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Law 5053/2023: Overview of new regulations on labour law

The law 5053/2023 (Government Gazette A/158/26-9-2023), which integrated the Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 into the national public order, introduces, among other things, extensive amendments regarding labour relations.

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Specifically:

BASIC REGULATIONS

1a) Provision of a "probationary period" in the employment contract (Article 4/ Article 8 of EU Directive 2019/1152)

The concept of a probationary period and a probationary employee in paid employment is introduced.

Under the new regulation of article 4, which adds article 1A in PD 80/2022 [Code of Individual Employment Law] the following are provided:

a) the employer is entitled when concluding an employment contract of indefinite time, to agree with the employee on a trial period, up to 6 months, during which the employment relation is in probation.

This employment relationship may develop in the following ways:

(i) in the case of a successful probationary period and continuation of the employment relationship, the date of commencement of the employment relationship shall be the initial hiring date.

(ii) if, either during the probationary period or after it has elapsed, the employer considers the latter to be unsuccessful, the contract shall be automatically terminated and the term of service until termination is considered employment time as far as the employees' rights are concerned.

It is noted that from the combination of articles 4 and 19, it follows that in the event of a probationary period agreed in an employment contract of indefinite time, this does not affect the minimum period of twelve (12) months required for the establishment of the employees' right to severance pay, in which it is counted.

b) when concluding a fixed-term employment contract, the employer may agree to a probationary period corresponding to the total time provided for in the contract, which may not exceed $\frac{1}{4}$ of the total period of employment, up to a maximum of six (6) months. It is provided that in the event of renewal of the contract for the same post, no new probationary period may be provided for.

Furthermore, during the probationary period, the protective provisions for the employee (Articles 162-179 of PD 80/2022) on working time (daily rest, annual leave, night work) are applicable.

1b) Possibility for the employee to request a transission to another form of employment (Article 11/ Article 12 of EU Directive 2019/1152)

Based on article 11, which adds article 69A in PD 80/2022, it is provided that an employee with at least six (6) months of service with the same employer and who has completed the probationary period, is entitled to request the amendment of his/her employment agreement into one with more predictable and secure working conditions, if such employment is possible.

In this case, the employer is obliged to provide to the employee with a reasoned written reply, within one (1) month from the submission of the request at the latest, unless the employer is a natural person or a micro, small or medium enterprise, in which case the above deadline is two (2) months.

2) Parallel employment (Article 9/ Article 9 of EU Directive 2019/1152)

This new regulation of article 9, which is being added to article 189 of PD 80/2022, provides that an employee is allowed to work for two employers (parallel employment), subject to the current provisions on minimum rest periods.

Furthermore, agreements or clauses prohibiting the provision of taking up employment with other employers, outside the working hours agreed with a particular employer are inhibited, unless the restriction in question is justified by objective grounds, e.g. health and safety, protection of business confidentiality or working in a competing business or avoiding a conflict of interest.

Agreements or clauses prohibiting the provision of taking up employment with other employers shall be void.

A decision of the Minister of Labour and Social Security shall determine any necessary issues concerning the information to be provided to the employer regarding the existence of parallel employment and any special issues related to the application of this provision.

3) Unpredictable work – On demand employment agreements (Article 10/ Article 10 and 11 of EU Directive 2019/1152)

Under the new provision of article 11, which adds article 182A in PD 80/2022, "on demand employment agreements" are regulated by law, whereby the parties agree on a minimum number of paid working hours that cannot be less than $\frac{1}{4}$ of the agreed total number of working hours.

Specifically the law provides for the following:

a) Where an employees' work pattern is entirely or mostly unpredictable, the employee is obliged to agree to work for the employer, on the one hand, if the work takes place within predetermined reference hours and days, and the employee on the other hand has been informed of a work assignment (in writing, by mobile phone message or e-mail or other appropriate means) within a notice period that cannot be less than 24 hours before the commencement of work (excluding cases objectively justifying less notice period)

b) If, on the contrary, the conditions of paragraph a. are not fulfilled, the employee has the right to refuse a work assignment, and any discrimination against him/her by the employer for having exercised this right is restricted.

Furthermore, it is provided that in the event of cancellation of the assignment by the employer at any time after the employees' notice, the latter is entitled to compensation equal to the hourly wages of the hours not assigned.

