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Employment Law Alert

Employment law reforms introduced by law 4808/2021

Law 4808/2021 (the “Law”) was published in the Government Gazette on 19.06.2021 and introduces important reforms on several areas of Greek employment law.

Summary

On worktime schedule, the Law introduces changes regarding overtime (including higher daily and annual caps and the possibility of a (limited in time) working time arrangement deviating from the 40 hours/week and 8 hours/day standard scheme following a request by the employee), breaks and annual leave.

On termination of employment agreements, **new categories of dismissal prohibition** are introduced, while on the other hand **certain risks for the employer are mitigated**, by giving the option to cure dismissal formalities’ inaccuracies, as well as putting a cap on the potential overall financial cost of invalid dismissals (for cases not falling within the list of dismissal prohibition cases). The option of **garden leave** (i.e. the dismissed employee being released from his/her duties during the dismissal notice period), a concept already broadly used in other jurisdictions, is recognized for the first time. **Blue collar workers** shall receive the same dismissal compensation with employees starting from 01.01.2022.

Remote working legal regime is reformed and the **right to disconnect** is established.

Regarding **digital platforms**, the persons providing services thereto, irrespective of the type of their relationship with the platform, are entitled to unionise and go on strike and enjoy health and safety protection.

The legal regime for **employee unions** is modernized, **strikes** are subject to a stricter framework and **collective labor agreements’** provisions must be codified from 01.01.2022 onwards (putting an end to the uncertainty often caused by cross-reference to previous collective labor agreements).

The Law ratifies ILO's Violence and Harassment Convention, 2019 (No 190) and ILO's Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and transposes Directive (EU) 2019/1158 on work-life balance for parents and carers. On **violence and harassment**, the Law introduces a set of provisions for the elimination of violence and harassment at workplace, including the obligation to adopt relevant policies. To promote work-life balance, the Law provides additional and more extensive leaves and flexible worktime arrangements for parents (including adoptive parents and parents through surrogacy).

On labor market supervision, the electronic information system **ERGANI II** will be put into place, which will be simplified and unified with EFKA and with the platform of the Manpower Employment Organization, while, the **"digital employment card"** will be introduced, an electronic system of registration of working hours, real-time connected to ERGANI II. **The Labor Inspectorate will become an Independent Authority**, not subject to the instructions or control of the Minister of Labor and will be able to perform audits on a 24-hour basis, following audit targets to be set by the Ministry.

Questions & Answers per topic

Working time limits

Which are the limits for overtime? How is any excess thereof compensated?

The daily cap of overtime is increased to 3 hours, while the annual cap is increased to 150 hours. Overtime above such limits without a special permission is characterized as "illegal" and is compensated at a 120% surcharge on the employee's hourly wage.

What do we mean by "working time arrangement"? What has changed by the new Law?

A working time arrangement which deviates from the standard one (i.e. 40 hours per week and 8 hours per day in case of a 5 days' work week) was already provided as an option by means of an agreement with the employee union, but now becomes also possible by means of an individual written agreement, following a request by the employee, if there is no employee union or it is not possible to reach an agreement with it.

In this context, in case of a 40-hour weekly schedule, it can be agreed that the employee will work 2 additional hours per day on the same remuneration. In exchange, the employee will work 2 hours less per day during another period or take time off or a combination thereof. This applies for a maximum period of 6 months within the same 12-month reference period. The dismissal of an employee due to non-submission of a working time arrangement request is invalid.

Which are the minimum legal requirements for break?

Break is obligatory for those working 4 consecutive hours or more (instead of 6 hours previously applicable) and must have a duration of 15 to 30 minutes. It is expressly provided that the break is not part of working time and that it cannot be consecutive with the start or the end of the daily working hours.

Is work on Sundays and holidays allowed?

Work on Sundays and holidays remains in principle prohibited, but the categories of companies which are exempted are expanded to include among others courier and logistics services, shared services centers of company groups, call centers and data centers.

What has changed regarding part-time employees?

Part time employees may be requested to provide additional work on a time which is not consecutive with their agreed working hours.

What is the deadline for the use of annual leave?

Annual leave can be provided until the 31st of March of the next year (instead of until the 31st of December of the same year previously applicable).

Is the employee entitled to an unpaid leave?

Unpaid leave is regulated for the first time, although it was always an option based on contractual freedom. It requires a written agreement between the employer and the employee for a term up to 1 year, which can be renewed. It is clarified that throughout this term the employment relationship is suspended and no social security contributions are due.

Termination of employment agreements

Does the Law provide a list of invalid dismissal cases?

