LEGAL ASPECTS REGARDING THE TRANSPARENCY AND PREDICTABILITY OF WORKING CONDITIONS IN THE EUROPEAN UNION

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Abstract

In the current economic-social context, minimum information requirements regarding the essential aspects of the employment relationship and working conditions should be established, at the level of the Union and then of the member states, which should apply to all workers, for to guarantee that all workers in the Union benefit from an adequate degree of transparency and predictability in terms of their working conditions, while at the same time maintaining reasonable flexibility of atypical forms of work, thus preserving the benefits them for workers and employers.

Therefore, in the current dynamics, it is necessary to update the labor legislation in our country, which aims to improve working conditions by promoting more transparent and predictable forms of work, while ensuring the adaptability of the labor market.

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JEL classification: K0, K1

According to art. 31 of the Charter of Fundamental Rights of the European Union every worker has the right to working conditions that respect his health, safety and dignity, to a limitation of the maximum working time and to daily and weekly rest periods, as well as to a rest leave paid annually.

Regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment in terms of working conditions, access to social protection and vocational training, the transition to permanent forms of work must be encouraged, in accordance with legislation and collective labor contracts, the necessary flexibility must be ensured for employers to quickly adapt to changes in the economic context, innovative forms of work must be promoted that ensure quality working conditions, entrepreneurship and activity must be encouraged independent and that occupational mobility must be facilitated; employment relationships resulting in poor working conditions must be prevented, including by prohibiting the abusive use of atypical contracts and that any trial period must be of reasonable duration[2].

Workers also have the right to be informed in writing upon employment of their rights and obligations arising from the employment relationship, including any trial period, before being dismissed, workers have the right to to be informed of its reasons and to benefit from a reasonable notice period, the right to resort to effective and impartial dispute resolution mechanisms, and in case of unjustified dismissal, have the right to a remedy, including adequate compensation .

Recently, the labor market has undergone profound changes as a result of demographic developments and the fact that digitization has led to the creation of new forms of work, which have supported innovation, job creation and the development of the labor market. Some of the new forms of work vary considerably from traditional employment relationships in terms of predictability, generating uncertainty as to the applicable rights and social protection of the workers concerned.

Therefore, in this changing world of work there is an increasing need for workers to be fully informed of their essential working conditions, and this information should be provided in a timely manner and in writing in an easily accessible form accessible to workers. In order to adequately frame the development of new forms of work, workers in the Union should also

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[2] Principle no. 5 of the European Pillar of Social Rights, proclaimed in Gothenburg on November 17, 2017.

be provided with a series of new minimum rights aimed at promoting security and predictability in employment relationships, achieving at the same time an upward convergence among member states and maintaining the adaptability of the labor market.

Under Directive 91/533/EEC, most workers in the Union have the right to receive written information about their working conditions. However, this Directive does not apply to all workers in the Union. Moreover, protection gaps have appeared for new forms of work created following recent labor market developments.

Therefore, there should be stability, at the level of the Union and then of the Member States, minimum information requirements on the essential aspects of the employment relationship and working conditions, which apply to all workers, in order to guarantee. that all workers in the Union benefit from an adequate degree of transparency and predictability in this employers.

Therefore, in the current dynamics, it is necessary to update the labor legislation in our country, which aims to promote working conditions by applying more transparent and predictable forms of work, while ensuring the adaptability of the labor market.

To this end, EU Directive 2019/1152 of the European Council and of the Council of June 20, 2019 on the transparency and predictability of working conditions in the European Union, states that states ensure that employees have the obligation to inform workers about the essential member elements . of the employment relationship. Said information shall include at least the following elements:

(a) the identity of the parties to the employment relationship;

(b) the place of activity; if there is no fixed or main place of activity, the principle according to the working activity has various places of activity or is free to establish its own place of activity, as well as the registered office of the enterprise or, if applicable, the domicile. the employer;

(c) any of the following:

- the name, degree, type of work or category of professional activity for which the worker is employed; or a brief characterization or description of the work;

(d) the date from which the employment relationship begins;

(e) in the case of a fixed-term employment relationship, the date on which it ends or its expected duration;

(f) in the case of temporary agency workers, the identity of the user enterprises, as soon as possible after it is known;

(g) the duration and conditions of the probationary period, if any;

(h) the right to training offered by the employer, if any;

(i) the duration of the paid holiday to which the worker is entitled or, if its duration cannot be indicated when the information is provided, the procedure for granting and establishing this leave;

(j) the procedure to be followed by the employer and the worker, including the conditions of form and length of notice periods, in the event of termination of their employment or, if the length of notice periods cannot be indicated when the information is provided, the method of determining of these notice periods;

(k) the remuneration, including the initial basic amount, any other components, if applicable, indicated separately, and the frequency and method of payment relating to the remuneration the worker is entitled to receive;

(l) if the pattern of work organization is wholly or largely predictable, the length of the worker's standard working day or standard working week and any overtime provisions and related remuneration and, where applicable, the arrangements regarding shift work;

(m) if the worker's work organization pattern is wholly or largely unpredictable, the employer shall inform the worker of:

- the principle according to which the work schedule is variable, the number of hours guaranteed in payment and remuneration for work performed in addition to the guaranteed hours;

- reference hours and days when the worker may be required to work;

- the minimum period of prior notice to which the worker is entitled before starting a work assignment and, as the case may be, the cancellation deadline;

(n) any collective labor contracts that regulate the working conditions of the worker or

in the case of collective labor contracts concluded outside the company by special peer institutions or bodies, the name of these competent institutions or bodies within which the contracts were concluded;

(o) if it is the employer's responsibility, the identity of the social security institution or institutions that receive the social contributions related to the employment relationship, and any social security protection provided by the employer.

