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MEMORANDUM REGARDING THE PROSPECTIVE LABOR LEGISLATION AMENDMENTS

Dear Partners,

We are writing to officially notify you that a recent change has been published on May 30, 2023, and it is scheduled to come into effect on July 30, 2023.

We strongly advise both employers and employees to carefully consider and acknowledge these changes, as they are crucial for safeguarding their respective interests and rights.

If you have any inquiries or concerns regarding any of the clauses outlined in the amendments, which are specifically mentioned in the attached MEMO, please do not hesitate to reach out to us. We are available to provide further clarification and address any questions you may have.

Thank you for your attention and cooperation.

1. **Prohibition of violence or harassment in employment relationship.**

The legislator prohibits harassment at the workplace, and intends to provide the precise definition of what is considered violence or harassment:

Violence or harassment in the workplace or elsewhere in the performance of work duties (including business trips) is a single or repeated act by an employer or employee that degrades or offends the dignity of a person, creates a hostile or degrading environment, or that is intended to lead to, leads to, or may lead to physical or mental or sexual or employment (work) related dependence or harm or is a threat of such an act directed against an employee or a third party.

The legislator separates the gender based harassment and provides the precise definition on that.

Sexual harassment, based on gender, is any physical, verbal or non-verbal or other behavior of a sexual nature that affects the dignity of women and men, which is unwanted, unreasonable and offensive to the recipient and the person to be rejected or subjected to it; such conduct is used explicitly or implicitly as the basis for a decision affecting the individual's employment; or conduct that creates an intimidating, hostile, or degrading work environment for the recipient.''.

2. **When it is considered that the employment relationship is originated in the Republic of Armenia?**

According to article 7 of the current labor code "Labor legislation and other normative legal acts containing norms of labor law ***apply to labor relations arising in the territory of the Republic of Armenia,*** regardless of where the work is performed - in the Republic of Armenia or on the instructions of the employer - in another state.".

So, at this moment, it is not regulated in what cases it is considered that the employment relationship arises in the Republic of Armenia.

The legislator intends to define when it is considered that the employment relationship arises in the Republic of Armenia:

Labor relations are considered to have originated in the Republic of Armenia, if the employment contract was concluded or the individual legal act on employment was adopted in the Republic of Armenia. If the employment contract was concluded in another place outside the Republic of Armenia, or by exchange by postal service or through a connection providing electronic communication in accordance with the procedure specified in Article 85, Part 1.1 of this Code (this is a new addition and will be referred to below), or if the individual legal act of employment was sent to the employee by means of communication specified in this part, then the employment contract is concluded, and the individual legal act on hiring is considered adopted in the Republic of Armenia, if:

1) the location (the location of its permanent operating body) of the employer who is a resident legal entity is the Republic of Armenia;

2) the employer is the Republic of Armenia or the community or the state or local self-government body;

3) The place of state registration of the institution (branch) is the Republic of Armenia;

4) The address (postal address) of the place of location of the employer, which is a separate division or institution of organizations or international organizations, is in the Republic of Armenia.

5) The place of residence of the employer who is a natural person is the Republic of Armenia.

3. **What is considered the place of work of an employee?**

According to the labor legislation's current edition, it is not regulated what is considered the place of work of an employee and it causes an ambiguity especially in the sphere of IT specialists, drivers, and couriers.

So, the legislator plans to provide the following solution to the aforementioned issues:

The place of work (workplace) is the place where the employee performs the work functions defined by the employment contract or the individual legal act on hiring, or where the employee must be or where he must appear due to his work and which directly (directly) or indirectly under the management (management) or control of the employer.

For the cases, where it is unclear what is considered the place of work of an employee because of the nature of the work, the legislator provides the following solution.

If due to the nature of the work, in the case of working for the same employer, there are more than one place (places) of work for the employee, then the main place of work (main place of work) is:

1) the workplace with a permanent location and equipped with work equipment, where the employee usually spends more than half of the period necessary to perform the work provided for by the employment contract or individual legal act on employment;

the location of the employer or the location of the structural or separate division of the employer or the office or establishment in which the employee works, in cases where:

a. It is not possible to determine the duration of the period provided for in point 1 of this part for performing the works provided for by the employment contract or the individual legal act on hiring;

b. the works are carried out in field conditions or have the nature of transportation (displacement) or have a non-permanent location or work at mobile trade points;

c. the place of work defined in the labor contract by the agreement of the parties, in the event that it is not possible to determine the main place of work according to points 1 and 2 of this part.