The Law includes for the first time a list of cases of invalid dismissal, including cases already provided by existing laws, cases formulated in the past years by case law (e.g., dismissals in retaliation for the exercise of a legal right by the employee) and newly introduced cases in line with other provisions of the Law (e.g., the dismissal of fathers within a specific period from childbirth, the dismissal due to the exercise of rights against workplace violence and harassment or rights for the leaves or flexible arrangements available to parents and carers, the dismissal of employees who exercise the right to disconnect or who refuse (to apply for) working time arrangements etc.).

The list is not exhaustive and employees can still contest dismissals for reasons not included in the list, however the protection of the employee is broader for the listed cases.

Which are the consequences in case of invalid dismissal?

For cases in the dismissal prohibition list, the burden of proof is partially reversed and in case the employee establishes, before a court, facts from which it may be concluded that the dismissal falls within the above list, it shall be for the employer to prove the opposite.

Moreover, the consequences for the employer in case of an invalid dismissal falling within the list are more severe.

Until the reform introduced by the Law, if a dismissal was found invalid by court (often after several years), the employer had to re-employ the dismissed employee and pay wages in arrears for the interim period, which created a prolonged uncertainty regarding not only the validity of the dismissal but also the overall financial cost. This remains the rule for cases of invalid dismissals in the list.

On the contrary, under the new regime, for all other cases of invalid dismissal (including e.g., in case of dismissals for financial – technical reasons, due to the incorrect application of social criteria for the selection of the employees to be

dismissed) the court may alternatively, following a request by either party, impose a penalty of an amount equal from 3 monthly regular wages to twice the legal dismissal compensation.

The same can apply for invalid dismissals falling within the list, but only upon a request by the employee.

Can the employer cure dismissal formalities' inaccuracies?

In case the employee did not notify the dismissal in writing, the dismissal is validated if the employer does so within 1 month from the service of a relevant lawsuit or the filing of a complaint with the Labor Inspectorate.

In cases where the amount of dismissal compensation paid is less than the legal one due to manifest error or reasonable doubt regarding the basis of calculation, the Law provides (in line with established case law), that the court does not invalidate the dismissal, but obliges the employer to pay the additional amount.

Can the employer put the employee on garden leave?

Following termination with prior notice, the employer can release the employee from his/her obligation to provide work up to the effective termination date, while paying his/her full remuneration. During this period, the employee can find another job without any impact on the validity of the termination or the amount of the dismissal compensation.

What changes for blue-collar workers' dismissals? Does this have a financial impact on companies?

The Law repeals the distinction between employees and blue-collar workers regarding dismissal compensation (which under the previous legal framework was significantly lower for blue-collar workers), starting from 01.01.2022. The employers who prepare their financial statements in accordance with either Greek or International Financial Standards must adjust their IAS 37 and IAS 19 provisions and relevant accounting entries accordingly.

Remote working

Can the employer or employee unilaterally impose remote working on the other party?

The rule remains that remote working requires an agreement between the employer and the employee, with two exceptions: a) the employer can unilaterally impose remote working for public health protection reasons, following a relevant Ministerial Decision; and b) the employee can request to work remotely in case of evidenced health risk (due to specific health conditions to be set forth in a Ministerial Decision) which can be prevented by remote working.

Are there any additional costs for the employer due to implementation of a remote working system?

The employer bears the cost of equipment required for remote working, the maintenance or replacement thereof, as well as the cost for telecommunication services and the use of the employees' home for working purposes (to be further regulated by a Ministerial Decision). The relevant amounts are not considered as income and are not subject to tax or social security contributions but are considered as deductible expenses for the employer.

Can the employer inspect the performance of remote workers?

The employer can inspect the performance of remote workers, while respecting their privacy and in line with personal data protection provisions. By no means can the employer supervise the employee with a web cam.

Is there any special protection for remote workers?

Remote workers have the same rights and obligations with the comparable employees working at the workplace, while the Law also establishes the right to "disconnect", i.e., to refrain from work, especially by not responding to calls, emails or engage in any other digital communication outside working hours or during the employee's leave. Any dismissal due to the exercise of this right is invalid.

Employee unions and strikes

What changes regarding the registration of employee unions and the protection of employee union officials?

The Law establishes a central electronic registry for employee unions and registration becomes a prerequisite for the collective bargaining right and the protection from dismissal of union officials, starting from 01.01.2022. Moreover, starting from 01.01.2022, unions must offer to their members the option of electronic remote participation to voting procedures.

Changes are introduced to the protection of employee union members against dismissals and transfer and the relevant special leaves.

Which are the additional prerequisites for the declaration of strikes?

