



FINAL REPORT

Project:

EUROPEAN HEALTH UNION

Delivering for people

“Labor rights in Bulgaria during Coronavirus’ times”

Republic of Bulgaria
Sofia 2021
ENGLISH VERSION



The project

Few different researches made in 2017, 2018 and 2019 showed that Bulgaria is the country with the cheapest labor in European Union and on the same time we are on last place in the combat with corruption and criminal activities. Same time each year the Bulgarian Labor Inspection receives and finds more than 150 000 violations of the Labor Law, which is an absolute sign of bad labor conditions in the country.

Using the above information we have prepared and conducted a legal research concerning the situation in Bulgarian labor market, especially changes in labor legislation and the observance of labor rights. Our main goal was to draw an approximately clear picture of the labor legislation in Bulgaria during Covid crisis, as well as to make a map of the most frequent violations, the main vulnerable groups. Our focus was on issues like fair remuneration, safety on the workplace; gender equality; improving social care for employees, working mothers, etc.

Not on lastly, the data from the study and this short document should serve as a basis and catalyst for future public discussions, organized by the ISI. To do the research we have formed a working group among our members and experts we are working with.

Introduction and context of labor rights in Bulgaria

The Third Bulgarian State was born at the end of 19th century as a result of the Russian-Turkish War \1877-1878\. The war ended the more than 500-year Ottoman rule over Bulgarian people and after it Bulgarians had to establish and run ourselves the new country. So, in 1879 in Tarnovo was adopted the First Bulgarian Constitution, which was the foundations of civil, criminal and procedural law. The Bulgarian Constitution was modern and in tact with the rest of the European legislation back then. There was also a need from legal regulation of the developing industries, so it was natural to adopt some labor legislation. At the very beginning Labour law was called a social legislation, but later it was renamed industry legislation and afterwards it was renamed Labour law.



Bulgaria, 1000 Sofia, 5 B Triaditsa Str. +3592/983 69 22, ifsi.bulgaria@gmail.com, www.isi-bg.org

We should be fair and acknowledge the role of the workers' unions and the Bulgarian Socialist Labour Party. The workers' movement was an essential tool for the creation of new laws to protect the rights of the workers in XIX and XX centuries.

In 1905 was adopted the first legal act and it aimed to protect Bulgarian children and women in the workplace. It regulated the minimum working age, working hours, holidays and maternity leave. Later, other statutes were enacted regarding labour law. For example in 1907 was established the Labour Inspectorate. In 1917 was adopted the Law on Health and Safety at Work and it replaced the previous two labor laws. In 1920, Bulgaria became a member of the International Labour Organisation and since then all acts ratified and promulgated by the ILO are part of the applicable law. Other important regulations are the Employment Contracts Act and the Collective Agreements Act of 1936. Finally in 1986 was promulgated the First Bulgarian Labor Code. It entered into force in 1987 \two years before the collapse of Socialism/ and has been modified more than a hundred times.

The Labour Code regulates all matters related to the general working conditions and also individual employment contracts as well as the collective labour relations.

According to the Bulgarian labour law the relationship between an employer and an employee begins with the concluding of an employment contract. The written form is obligatory for the validity of the contract. Each employment contract must contain at least the following information:

- The identity of the parties (regarding the employee: name, personal number, home address, professional experience in this position; regarding the employer if it is a legal entity: legal name, identification number, registered office of the company and business address, the manager/authorized representative and his personal number);
- The workplace;
- Job description of the position and the character of the work;
- The term of the contract and the duration of the probation period;
- The amount of basic and extended paid holiday and of additional paid annual holiday;
- The termination notice period for both parties;
- The conclusion date of the contract and the date of the actual performance;
- The work time;
- The basic remuneration and supplementary remuneration of regular nature.

The employment contract may contain other clauses that differ from the described essentialias. It is to be noted that, if there is a collective labour agreement concluded prior to



the individual contract, the individual clauses of the latter should be more favourable to the employee than those in the collective agreement, otherwise the individual clauses shall be considered void.

Each party receives a copy of the employment contract. It must be personally signed by the employee. If the employer is a legal entity, the contract is signed by its representative (the manager or CEO). The signature of both parties creates the legal relationship between them and it must be filed with the Bulgarian tax office within 3 days. Before filing it, the employee may not enter into service.