The mentioned information can be communicated, if necessary, in the form of a reference to the legal acts and to the administrative or statutory provisions or to the collective labor contracts that regulate the aspects mentioned in the respective letters.

If it has not been communicated in advance, this information may be communicated individually to the worker, in the form of one or more documents, during the period starting with the first working day and ending no later than the seventh calendar day or in the form of a document, within one month starting from the first working day.

Member States may develop forms and models for these documents and make them available to employees and employers, including by publication on a single national official website or by other appropriate means.

Each state within the European Union must ensure that the information regarding the legal acts and administrative or statutory provisions or collective labor agreements of general application that regulate the applicable legal framework, which must be communicated by employers, is made available at a level generally, free of charge, in a clear, transparent, comprehensive and easily accessible way remotely and electronically, including through existing online portals.

Member States shall ensure that any change to the elements of the employment relationship and any change to additional information in the case of workers sent to another Member State or to a third country, is communicated by the employer to the worker, in the form of a document, in the most as soon as possible and at the latest on the effective date.

This document is not communicated in the case of changes that only reflect a modification of the legal acts, administrative or statutory provisions or collective labor contracts applicable at national level.

According to art. 7 of EU Directive 2019/1152 of the European Parliament and of the Council of June 20, 2019 on the transparency and predictability of working conditions in the European Union, each member state must also communicate a set of additional information for workers sent to another member state or in a third country.

Thus, Member States shall ensure that, when a worker has to perform work in a Member State other than the one in which he normally carries out his activity or in a third country, the employer communicates the above-mentioned documents before the worker's departure and that the documents include at least the following additional information:

(a) the country or countries in which the overseas work is to be performed and the anticipated duration

Hers;

(b) the currency in which the remuneration is to be paid;

(c) if applicable, benefits in money or in kind related to the work performed;

(d) information indicating whether repatriation is envisaged and, if so, the conditions for repatriation of the worker;

(e) the remuneration to which the worker is entitled under the legislation applicable in the host Member State;

(f) as the case may be, any allowance specific to the posting and any reimbursement measures for transport, board and accommodation expenses;

(g) the link to the single official national website created by the host Member State pursuant to Article 5(2) of Directive 2014/67/EU of the European Parliament and of the Council (15).

This information can be provided, where appropriate, also in the form of a reference to the specific provisions of the legal acts and to the administrative or statutory acts or to the collective labor agreements that regulate the respective aspects.

Unless Member States provide otherwise, these obligations do not apply if the duration of each working period spent outside the Member State in which the worker normally carries out his activity is four consecutive weeks or less.

Regarding this aspect, it must be emphasized that Member States must ensure that, if an employment relationship is subject to a trial period, as defined in domestic law or national practices, that period does not exceed six months.

In the case of fixed-term employment relationships, Member States shall ensure that the duration of the trial period is proportionate to the expected duration of the contract and the type of work. In case of renewal of a contract for the same position and tasks, the employment relationship is not subject to a new trial period.

Member States could also exceptionally provide for longer trial periods when the nature of the work justifies it or when it is in the worker's interest. If the worker has been absent from work during the probationary period, Member States may provide that the probationary period may be extended accordingly by the duration of the absence.

It is important to note that national legislation must ensure that an employer does not prohibit a worker from working for other employers outside the working hours established with that employer and does not subject the worker to unfavorable treatment for this; in this sense, conditions can be set for the use of incompatibility restrictions by employers, based on objective reasons such as health and safety, protection of business secrets, integrity of the public service or avoidance of conflicts of interest.

Any member state of the European Union must ensure that, in the event that a worker's work organization pattern is wholly or largely unpredictable, the employer requires the worker to perform work only if the following two conditions are met cumulatively:

a) the work is performed within pre-established reference hours and days;

b) the worker is informed by his employer regarding a service task with respect to a reasonable period of prior notice, established in accordance with domestic law, collective labor agreements or existing national practices in the matter.

A worker has the right to refuse a job assignment without suffering negative consequences if one or none of the above requirements are met.

Where national law allows an employer to cancel a work assignment without compensation, the employer shall take the necessary measures, in accordance with national law, collective agreements or national practice, to ensure that the worker is entitled to compensation where that the employer cancels the work task previously agreed with the worker, after the completion of a reasonably determined deadline.

National legislation must ensure that a worker with at least six months of service at the same employer, who has completed his probationary period, if any, can request a form of work with more predictable and safer working conditions, if it is available and that it receives a reasoned response in writing and to be able to limit the frequency of requests that trigger this obligation.

Any Member State must ensure that the employer provides a reasoned response in writing within one month of receiving the request. As regards natural persons acting as employers, as well as micro and small and medium-sized enterprises, Member States may

provide for the extension of this period by a maximum of three months and may allow oral communication of the response to a subsequent similar request submitted by the same worker, if the justification of the answer regarding the worker's situation remains unchanged.

Workers who consider that they have been dismissed or have been subjected to measures of equivalent effect because they have exercised their rights set out in this Directive may request the employer to provide well-founded reasons for the dismissal or equivalent measures. The employer presents these reasons in writing.

Bibliography

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