Moreover, it is provided that all the provisions protecting the worker linked to his/her contract or employment relationship, are applicable in this case.

Any unilateral conversion by the employer of a full-time or part-time employment contract into an on demand employment agreement is prohibited as a unilateral harmful change of working conditions.

4) Free provision of compulsory training (Articles 12/ Article 13 of EU Directive 2019/1152)

In article 12, which adds article 70A in PD 80/2022, provision is made for training free of cost, in case the employer's obligation to provide it to the employee arises from the applicable labour legislation, in order to carry out work for which he/she is employed.

In this case, the training, according to the wording of the article, is counted as working time and takes place during the contractual working hours, where possible.

5) Provision of information- Timing and means of information (Articles 5/ Articles 3 and 5 of EU Directive 2019/1152)

Article 5, which modifies article 71 of PD 80/2022, provides for the following:

1.The employers shall provide in writing each worker with the information required pursuant to articles 70, 72 and 73 of PD 80/2022 in one of the following ways:

- a) by delivering a paper or
- b) in electronic form provided that the information is accessible to the worker, that it can be stored and printed, and that the employer retains proof of transmission or receipt.

2. The information referred to in points (a), (b), (c), (d), (e), (g), (k), (l) and (m) of Article 70 par. 1 shall be provided by delivering a document to the employee, in paper or electronic form, one (1) week at the latest from the start of his/her work, provided that this document includes all the information mentioned in these cases.

3. The information about the elements f), h), i), j), n) and o) of par. 1 of article 70 is done by handing over to the employee a document, in paper or electronic form, one (1) month at the latest from the start of his/her work, provided that this document includes all the information mentioned in these cases.

4. The employer communicates the information on the provisions of the employment laws governing the minimum terms of remuneration and employment, free of charge in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means, including through existing online portals.

6) Employer's obligations to provide information - Essential conditions (Articles 6/ Article 4 of EU Directive 2019/1152)

According to Article 6, which modifies article 70 of PD 80/2022, the terms of the employment agreement which the employer is obliged to communicate to the employee are extended to cover the new provisions. Specifically, the essential terms of the contract which the employer is obliged to communicate to the employee are defined in the above article, as follows:

- (a) the identities of the parties to the employment relationship
- (b) the place of work, including the case where the work is performed at different locations where there is no fixed or main place of work, the principle that the employee is free to determine his/her place of work, the registered place of business or, the domicile of the employer
- (c) the position or specialty of the employee, his or her grade, category or sector of employment and the object of his/ her work
- (d) the date of commencement of the employment relationship
- (e) in the case of a fixed-term employment relationship, the end date or the expected duration thereof
- (f) the identity of the user undertakings, in the case of temporary agency workers without prejudice to Article 118 of PD 80/2022
- (g) the duration and conditions of the probationary period, if any
- (h) the training entitlement provided by the employer, if any

- (i) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave
- (j) the procedure to be observed by the employer and the employee in the event of termination of the contract or employment relationship, in accordance with the applicable legislation, in particular the obligation to give written notice of termination to the contracting party, the periods of notice and the determination of the amount of compensation, as well as the existence of significant cause, if required,
- (k) remuneration of any kind to which the employee is entitled, the frequency and method of payment
- (l) if the work pattern is entirely or mostly predictable, the length of the employees' standard working day or week and any arrangements for overtime or additional work and its remuneration and, where applicable, any arrangements for shift changes
- (m) if the work pattern is entirely or mostly unpredictable, the employer shall inform the employee of:
 - (i) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;
 - (ii) the reference hours and days within which the employee may be required to work;
 - (iii) the minimum notice period to which the employee is entitled before the start of a work assignment and, where applicable, the deadline for cancellation;
- (n) any collective agreements governing the employees' conditions of work and the name of the collective bodies that are signatories to it, and
- (o) the social security institutions to which the employee is insured and any other benefits provided by the employer related to social security

2. The information referred to elements (g), (h), (i), (j), (k), (l) and (o) of par. 1, may, where appropriate, be given in the form of a reference to the applicable provisions of employment laws.

7) Modification of the details of the contract or employment relation and information on work abroad (Articles 7 / Article 6 of EU Directive 2019/1152)

Article 7, by which article 73 of PD 80/2022, on the change of the elements of the contract or employment relationship, is being replaced, introduces the following regulations:

1. Any change in the aspects of the employment relationship referred to in par. 1 of article 70 and article 72 for employees posted to another Member State or to a third country shall be provided in the form of a document by the employer delivered to the employee at the latest until it takes effect.