In most of the cases the employment contract is concluded for an unlimited period, but it may also be concluded as a fixed-term contract of employment. The fixed-term contracts can be:

- employment contracts for a specific period that may not exceed 3 years;
- regarding temporarily unlimited activities and activities that are not seasonal or short-term, the employment contract may be concluded for at least one year;
- contracts regarding the attainment of qualification, upgrading of qualification or retraining.
- contracts regarding the performance of a specific activity (the term is defined by the extent and the nature of the task);
- contracts regarding the temporary replacement of another employee;
- contracts regarding the undertaking of a mandate job (e.g. in a governmental body).

It is important to mention that the employee who concluded a fixed-term contract of employment acquires the same rights and is subject to the same obligations as the employee that concluded an unlimited employment contract.

The Bulgarian Labour Code is the applicable law also for employment relationships with an international element between an employer and an employee whose place of work is in Bulgaria or abroad, unless otherwise agreed in the employment contract or provided for in the law or in an international contract, which is in force for Bulgaria. The aim is to ensure equality for employees, as well as the opportunity to enjoy the protection of labour legislation, irrespective of their citizenship.

The Ministry of labor and social affairs controls and sanctions the implementation of the Labor Law through the Executive agency - General Labor Inspectorate. As we mentioned above the Inspectorate was established with a decree of Prince Ferdinand in 1907. According to the decree the purpose of the Inspectorate was to monitor the implementation of the legal acts, concerning the rights of the employees. Later in 1917 the Bulgarian Parliament accepted



INSTITUTE FOR SOCIAL INTEGRATION

Bulgaria, 1000 Sofia, 5 B Triaditsa Str. +3592/983 69 22, ifsi.bulgaria@gmail.com, www.isi-bg.org

the first Bulgarian Law about safety and hygiene labor. The control over compliance with the law was assigned to the Labor Inspectorate at the Ministry of Agriculture and Trade.

In 1951 the control functions of safety and health were delegated to a social organization and the trade unions adopt the control function.

In 1991 was established the State Labor Inspection incorporated in the structure of the Ministry of Labor and social policy. In 2000 the State Labor Inspection was transformed in Executive agency - General Labor Inspectorate.

The General Labor Inspectorate impose sanctions for non-compliance with any coercive administrative measure. There is a qualified provision for the cases of non-assistance to a labour controlling authority while performing its functions for monitoring the compliance with the provisions of labour law.

A legal definition of the term “systemic violations of labour discipline” is introduced in the Labour Code. Three or more violations of labour discipline, committed for a period of one year, will be considered as such provided that (i) for at least one of them no disciplinary sanction has been imposed (ii) the deadlines for sanctioning the violations have not expired and (iii) for those for which sanctions have been imposed – said sanctions have not been expunged.

The minimum and maximum amount of the penalty for committing a repeated violation related to non-fulfilment of the obligations for ensuring healthy and safe working conditions is reduced and the sanction is envisaged to be from BGN 15,000 to 20,000 and a fine from BGN 5,000 up to BGN 10,000, respectively.

In case of repeated violation related to breaches of the provisions of the labor legislation outside the rules for ensuring healthy and safe working conditions, as well as for violations related to undeclared work (work without a concluded written employment contract or without registering the employment contract within the statutory deadline), the penalty is in the amount from BGN 15,000 to 20,000, for the liable official - a fine in the amount of BGN 5,000 to 10,000, respectively.

Labor rights in COVID crisis. Changes in legal frame

\most of them are direct result of anti-covid restrictions/

We faced extraordinary circumstances in 2020 and they have led to numerous changes in



INSTITUTE FOR SOCIAL INTEGRATION

Bulgaria, 1000 Sofia, 5 B Triaditsa Str. +3592/983 69 22, ifsi.bulgaria@gmail.com, www.isi-bg.org

labour legislation worldwide, including in Bulgaria. In March 2020 Bulgarian government declare a state of emergency and adopt an Act on the Measures and Actions during the State of Emergency. Most of the changes that addressed the need to rearrange the relationships between employer and employee as a result of the emergence of COVID-19 became effective on the territory of the country from March 2020.

In May 2020, the government declared an “emergency epidemic situation” which replaced the state of emergency and which enabled the extension of some of the measures that were introduced during the state of emergency. At present, the “emergency epidemic situation” has been extended until 30 September 2021, and probably most of the measures will continue till 2021.

