

# Crucial mistakes in employment contracts 1/15/21



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Although the employment contract is a key basis for each company's business and its content is quite exhaustively prescribed by section 40 of the Labour Act, in practice we often encounter incorrect, inaccurate and in certain cases even unlawful terms of the employment contract. It is important to review employment contracts regularly, and this article will help you notice some crucial faults in your employment contracts that are often ignored, as well as suggesting improvements.

## The worker's residence address

There are often situations where the employer's notice of termination or any other information needs to be sent to the worker by post (e.g. if the worker is absent for a long time). Under section 112.1 of the Labour Act it is important for the employment contract to correctly state the worker's declared residence address in order to avoid complications and misunderstandings when the employer wants to send a notice of termination or any other important information to the worker. Also, when it comes to suing a worker, this should be done according to their declared residence address. This information needs regular updates so it is advisable for the employment contract to require workers to notify a change of residence address to the employer.

## Agreement on overtime

Many employment contracts state that "*the worker agrees to work overtime.*" Unfortunately a clause like this prevents the company from having an employee work in addition to their agreed working hours because section 136(2) of the Labour Act requires the parties to consent to overtime on each occasion separately, unless any of the exclusions of section 136(3) apply. Alternatively, the parties' consent to overtime on a particular day may be given in their e-mail correspondence etc.

## Aggregate working hours for part-time workers

Aggregate working hours are not applicable to part-timers, according to the Supreme Court's ruling on civil case No. SKC-2735/2015. The court finds it is normal full-time hours that an employer recording aggregate hours is required to balance over a particular financial period.

## Failure to pay the minimum wage

With this breach attracting an administrative penalty of EUR 850–7,100, special attention should be paid to the minimum wage in employment contracts. We have dealt with situations where the employer determines additional payments to workers but their basic wage is set below the national minimum. Employment contracts also need attention when the country raises the minimum wage, and this applies to the minimum hourly rate, too.

## Suggested improvements

### *E-mail address*

Section 112.1(1) of the Labour Act provides that the employer's notice of termination may be given by e-mail using a secure electronic signature if the employment contract provides for this. While this clause is omitted from most employment contracts, it is recommended nevertheless as it facilitates the notification and communication process between the employer and the worker. The Labour Act does not prohibit the electronic transmission of any other documents, such as the employer's orders. It is important for the e-mail address stated in the employment contract to be freely accessible by the worker as their private address and not a business one.

### *An electronic employment contract*

While most employment contracts are signed in hardcopy, electronic signing is not forbidden. Section 40(1) of the Labour Act provides that an employment contract should be signed in writing, yet section 3(1) of the Electronic Documents Act provides that the written form requirement is satisfied if an electronic document has an electronic signature and meets other statutory requirements. An electronic employment contract facilitates not only the contracting process but also the employer's record-keeping obligations.

Since this list is not an exhaustive one and offers just a brief overview of the issues, lawyers at *PwC Legal* have built a handy tool that allows everyone to verify that their employment contract is compliant. We invite you to give it a try on our website and approach *PwC Legal's* employment law experts if necessary.