

**AMENDMENTS TO LABOUR CODE AND THE ORDINANCE
ON WORKING TIME, RESTS AND LEAVES
(IN FORCE AS OF MARCH 2011)**

The Act amending and complementing the Labour Code as well as a Government Decree amending the Ordinance on working time, rests and leaves (the "Ordinance") are published in State Gazette # 18/01.03.2011 and State Gazette # 21/15.03.2011, the provisions of which enter into force as of March 2011.

Some of the most important amendments introduced by the Act and the Decree are summarized below.

1. Using the Paid Annual Leave

Articles 172 and 173 of the Labour Code introduce new rules for the paid annual leave – the employee/worker shall use it at once or at different times, but only during the year for which it is due and according to a schedule approved by the employer. The employer shall approve this schedule no later than 31st of December of the calendar year prior to the year of the leave after consulting the representatives of the unions and of the employees/workers. The schedule for 2011 shall be approved no later than 31st March 2011.

The employer cannot deny the employee the use of the leave pursuant to the approved schedule, unless the use of the leave is postponed under Article 176 (important industrial reasons, written request by the employee, used leave for pregnancy, birth, adoption, etc.).

In the event that the employer denies the use of the paid annual leave under the schedule, the employee is entitled to determine the time for its use with a two-week notice to the employer in writing. Given the employee has not requested the leave until the first due date under the schedule, the employer can provide him the paid annual leave without his written request or consent.

According to prior provisions the employee was obliged to use only a half of the paid annual leave at once during the year for which it is due.

2. Postponement and limitation of the right of using the paid annual leave

According to the amendments in Article 176 and the new Article 176a of the Labour Code, the employer is entitled to postpone the use of not more than 10 working days of the paid annual leave in case of important production reasons. The employee has also the right to request that he use up to 10 days of the leave during the next year by filing a written request and receiving the employer's consent. The total postponed leave by the employer and the employee cannot exceed 10 days.

The leave could also be postponed due to the use of other leaves in the respective calendar year, such as leaves for temporary incapacity for work, pregnancy, birth, adoption or raise of a young child, etc.

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One of the most important amendments concerns the statute of limitation of the right of using the paid annual leave. According to the new rule the employee is not allowed to use the paid annual leave provided that 2 (two) years, following the year for which it is due, have elapsed. In case the postponement of the leave is due to pregnancy, temporary incapacity for work, birth, etc. the leave can be used only 2 (two) years after the reason for its postponement has ceased to exist.

The paid annual leave for the years prior to 2010 is not subject to limitation and can be used under the former rules, i.e. until the termination of the labour relationship with the respective employer.

The unused paid annual leave for 2010 can be used until 31.12.2012.

3. Financial compensation for unused paid annual leave

The amendment of Article 224 of the Code entitles the employee to receive a financial compensation for the unused paid annual leave when the labour relationship is terminated, but under the condition that the right of using the leave has not extinguished within the two-year term.

4. Employer's obligations concerning the control on compliance with the labour legislation

The amendments require the employer to determine employees who will represent him before the competent officers of the Labour Inspection in the event of inspections. It is compulsory that the company-employer stores documentation in its headquarters, divisions, entities, workplaces which must be at the disposal of the controlling authorities upon their request. These documents include: a copy of the regulations on internal order; documents concerning the working hours and the organization of the work such as orders for overtime work, for work on duty, for the time at disposal, for part-time work as well as nominal schedules for the periods of summary calculation of the working time.

The Ordinance introduces main requirements on the schedule on the use of the paid annual leave to be approved by the employer. Prior to the approval of the schedule, the employer has to consult all employees and workers on their preferences.

This schedule should include full names of the employees/workers, position, duration of basic and additional paid leave (in days), first and last date of use of the leave, calendar year for which the leave is due, etc. The employer shall include all employees/workers in the schedule, including those who have not announced their preferences and those who have not been at work when the schedule was approved.

The schedule could be amended in case of any economic, technological, financial, market or other reasons. The employer shall inform the employees on the approved schedule and should keep a copy of it at their disposal in the working area.

5. Amount of penalties for infringement of the labour legislation

The amendments in Chapter 19, Section II first introduce a significant decrease in the lower thresholds of the sanctions in case of infringement of labour legislation.

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