Employers whose activities have not been suspended during the emergency epidemic situation are entitled to introduce unilaterally home-office work or telework, without the consent of the employees or part-time work for all or part of the enterprise. Additionally, the employers may grant up to one half of the paid annual leave to an employee without their consent. If work has been suspended by order of the employer or by virtue of a state body act, the law provides several possibilities. The employer may unilaterally, without the consent of the employees, grant them their paid annual leave. The employer is not entitled to grant unpaid leave without the consent of the employee. However, the employer is obliged to grant the requested paid or unpaid leave to several categories of employees (incl. pregnant employees and employees at an advanced stage of IVF treatment, mothers or adoptive mothers of a child up to 12 years of age or of a disabled child, regardless of their age, etc.)

The government establish funding of employers under the 60/40 mechanism. It is wage subsidy program which allowed the Bulgarian authorities to finance 60% of the wage costs (including the employers' social security contributions) of businesses that, due to the COVID-19 pandemic, would otherwise lay off workers. The relief generally is available for businesses in sectors that have been most affected by the health crisis including retail, tourism, passenger transport, culture, sports activities, amusement and recreation activities, and others.

The scope of employees for whom employers may apply for receipt of funding is extended. As per the amendments this scope includes all employees with regard to whom measures have been implemented (suspension of work or unilateral reduction of the working hours) during the period from 13 March until 31 December 2020. Prior to the amendments



INSTITUTE FOR SOCIAL INTEGRATION

Bulgaria, 1000 Sofia, 5 B Triaditsa Str. +3592/983 69 22, ifsi.bulgaria@gmail.com, www.isi-bg.org

said measures had to be implemented during the period from 13 March until 30 June 2020 in order for the respective employer to be eligible to apply.

The Council of Ministers adopted amendments to Decree No 151 dated 3 July 2020 on the conditions and procedure for payment of funds to employers for the purpose of maintaining employment. The amendments were published in the State Gazette, Issue No 2 dated 8 January 2021. The amendments became effective as of 1 January 2021. However, it is explicitly prescribed that all applications for receipt of funding for the period from 1 October until 31 December 2020 submitted before 15 January 2021, will be reviewed and funded under the conditions prior to the amendments.

At the end of 2020, the National Assembly adopted several additional amendments in the area of employment law which are aimed at primarily guaranteeing the rights and interests of employees and employers in this rapidly changing environment. The first relevant amendment concerns employees who have been in close contact with a confirmed case of COVID-19. The law provides that they shall switch to telework or the home office if the nature of the work allows this to be the case.

Another change made because of COVID crisis is the extension of the unpaid leave. The Transitional and Final Provisions of the State Social Security Budget Act for 2021 have supplemented the Act on the Measures and Actions during the State of Emergency declared by a resolution of the National Assembly on 13 March 2020 whereas the unpaid leave under Art. 160, Para. 1 of the Labor Code up-to 60 business days and used in 2021 is recognized as length of service.

Next, the procedure for extending the application of the concluded branch or industry collective labor agreements (“CLA”) is being improved. A procedure for registering the CLA in the labor inspection as per the registered seat and address of the employer is being regulated, while the branch and industry CLA are envisaged to be registered in a central register of the Executive Agency “General Labor Inspectorate”. It is possible through the mechanism of collective bargaining at the branch and industry level to negotiate a longer duration of overtime work of an employee, but not more than 300 hours within one calendar year. The restrictions established in the Labor Code for overtime work within a month, a week and two consecutive working days still apply. In addition, a branch or industry collective agreement may set a period of up to 12 months for the summarized calculation of working hours. The last two amendments enter into force as from 1 January 2021.



INSTITUTE FOR SOCIAL INTEGRATION

Bulgaria, 1000 Sofia, 5 B Triaditsa Str. +3592/983 69 22, ifsi.bulgaria@gmail.com, www.isi-bg.org

The amendments establish the rule that for the period of posting in the framework of the provision of services the employee is entitled to remuneration not lower than the established amount of the remuneration in the host country for the same or similar work. In practice this means that when an employee is posted to the territory of the Republic of Bulgaria, all mandatory elements that are part of the gross remuneration according to the Bulgarian legislation are included when calculating the remuneration. This ensures compliance with the principle of equal pay for equal work performed in the same country.

Prior to the amendments the employers were obliged to provide the employees with warm food during night work. Now the word “warm” is replaced by “free”. The aim is to ensure greater flexibility in providing free food, incl. vouchers or money.

The minimum required length of service for acquiring the right to use paid annual leave is reduced from 8 to 4 months for employees who commence work for the first time.

The adopted amendments to the Labor Code establish the will of the parties, the place of establishment of the employer and the place of work as criteria for determining the applicability of the Bulgarian labor legislation to the labor relations with an international element. The citizenship of the employee has lapsed as a criterion for determining the applicability of the Bulgarian labor legislation.

