

Amendments to Labour Code (2/35/17)

Amendments to the Labour Code effective from 16 August 2017 bring a number of significant changes. This article explores amendments relating to competition restraints, side jobs, overtime, and extra leave.

A competition restraint after employment is ended

The version of the Labour Code applicable before the amendments came into force allowed the employer to agree with employees on a competition restraint, i.e. a restriction on their professional activity after the end of their employment. The amendments clarify the purpose of a competition restraint, i.e. the competition restraint should be based on a piece of the employer's confidential information held by the employee, such as customer details. Accordingly, when facing the need to insert a competition restraint in an employment contract or other documents, the parties should evaluate whether the purpose of that restraint can be linked to the employer's confidential information.

Section 84 of the Labour Code has been amended to include examples for various types of competition restraints. Those examples serve to mark the boundaries of a competition restraint. Competition restraints will be taken to mean also restrictions relating to a former employee's independent competing economic activity, a former employee working for another employer, and enticing customers or employees of the former employer.

The Labour Code now clearly states that a consideration in return for a competition restraint is payable each month, ruling out the possibility of such a consideration being interpreted as a one-off payment or as a payment already included in the former employee's pay during their employment.

It is important to note that section 85 of the Labour Code clarifies the employer's right to unilaterally terminate the agreement on a competition restraint. As a result, where an employment contract is being terminated by the employer, he can unilaterally terminate the competition restraint agreement only before, or at the same time as, he gives notice of termination. Where any other grounds are invoked for ending employment, the employer can unilaterally terminate the competition restraint agreement only before the employment is ended.

We suggest checking that your current and proposed competition restraint agreements comply with these amendments to the Labour Code, i.e. the competition restraint should have a legitimate purpose and the former employee should receive an appropriate consideration. It is important to note that where the conditions for imposing a competition restraint are not satisfied, that restraint can be difficult to enforce.

Side jobs

A side job is no longer taken to mean only an employment relationship but includes some other forms of work, such as a civil service relationship or working under a contract for services.

The amendments clarify how the employer can impose restrictions on side jobs, i.e. such restrictions will be permitted to the extent they are based on the employer's legitimate and protected interests. In the event of a dispute the employer will be required to prove the existence of his legitimate and protected interests.

We suggest evaluating the grounds for each side-job prohibition and avoiding a general one that is not based on particular circumstances. Since in a dispute the employer may be required to prove the existence of his legitimate and protected interests, a general prohibition on any side job might be

unreasonable and therefore unenforceable.

Overtime

Amendments to section 136 of the Labour Code introduce paid time off in lieu (TOIL) as an alternative method of overtime compensation the employer and employees can choose instead of extra pay for overtime worked.

An employee can be awarded TOIL equal to the number of extra hours worked. In the case of normal working hours, TOIL should be awarded within one month. With aggregated working hours, TOIL should be awarded in the following financial period but no later than three months after its beginning. If the employment ends before TOIL is claimed, the employer will be required to pay extra.

It is important to note that the Labour Code does not provide for TOIL in the form of leave, and so the employer can award it as a daily or weekly TOIL. Standard wages are payable during TOIL, not average earnings as in the case of leave.

Extra leave

Amendments to section 151 of the Labour Code provide for extra leave to be awarded to employees who are taking care of children and to those who are doing work that involves a special risk, with procedures for taking extra leave also included in that section. Such extra leave can be claimed before annual paid leave due for the coming year. A cash compensation for extra leave is not possible, except where extra leave remains unclaimed before the end of employment while the employee can still claim it.