2. The document referred to in paragraph 1 shall not apply to changes that merely reflect a change in the employment laws, cited in the documents referred to in Article 71 par. 2, and, where relevant, in Article 72 element (b) of par. 1 and element (a) of par. 2.

8) Information on working abroad (Articles 8/ Article 7 of Directive [EU] 2019/1152)

Article 8, by which article 72 of PD 80/2022 is being replaced, provides for the following:

1. If an employee habitually works in Greece and is called to work in another EU Member State or in a third country, under an employment contract entered into in Greece, the documents mentioned in article 71 of PD 80/2022 are delivered to the employee before his/her departure and include at least the following additional information:

- (a) the country or countries in which the work abroad is to be performed and its anticipated duration
- (b) the currency to be used for the payment of remuneration
- (c) the benefits in cash or kind relating to the work assignments
- (d) information as to whether repatriation is provided for, and if so, the conditions governing the employees' repatriation.

2. If the employee is posted to an EU Member State according to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 Concerning the posting of workers in the framework of the provision of services as amended by Directive 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (L 173), by virtue of contract or employment relation entered into in Greece, the documents mentioned in par. 2 and 3 of article 71 are delivered to him/her before the departure, and include beyond the elements mentioned in par. 1, the following:

- (a) the remuneration to which the employee is entitled in accordance with the applicable law of the host Member State;
- (b) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging
- (c) the link to the single official national website developed by the host Member State where the employee will provide his/ her work, through which he/she can be informed about the terms and conditions of employment applicable to posted workers, in accordance with article 259.

3. The information referred to in element (b) of par. 1 and element (a) of par. 2 may, where appropriate, be given in the form of a reference to specific provisions of the employment laws of the country where the employee will provide his or her services.

9) Procedure for reporting to the "ERGANI II" Information System of employment contract termination cases (Art. 23)

According to article 23, which amends article 320 of PD 80/2022, the following regulations are being introduced:

1. The employer is required to give notice, by electronically filing the relevant forms provided for in decision No 40331/13.09.2019 of the Minister of Labour and Social Affairs (OJ B/3520)) in the "ERGANI II" Information System of the Ministry of Labour and Social Security, of each case of voluntary departure of an employee or automatic termination of the probationary period or consensual termination of the employment contract, such as voluntary redundancy, or termination of an indefinite-term employment contract or termination of a fixed-term employment contract or project contract no later than four (4) business days from the day of the employees' departure or termination of the indefinite-term employment contract or termination of the fixed-term employment contract or project contract or any other instance of termination or expiration of the employment contract.

2. The notice of an employees' voluntary departure shall be necessarily accompanied by an electronically scanned form signed in person by the employer and by the employee or by a document bearing their electronic signatures or a document digitally certified by both of them via the Public Administration Single Digital Portal (gov.gr - ΕΨΠ), in accordance with Article 27 of Law 4727/2020 (OJ A/184), on the issuance of documents through the Public Administration Single Digital Portal.

3. An employees' unjustified (arbitrary) absence from work for a period of more than five (5) consecutive working days may be treated as a termination of the contract on his/her part, provided that an additional period of five (5) consecutive working days has elapsed since the mandatory notice sent by his/her employer, which (a) shall be posted on the ERGANI II Information System, and (b) shall be proven by any appropriate written means. In such an instance, the employer shall be required, on the working day following the expiry of the period referred to in the first subparagraph, give notice of the employees' voluntary departure via the ERGANI II Information System, without the employees' signature being required.

4. If the employer fails to comply with the obligations to give notice of a voluntary departure in due time, the employment contract shall be deemed to have been irregularly terminated by the employer.

5. Paragraphs 2, 3 and 4 shall not apply in the case of an employees' suspension of work on the grounds of unpaid salaries.

10) Recording of changes in working hours and overtime in the “ERGANI II” Information System by enterprises or undertakings that have joined the digital working card system (Article 22)

With the new regulation of article 22, employers already implementing the Employment Digital Card system, are released from the obligation to upload electronically any change or amendment of the working hours or the employment time’s organization or overtime occupation before these are implemented.

A penalty of EUR 10.500 per employee is imposed for the case of mismatch between the actual working hours and the entries of Employment Digital Card System.