Upon posting or sending a temporary employee to a business trip under Art. 121 or Art. 121a of the Labor Code, the user undertaking must notify the temporary work agency for the posting of the employee not later than 5 business days before the posting/business trip. This should ensure that the temporary work agency can meet all the requirements on posting/business trip under the national and European law.

And last but not less important as of 1 January 2021 the amount of the additional remuneration for night work was increased. Accordingly, for each hour of night work or part of the hour the employer shall pay an additional remuneration in the amount of not less than 0.15 per cent of the minimum wage, established for the country, but not less than BGN 1 (one lev). After 1 January 2021, the unpaid leave for a period of up to 60 days will be acknowledged as work experience. During 2021, up to 60 of those days will be acknowledged as social security periods.

The COVID-19 pandemic has raised new barriers in Bulgarian society. Pre-existing gender gaps have amplified the crisis symmetrically between men and women, even as women have been at the frontlines of managing the crisis as essential workers. The hardest hit



sectors by lockdowns and rapid digitalization are those where women are more frequently employed. Combined with the additional pressures of providing care in the home, the crisis has halted progress toward gender parity.

At the end of 2020 Bulgaria's cabinet has adopted the 2021-2030 National Strategy for Promoting the Equality between Women and Men. The main goal of the document is to contribute to the achievement of de facto gender equality in Bulgaria through a unified, consistent and sustainable state policy. Gender equality in the labor market; reducing the pay gap; combating violence and protecting and supporting victims; overcoming sexism are among the priority areas in the strategy.

In May 2021 the Union "Podkrepa" proposed a new type of a paid leave for employees who take the vaccine as follows: one day after the first dose and one day after the second one. This is necessary because many people are experiencing headache, blood pressure, high body temperature and etc. various symptoms. The proposal was sent in the Council of ministers and it waited to be entered in the 45th Bulgarian Parliament, that unfortunately had very short life and new elections happened in 11th July 2021. Unfortunately this proposition did not entered in the 46th Parliament, which also has short life and did not have time to review and vote new social policies.

Specific legal cases, related to COVID-19 pandemic crisis

Despite numerous changes in the social security legislation in recent months, Bulgarian law remains "silent" when it comes to employers' specific rights and obligations in relation to the coronavirus pandemic. A number of orders of the Minister of Health were aimed at specifying the responsibility of employers and employees in relation to the prevention of the spread of coronavirus. However, there is still no explicit requirement for the employer to test their employees, nor to instruct employees to test themselves.

One of the major practical problems in this context is the balance between the obligation to ensure healthy and safe working conditions and the obligation of the employer in his capacity as personal data controller. Undoubtedly, information on the health status of individuals falls into the category of "sensitive" data within the meaning of the General Data Protection Regulation (GDPR) and the Personal Data Protection Act. The processing of sensitive personal data in the context of the the rights and obligations of the employer - data



controller, is permissible in principle. However, it must be performed with the awareness of the potential damage that data subjects may suffer from the unauthorised disclosure of their sensitive data. Respectively, adequate technical and organisational measures must be taken to ensure the security of this data.

The General Data Protection Regulation entered into force on 25 May 2018 and it introduced unprecedented penalties for established violations of the rules on personal data processing. Therefore, as expected, many employers reached out to the Commission for Personal Data Protection (CPDP) with inquiries about the various aspects of the processing of information regarding the health status of employees. Same time many employees were complaining that their employers are obliging them to test or vaccinate.

The CPDP issued opinions on the aspects of COVID-19 group testing of employees as well as on the processing of personal data regarding the health and level of information of employees in case of presence of an employee infected with coronavirus. The Commission generally concludes that Bulgarian legislation does not oblige employers to test their employees for coronavirus. Employers only have the legal opportunity to organise testing for the employees that are willing to, but not to carry it out themselves. However, before taking any such action, employers should perform a preliminary analysis (the so-called balancing test). The analysis establishes whether the legitimate interests of the employer (protection of the health and fitness for work of all staff and continued operation of the activity) have an advantage over the rights and freedoms of data subjects- employees (the idea of limiting interference with the privacy rights of the employee). If this is the case, the employer may issue an order for mandatory group testing to identify coronavirus-infected individuals among its employees. The processing of personal data concerning health, as well as data derived from genetic data samples, containing genetic material may be performed only by the competent health authorities, which are bound by the obligation of professional secrecy and subject to the applicable legislation.