4. **What are the new mandatory provisions that shall be included in the employment contract?**

According to the amendments the following new provisions shall be added to the employment agreement:

1. Father's name of an employee;
2. Place of work;
3. position name and (or) work functions or a reference ***to the document defining the functions arising from the position***;
4. the amount of salary ***(including taxes paid from the salary, social or other mandatory payments established by law)*** and the method of calculation of it (hourly, daily, fee or monthly rate);
5. the mode of working time (normal duration of working time or part-time working time or reduced duration of working time or sum calculation of working time) and ***weekly duration (except for sum calculation of working time)***;
6. ***Position***, name, surname of the person signing the individual legal act or employment contract;

7. Methods of notifying each other by the employer and the employee connected with labor relations.

5. The procedure of conclusion of employment contract.

The legislator envisages a new method of signing of employment contracts:

The employment contract can also be concluded by post or by exchanging between the parties through electronic communication, which allows to confirm its authenticity and to determine precisely that it is issued by the party of employment contract. In the cases defined by this part, the party that signed the employment contract provides one copy of the employment contract to the other party and receives it after signing it in one or more of the following ways:

1) by sending a signed copy of the employment contract to the address or place of residence provided by the other party by registered letter with notification of receipt;

2) by sending the scan (facsimile reproduction) of the signed employment agreement through a facsimile (telecopy) connection;

3) by sending a signed and electronically printed (scanned) copy of the employment contract or a copy of the employment contract with an electronic digital signature through a electronic communication (including through the official e-mail prescribed by the law "On Public and Individual Notification on the Internet").

Moreover, the legislator defines when an employment contract is considered as concluded in the aforementioned cases:

In case of signing an employment contract in accordance with the procedure specified in part 1.1 of this article, the employment contract is considered concluded from the moment when both parties who signed the contract receive a copy of the employment contract signed by both parties.

6. **In some cases it will not be mandatory for the employer to request social services number from the employee.**

The legislator makes an exception for the employers and releases it from the obligation of requesting social services number from the employee on the following case:

In order to sign an employment contract, the employer must request the following documents:

1. Social security number or a certificate of not having a social security number or a public service number or a certificate of not having a public service number, except for cases where the employee is a foreign citizen without a residence status in the Republic of Armenia or a stateless person and will not actually be in the Republic of Armenia.

7. **Work functions will be considered as essential conditions of employment.**

As work functions will be connected as essential terms of employment all the obligations and rights connected with the amendment of essential terms will be applied for the employer.

8. Additional legal implications in case of termination of employment contract by employee.

The legislator intends to add additional safety layers for employers, for the cases where an employee does not attend to work earlier than it was initially intended by that employee.

In cases if an employee terminates the employment contract before the mentioned termination date, an employee will be obliged to pay fine for each overdue day of notification - in the amount of the average daily salary, but not more than the average monthly salary.

It is also important to note that if an employee mentions earlier date of termination of employment contract in its notice, it will be possible to terminate the employment agreement earlier than the term specified in the labor code, if the employer does not object. In case of receiving an objection by the employer, the employment agreement shall be terminated within the terms set by the RA Labor Code, for that particular case.

9. In case of termination of employment contract by the initiation of the employer because of the long-term disability of employee new timeframes for the length of disability of employee are established.

The employer will need more time period of disability of employee to terminate an employment contract based on the fact of disability of employee.

The employer has the right to terminate the employment contract concluded with the employee for an indefinite period, as well as the employment contract concluded for a definite period before its expiration date: in case of long-term incapacity of the employee (if the employee has been in temporary incapacity for more than six months in a row or in the last twelve months - more than 180 days, excluding the days of pregnancy and maternity leave).

10. In the case of changes in production volumes and (or) economic and (or) technological and (or) work organization conditions and (or) reduction of the number of employees and (or) positions due to production needs an institute of pre-emptive rights is going to be introduced.

The legislator intends to provide additional layers of labor rights protection for some range of employees in case of layoffs connected with the employer's changes in production volumes and (or) economic and (or) technological and (or) work organization conditions and (or) reduction of the number of employees.

When terminating the employment contract, in the presence of other equal conditions, the right of preference to stay at work is enjoyed by a former serviceman entitled to a disability pension, as well as a family member (spouse child, father, mother, relative sister, relative brother, grandmother, grandfather) of a former serviceman receiving a disability pension with a deep degree of functional limitation or a deceased (deceased) or missing or deceased serviceman, if he/she:

1) is engaged in the care of a former serviceman receiving a disability pension with a profound degree of functional limitation or in the care of the children, grandchildren, brothers or sisters of a deceased (deceased) or missing or declared dead serviceman, until the latter reach the age of eighteen;

2) Has a disability (handicap);

3) Is the only employee with capacity of the family who has reached the age specified by this Code.

11. The grounds for terminating the employment agreement in case of loss of trust have been complemented.

The legislator provides additional grounds for the termination of employment contract.

Besides the existing grounds for the termination of employment contract the legislator provides these two additional grounds:

- when the employee has not observed (violated) the requirements of the legal acts for the safety and health of employees, the requirements of the rules of organization and implementation of works, instructions, which caused or could cause serious consequences,

endangering the life and health of persons or creating a real threat to people's lives and health or causing harm to their life and health.
In this case, the employer will have the right to terminate the employment contract without notifying the employee.
- illegally (without consent or notification) used the employer's or other employees' computer equipment or information systems (means of accessing information systems (login, password, etc.)), through which the employee obtained work or personal data, carried out illegal use of data, recording, destruction, transformation, blocking, copying, distribution of data or carried out activities involving the intervention of digital technologies, including virus or software installations, which could disrupt or have disrupted normal work of the employer.