11) Termination of an indefinite time employment without notice and without severance pay (Article 19)

Article 19, which adds article 325A in PD 80/2022, regulates termination of an indefinite-term employment contract without notice and without severance pay.

More specifically, employment under an indefinite time employment contract for the first twelve (12) months from the date of its entry into force may be terminated without notice and without severance pay, unless otherwise agreed by the parties. If the parties agree to a probationary period, the probationary period shall count towards the twelve-month period of the first section hereof."

12) Posting of basic terms of employment and individual employment contract on the "ERGANI II" Information System - Electronic signature - Standard Basic Terms of Employment and Individual Employment Contract (Article 21)

Article 21, provides for the following:

1. a) Every employer who hires an employee under a dependent employment relationship under private law shall be required to post electronically on the "ERGANI II" Information System (ERGANI II) operated by the Ministry of Labour and Social Security, prior to the start of employment, the basic terms and conditions of employment of the employee and, within the time limits of Article 71 of PD 80/29022, the written individual employment contract, if any.

b) For the validity of the basic terms and conditions of employment of paragraph (a) and for the posting of the individual employment contract, the employee must co-sign these in person or by means of an approved electronic signature or a digital attestation through the Single Digital Portal (gov.gr - ΕΨΠ) or by means of their acceptance by the employee via the “MyErgani” information system "operated by the Ministry of Labour and Social Security.
2. For any change in the basic terms and conditions of employment, the procedure of paragraph 1 shall need to be followed.

3. "Basic Conditions of Employment" and "Individual Employment Contract" templates are available in the ERGANI II Information System of the Ministry of Labour and Social Security.

13) Arrangements for sixth-day employment option (Articles 25 and 26).

According to articles 25 and 26, that add articles 182B and 182C in the PD 80/2022 correspondingly, provision is made for the possibility of employment on 6th day in enterprises operating under the five-day employment system, provided that certain conditions are met. In particular:

A) In cases of enterprises or undertakings operating continuously using a system of alternating shifts, in which employees are employed on a five-day working week, it may be possible for the employment of the employees on the sixth (6th) day of the week to be permitted, provided that notice is given by the employer via the "ERGANI II" Information System before the employee takes up duty.

The employment of employees during the additional day may not exceed eight (8) hours. No extra hours or overtime work may be performed by the employee on this day. The employee shall be paid the sixth (6th) day's pay, increased by forty percent (40%).

Employment in accordance with par. 1 shall be subject to compliance with the employees' working time limits, as well as to the application of the employees' health and safety rules. In any event, Articles 162 to 179 of PD 80/2022 shall apply.

Employees of hotel and catering enterprises are not included in the scope of this article.

A decision of the Minister of Labour and Social Security shall determine the procedure for recording the additional day in the ERGANI II Information System, as well as any other issue related to the application of the present article.

B) In cases of enterprises or undertakings which are not continuously operating by their nature, but which may operate from Monday to Saturday, twenty-four hours (24) per day, on the basis of a system of alternating shifts, and in which the employees are employed on a five-day work week, in exceptional cases, when the enterprise has an unforeseen particularly heavy workload, the employment of employees on the sixth (6th) day of the week is permitted. This special condition shall be notified by the employer to the Labour Inspectorate before the employee takes up duty and shall be subject to inspection in accordance with the provisions in force.

Employment on the sixth (6th) day of the week shall be recorded by the employer in the "ERGANI II" Information System before the employee takes up duty.

The employment of employees during the additional day may not exceed eight (8) hours. No extra hours or overtime work may be performed by the employee on this day. The employee shall be paid the sixth day's pay, increased by forty percent (40%).

Employees of hotel and catering enterprises are not included in the scope of this article.

Employment in accordance with par. 1 to 3 shall be subject to compliance with the employees' working time limits, as well as to the application of the employees' health and safety rules. In any event, Articles 162 to 179 of PD 80/2022 shall apply.

A decision of the Minister of Labour and Social Security shall determine the procedure for recording the additional day in the ERGANI II Information System, as well as any other issue related to the application of the present article.

