the employer, in particular:

1) the duration of labor practice cannot exceed two months; the contract is concluded once and without the right to renew;

2) the concept of "a person undergoing labor practice" ("Trainee");

3) the Law does not require payment for the period of labor practice, but by agreement of the parties, a certain amount **may be** transferred to the trainee to gain work experience in a particular profession, qualification, or position;

4) **the number of trainees** at the employer is limited, **it cannot exceed ten percent of the current number of employees;**

5) if a trainee is a person under the age of 18, then his right to privileged conditions must be preserved;

6) relations concerning the involvement of a trainee by an employer are regulated by a civil law written contract on the acquisition of work experience;

7) after the conclusion of the contract, the employer is obliged to issue the trainee a certificate of gaining work experience, which indicates the length of involvement as a trainee, information about professional qualifications or acquired knowledge, skills or abilities in accordance with the position title;

8) the contract on the acquisition of work experience is subject to registration in the manner prescribed by the legislation of the Republic of Armenia.

Thus, with the investment of the above-mentioned regulations, the employer will have the right to involve trainees in their work processes without payment, upholding the above norms. In this way, also the problems with the tax authorities existing in practice will be resolved when trainees are involved.

The above-mentioned changes can be viewed at the following link:
https://www.arlis.am/DocumentView.aspx?docid=178448

Relevant for 18.08.2023 date.