The Commission has not ruled in terms of who should assume the expenses in relation to coronavirus testing. But it can be assumed that if the employer requires and organises the testing, it should be the employer who also pays for them.

An opinion of the CPDP gave an explicit answer regarding the level of information of other employees in case of a coronavirus infection in the workplace: *"The employer may provide information to the staff about the presence of an infected employee without providing data on their identification, and only when an infected employee is confirmed in an*



INSTITUTE FOR SOCIAL INTEGRATION

Bulgaria, 1000 Sofia, 5 B Triaditsa Str. +3592/983 69 22, ifsi.bulgaria@gmail.com, www.isi-bg.org

indisputable manner on the basis of Article 4, para 1 of the Health and Safety at Work Act (HSWA). The health authorities should take actions to identify the contact persons and examine them accordingly". Obviously, the aim is to enable other employees, if they see fit, to independently undergo a coronavirus test.

Next important issue regards the quarantine, which is presented in Bulgarian legislation and have an established legal meaning and consequences in the field of labour and social security law. An employee is entitled to take a leave in various cases, when he/her himself/herself is not unfit to work, but due to health reasons cannot carry out work activity. These cases are called "equated to a common illness" because they have similar legal consequences. Some examples are the situation of quarantine or dismissal upon the prescription of health authorities, as well as the cases of caring for a sick or quarantined family member or caring for a healthy child due to quarantine in a child care facility where. A quarantine is a measure to prevent the spread of infectious diseases and it is expressed in isolating the respective person and limiting their movement during the time they are in quarantine, which results in an inability to work. Suspension from work upon prescription of the health authorities is a similar measure, by which a person is prohibited from carrying out their work duties because they have suffered from a contagious disease, has been found to be a virus carrier or has been in contact with a contagious patient.

The above described leaves are granted by the health authorities. According to Article 6, para 2 of the Medical Expertise Ordinance, the leave due to temporary unfitness for work (including in the equated cases) is formalised with a document for sick leave. The insured person is obliged to present it or to notify the employer / insurer within two working days from its issuance.

According to the Social Insurance Code (SIC), monetary compensation for temporary unfitness for work due to quarantine or suspension from work prescribed by the health authorities, must be paid respectively for the time for which the insured person is in quarantine or for the time of suspension, if the insured person cannot be employed in another suitable position during the respective time, but for not more than 90 calendar days in a calendar year. Monetary compensation under the conditions and in the amount of the monetary compensation for temporary unfitness for work due to general illness is also paid in other "equated cases". The daily monetary compensation for temporary unfitness for work due to common illness and due to the cases equated to a common illness is calculated in the



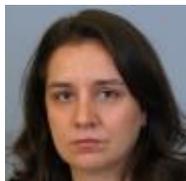
INSTITUTE FOR SOCIAL INTEGRATION

Bulgaria, 1000 Sofia, 5 B Triaditsa Str. +3592/983 69 22, ifsi.bulgaria@gmail.com, www.isi-bg.org

amount of 80 per cent of the average daily gross remuneration on which social security contributions have been paid or are due.

Based on the above, it can be concluded that the legal significance of "voluntary" quarantine or self-quarantine does not equal the legal significance of quarantine enforced by medical authorities. In the absence of a medical document certifying the objective need for absence from work, the employee may, on general grounds, even be subject to a disciplinary penalty. Of course, there is no obstacle to a conflict-free solution to such situations. It is advisable for the employer to seek such a solution by offering the employee to use, for example, paid or unpaid leave. Furthermore, similar advice is given by the experts with the Ministry of Labour and Social Policy on the website of the ministry. In a recent awareness campaign on the topic "If you are a parent of a child in quarantine", employees were advised to use paid or unpaid leave. They were presented with the procedure for receiving benefits from the Agency for Social Assistance (ASA) if unpaid leave is used and the respective persons are deprived of income, as well as with the procedure for issuing a document for sick leave and receiving compensation from the Public Social Insurance (PSI).

Author:



Lazarina Boneva, Lawyer

Since 2009 she has been a member of the Regional Electoral Commission of the 26 MIR Sofia District. She has been actively involved in trainings for youth exchanges leaders and coordinators of the Youth in Action and Erasmus + programs. She has been the leader of youth exchange groups in Austria, Croatia, Germany and Slovenia.

Member of the Board of National Youth Forum, Mandates: November 2013 - December 2014; December 2014 - December 2015. She has been trained for community leaders, including one-year funding for the Mobile Youth Center Bozhurishte project through the Institute for Social Integration.