14) Ability to employ workers on Sunday and on public holidays (Article 27)

According to article 27, which is being added to par. 1 of article 200 of PD 80/2022, the list of employers whose employees can work on Sunday and during public holidays is expanded to include new business, as follows:

y) Aircraft pilot, crew and engineer training centres, as well as aircraft and passenger ground handling personnel training centres, provided that they serve operations or undertakings that operate twenty-four (24) hours per day and seven (7) days a week.

z) Food industry.

aa) Bottling of natural mineral water for the production of soft drinks and the manufacture of bottled products.

bb) Conference organization.

cc) Greenhouse cultivation with the manufacture and packaging of greenhouse products.

15) Protection of right to work (Article 31)

With article 31, penal sanctions are provided in case of preventing employees in participating in strikes or in case of exercise of violence over employees who do not participate in strikes, from entering, providing services and leaving their work, or in case of participation in the occupation of the working spaces or their entrances. The repeated commission of criminal offences constitutes an aggravating circumstance.

16) Remuneration of prior service in the private sector and adjustment of employees' salaries - Abolishment of Article 4 of Act No 6/28.02.2012 of the Council of Ministers (Article 33)

Article 33, provides for the following:

1. As of 01.01.2024, the suspension of the provisions of laws, regulations, collective agreements or arbitration awards providing for increases in salaries or wages, including those relating to seniority, subject only to the requirement of the completion of a specific period of service, such as the long-service allowance, the prior service allowance, the three-year allowance and the five-year allowance, imposed by Article 4 of Act No

6/28.02.2012 (OJ A/38) of the Council of Ministers, which was adopted pursuant to paragraph 6 of Article 1 of Law 4046/2012 (OJ A/28), shall be lifted.

2. For the application of the provisions in paragraph 1, the suspension of which is lifted, the following shall apply:

(a) The length of service of each employee hired before 14.02.2012, as this length of service stood on 14.02.2012, when its running was suspended, shall continue to run after 01.01.2024.

(b) The length of service of each employee hired after 14.02.2012 shall begin to run after 01.01.2024.

3. Specifically, where the prior service increment for employees who are paid the minimum statutory wage or salary is concerned, the time spent under a dependent employment contract or employment relationship with any employer and in any specialty before 14.02.2012 and after 01.01.2024 shall be recognized as prior service. The prior service increment referred to above shall be determined as follows:

(a) For employees with a dependent employment relationship, at a rate of ten percent (10%) for every three (3) years of prior service and up to three (3) three-year periods of service and at a total rate of thirty percent (30%) for prior service of nine (9) years or more.

(b) For blue collar workers with a dependent employment relationship, at a rate of five percent (5%) for every three years of prior service and up to six (6) three-year periods of service and at a total of thirty percent (30%) for prior service of eighteen (18) years or more.

4. If the regular remuneration paid is in excess of the statutory remuneration, the increases, surcharges and amounts in general resulting from the application of paragraphs 1 to 3 shall be set off against the difference between the remuneration paid and the statutory remuneration, and the payment of such difference shall cover these amounts either in total or in part.

5. For the period from 14.02.2012 to 31.12.2023 no claims shall arise, nor shall any salary or wage increases be due, including those concerning seniorities, subject only to the expiry of a specific period of employment, as referred to in paragraphs 1, 2 and 3, nor shall any length of service completed between 14.2.2012 and 31.12.2023 be taken into account.

6. From 01.01.2027, if the unemployment rate exceeds ten percent (10%), and until it falls below ten percent (10%), the provisions referred to in paragraph 1 shall be automatically suspended. For the purposes of the application of the first section, the average of the

national unemployment rate of the last four quarters, as reflected in the Labour Force Survey of the Hellenic Statistical Authority, shall be taken into account.

7. A joint decision of the Ministers of National Economy and Finance and of Labour and Social Security may specify the procedure for the automatic suspension of effect provided for herein. By means of an Act of the Council of Ministers, following a specially reasoned recommendation of the Minister of Labour and Social Security and after consulting the social partners referred to in para. 3 of Article 134 of the Labour Code (Presidential Decree 80/2022, OJ A/ 222), the terms and conditions for the suspension of the present provisions may be decided, in addition to the cases where paragraph 6 is applicable, in order to ensure the stability of the national economy, taking into account in particular the evolution of unemployment and inflation.

8. As of 01.01.2024, Article 4 of the Act No 6/28.02.2012 of the Council of Ministers is abolished.

For any relevant information or clarification on the above law you can communicate with Betty Smyrniou, Head of Employment, b.smyrniou@bahagram.com .