The decision to declare a strike requires the physical or remote participation of at least ½ of all union members who are up to date with their financial obligations vis-à-vis the union.

The notification regarding the exercise of a strike must be delivered to the employer at least 24 hours beforehand by a Court bailiff and must mention the date, start and end time of the strike, its form, the requests and reasons.

If a strike declared by a first-level union is found illegal by a court decision, the second- or third-level union cannot re-declare a new one against the same employer and on the same date.

What about employees who do not wish to participate in a strike?

The employee union organizing the strike must protect the right of employees who do not wish to participate to freely enter and leave the workplace and provide their services. Otherwise, the strike can be interrupted by a Court decision and the union and its board members bear civil liability.

Elimination of violence and harassment at work

Who is covered by the measures?

The measures cover not only employees but also other people providing services at the workplace, including independent service providers, trainees and lawyers employed by means of “emmisthi entoli”.

Which are the obligations of the employer?

All employers are obliged to a) receive, investigate and manage relevant complaints in a confidential manner; b) assist the authorities in the investigation thereof; c) inform the employees regarding the relevant risk prevention and protection measures; and d) make available in the workplace information on the complaint procedures and contact details of the competent authorities. The employer, in cooperation with the labor physician, where applicable, must also take into account the relevant risks in the context of its obligations for occupational health and safety.

Employers with more than 20 employees must adopt policies for the prevention of violence and harassment at workplace and the management of relevant complaints. Such policies can be part of broader policies, part of enterprise Collective Labor Agreements or Internal Labor Regulations and must be adopted following consultation with the employee representatives, or in the absence thereof, all employees. In case of absence of an agreement following consultation and for the interim period, they can be adopted unilaterally by the employer within 3 months from the publication of the Law. The Ministry of Labor shall make templates available through a Ministerial Decision.

Is there a special protection for victims of violence and/or harassment?

Victims of violence or harassment are entitled, in case of imminent danger for their life, health or safety, to remove themselves from the workplace on full remuneration, upon written notification to the employer.

The dismissal or any adverse treatment in retaliation against a violence or harassment victim is prohibited. The burden of proof is partially reversed.

The Labor Inspectorate can, in case of imminent risk for the life, health or safety oblige the employer to take any of the provisional measures to physically alienate the victim and the perpetrator (such as change of shifts, absence of the victim from work on full payment, obligatory remote working or removal of the perpetrator from working place).

Work-life balance for parents and carers

What are the new rights of employees under the new regime?

The Law provides additional and more extensive leaves for parents (including adoptive parents and parents through surrogacy) and carers, including a paternity leave of 14 days (instead of 2 previously applicable), an individual right of each employee to a parental leave of 4 months on the occasion of the birth of the employee's child, along with a 2-month subsidy by the Manpower Organization (OAED), a carers' leave of five working days per year and the right to time off from work on grounds of force majeure for urgent family reasons. Employees with a prior service of at least 6 months with the same employer and with children up to 12 years old can also request flexible working arrangements, such as remote working, flexible working hours or part-time employment.

Can the parent or carer be treated less favourably or even be dismissed?

Dismissal or less favourable treatment of employees on the ground that they have applied for or have exercised any of the above rights is prohibited. With respect to the dismissal of an employee who has applied for, or has taken, the above leaves, the employer must provide reasons for the dismissal in writing. The burden of proof is partially reversed.

Fathers are protected from dismissal for 6 months from childbirth (unless for serious cause which is not related to underperformance due to parental responsibilities).

Key areas of action by employers

- **Establishment of policies against violence and harassment and policies for the processing of relevant complaints** by employers with more than 20 employees (if not already covered by existing policies).
- **Adjustment of leave policies** to adapt to new or amended leaves and the new deadline for provision of annual leave.
- Potential **establishment of policy and/or internal procedures for remote working** and assessment of relevant requests.
- Review of **health and safety procedures** in view of the new regime (especially regarding violence and harassment elimination and remote working) in cooperation with occupation physician and safety technician.
- **Screening of imminent termination cases** for potentially falling under the dismissal prohibition list and potential need to invoke specific reasons for dismissal.
- Check compliance of existing **break arrangements**.
- **Adaptation of accounting records and financial statements in line with changes to blue collar workers' dismissal compensation status.**
- **Codification of collective labor agreements' provisions.**
- **For digital platform employers:** check of compliance with written notification of rights and health and safety protection obligations; check existing agreements to assess the nature of relationship based on newly adopted by the Law criteria.

Authors

Aggeliki Tsatsi, Senior Counsel

Stella Natalia Anastasiou, Associate