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Amendments *to the* Labour Code of Georgia –

further advancements towards employee protection

Georgia's Labour Code, adopted back in 2010 as a part of major reforms aimed at improving the investment climate in the country, has been recently further improved by the latest amendments that came into force on 6th of October 2020.

The initial 2010 edition was primarily based on the principle of freedom of contract, thus providing a broad avenue for interpretation and soft hiring-firing policies.

To counterbalance employer discretion, Georgian courts have consistently pursued a path of protecting employees to the best extent possible through creative reasoning to support judgements in labor cases, culminating in what has become a mock phrase: 'the employee is always right'.

On the other hand, the 2010 edition of the code has been heavily criticized by international think tanks who considered it too 'employer friendly', allowing for the abuse of employee rights and discrimination.

In response to the above, the first major reform aimed at improving employee status, as well as providing protection against unfair treatment and discrimination in the workplace, was initiated in 2013 and resulted in a package of amendments to the Labour Code in June of the same year. However, as evidenced by the growing number of labor law disputes since the reform, certain problems have persisted.

The current amendments are a logical continuation of the 2013 revision and adopted with the aim to further approximate Georgia's labor Code with requirements imposed by the DCFTA (Deep and Comprehensive Free Trade Agreement with the EU), as well as the European Union Association Agreement, therefore aiming to better protect employees. The 2020 amendments were initiated for discussion by the parliament of Georgia on April 27, 2020 and swiftly went through all three readings and promulgation stage within four months, and coming into force in early October 2020. The cornerstone novelties introduced by the 2020 amendments are as follows:

✓ Regulations prohibiting discrimination have been significantly broadened – there is no longer an exhaustive list of protected classes but rather an open ended one. Discrimination is prohibited at any stage of employment, including, but not limited to the pre-employment stage, as well as upon promotion, termination, etc. The obligation to provide equal pay has been introduced, and the principle of 'Reasonable Adjustment' has also been recognized, obliging the employer to, where possible, adjust its practices to accommodate people with disabilities, temporary/permanent medical conditions and so on. Most notably, in the case of a discrimination claim, the burden of proof shall rest upon the employer.

✓ Previously deregulated types of work, namely part-time work and internships, are now regulated. Part time work is encouraged, while discrimination based on part-time employment is explicitly prohibited. Internships have been restricted to 6 months in case it is unpaid and up to a year in case it is paid. Consecutive/multiple unpaid internships by a single employer are not allowed and the employer is restricted from hiring a trainee instead of a previously employed person.

✓ Employers are now obliged to 'timesheet' its employees. In essence, after the relevant rules come into force (January 1, 2021), the employer shall be obliged to record working hours of employees on a monthly basis and this timesheet shall serve as the basis for payment of overtime work. The revised Labour Code now requires that overtime work compensation be paid together with salary payment immediately following the overtime (or, if additional time in lieu is given – within 4 weeks). Additional protection is offered to employees that work nighttime hours, in particular the employer is obliged, at their own expense, to conduct medical examinations of such employee on a regular basis, should the employee so request.

✓ Enterprise transfer regulation - termination of employment merely due to the fact that the enterprise is being alienated/transferred to another owner is explicitly prohibited. Most importantly, this covers not only share transfer, but transfer of business or assets. Should either occur, the employees follow the enterprise transferred and are to be relevantly informed regarding specifics of such transfer in advance, including, inter alia, any and all effects that such a transfer may have upon their employment terms and conditions. Quite interestingly, the Georgian court ruled to the same effect even prior to the introduction of this regime, so the codification of this approach was not entirely unexpected.

✓ In the event a particular employer permanently employs above 50 people, ensuring information exchange and consultation with duly elected employee representatives is now mandatory. Should that be the case, employees have an option to either represent themselves through an internal labor union or, if such is not available, through a specifically elected authorized employee representative(s). At its core, this amendment is aimed at strengthening employee unification in sectors that were traditionally uninvolved in union activity (e.g. office workers). The employer is obliged to regularly inform the employee representative(s) of the core issues related to the activity of the enterprise, including, among others, the economic state of the enterprise and its estimated development, any issues that might affect employees' pay or other terms of employment, any structural changes, etc. Such information is to be delivered reasonably in advance (at least 30 days).Should intended changes be found to affect employee interests, relevant information is to be delivered in writing to such extent as to allow the employees adequately analyze the issue.

✓ Increase in power of the Labour Inspection - Legal Entity of Public Law Labour Inspection, Subordinate to the Ministry of IDPs, Labour, Health and Social Security, previously empowered to inspect and act on issues related to occupational and workplace safety, is now authorized to check compliance with any and all labour-related legal acts, as well as employment agreements. In particular, Labour Inspection shall be authorized to impose sanctions upon parties it finds them in breach of requirements imposed by the Labour Code (aside from compliance with the termination rules, which is left to the courts to decide). The amounts of sanctions vary based on the category of the employer (whether it is a private person or a company) and the volume of its annual turnover, ranging from a 200 GEL per offense up to 1000 GEL for non-specific defaults, whereas specific defaults, e.g. discrimination or forced labour warrant fines triple of the amounts of ordinary fines. A repeat offense within the same year also multiplies the possible sanction.

While it is evident that the 2020 amendments have been put in place with the aim of providing more safeguards to the employees, it remains open to debate whether or not the suggested instruments will prove effective.

In particular, the issue of the involvement of the Labour Inspection raises certain legitimate concerns, as to whether or not it shall be time and cost effective to process the complaints/applications filed by interested parties.

It is expected that the notion of equal pay may prove to be problematic in practice, as not many private sector employers have a distinct distribution of functions and job descriptions allowing for comparative analysis. Needless to say, such requirements are also sure to increase costs for employers – facilitation of professional advancement, introduction of the Reasonable Adjustment principle, time-sheeting obligations, etc. will most probably require the injection of additional funds within enterprises, which may be exceedingly challenging in the Covid-19 affected economy.

Overall, the intent of the legislator is clearly towards western standards of the labour law, aligning the Code toward best practices accepted in the developed countries.

As a result, employees shall enjoy better protection against possible mistreatment at work, thus resulting in a more committed and mutually beneficial relation with the employer, hopefully bringing the economy of Georgia to new heights as well.