12. The following annual leave issues will be resolved by the new amendments.

It has been established that if the employee avoids or refuses to provide annual leave or a part of it due to him for two and a half years in a row, without submitting an application for granting annual leave, then the employer grants leave without the employee's application. At the same time, it is proposed to require the employer to pay damages to the employee (for each day past the deadline, in the amount of 0.15 percent of the employee's average monthly salary, but not more than the average monthly salary) when the employer does not provide the employee with vacation for about two and a half years, except for the cases when not providing the employee with the annual leave or the transferred part of the annual leave was due to the fact that the employee was on leave for the care of a child under the age.

The procedure for calculating the average salary in the event that the employee did not work during the previous 12 months has been regulated.
In this case, in the event that during the twelve months preceding the moment of the requirement of calculation of the the average monthly salary, the employee did not actually have a calculated salary, or in the cases mentioned in the second paragraph of article 195 of labor code the average hourly wage is determined by dividing the official salary rate or monthly salary established by the legislation for an employee, established by an employment contract or a legal act on employment, by the number of working hours established by the legislation of the Republic of Armenia, or a collective agreement, or an employment contract, or an employer's individual legal act, by the number of working hours established for this employee for the month of the calculation.

13. **Additional regulations regarding professional trainings organized by an employer for the prospective employees.**

The legislator intends to regulate the scenarios where a person (by its own fault) does not start working for the employer, which organized the employee’s professional training.
In particular, in the case of refusing to be employed by the employer after vocational training or failing to fulfill the duty to work for the employer during the period stipulated by the contract on vocational training after employment due to his own fault, the person who has undergone vocational training shall, at the request of the employer, be obliged to compensate the employer with the organization of its vocational training in accordance with the procedure and conditions stipulated in the contract on vocational training related actual costs, unless otherwise specified in the contract concluded between the parties.

It is also necessary to mention that the legislator additionally clarifies that requirements regarding the maximum duration of working hours, as well as the minimum durations of rest and meal breaks, daily (between shifts) and weekly consecutive rest periods apply to the professional trainings as well.

14. **Additional professional training of employees' will be regulated.**

An employer can organize additional professional training for an employee, with the consent of that employee, at its place or in another place (including in a foreign country) for the purpose of acquiring professional skills or improving them.

An agreement shall be concluded regarding the additional professional training of an employee.

The legislator further clarifies that the additional professional training cannot be regarded as business trip within the understanding of some provisions of the labor legislation, that is, the requirements regarding the provision of money for the daily expenses by the employer during business trips does not apply to additional professional trainings.

After additional professional training, in the case of not fulfilling the duty to work for the employer during the period stipulated by the contract on professional training due to employee's fault, the person who received additional professional training is obliged to compensate the employer for the actual costs related to organizing employees additional professional training in the manner and under the conditions stipulated in the contract on professional training, unless otherwise is not defined by the professional training contract concluded between the parties.

15. Organization of internship by employer.

The legislator intends to introduce a new concept of internship, which thoroughly regulated the relations between the students and the employees.

So, who is considered an intern?

A person undergoing internship is a citizen who, during his studies at an educational institution implementing pre-vocational (craftsmanship), secondary vocational or higher vocational educational programs, or within one year after graduation, is engaged by an employer in employment without payment or with payment in the amount determined by the agreement of the parties, in order to gain work experience in a specific profession, qualification or job title.

An employer has a right to organize an internship for a period of up to two months, not more than once, by signing a contract with the person undergoing an internship, without the right to extend it.

The following are the most important factors that shall be taken into consideration in case of internships:

- The number of interns cannot exceed 10% of the employees;
- Relations related to hiring an intern by an employer are regulated by a written agreement on obtaining work experience by a contract (it is not an employment contract), executed in two copies, one copy of which is handed over to the intern by the employer.
- The time period of internship is not considered as work experience for the interns.
- An intern shall be engaged by an employer in work matters and gain work experience for no more than five days a week, four hours a day and twenty hours a week, keeping breaks for rest and meals.

The mandatory requirements regarding the terms of internship agreements:

- The agreement shall be in a written form;
- The rights and obligations of each party regarding the internship, the basis and the procedure of the amendment and termination of such relations, the guarantees envisaged for the intern.
- The internship agreement is subject to registration.

An intern shall be given an internship certificate where the time period of internship and information regarding the acquired knowledge, abilities or skills shall be mentioned.

16. **Additional labor guarantees for the donors.**
Employee's average daily salary is kept on the day of provision of blood or its components.

17. **Clarifications regarding the payments made for the vacation.**
The legislator clarifies that the payments made for vacation (for the period of vacation that the employee did not work for) are subject to return by the employee in cases where the employee's employment contract is terminated (this provision will apply depending upon the basis of the termination of contract).
In the aforementioned case, the employer acquires the right to withhold the necessary amount of money from the salary, if before the date of the full final settlement with the employee in accordance with the procedure established by the Labor code, it has adopted a relevant legal act on that or indicated deductions or penalties in the individual legal act on dismissal from work (termination of the employment contract) of the employee.
18. **Internal disciplinary rules shall regulate matters regarding recording of daily or weekly working time of employees.**
This provision is important, because it indirectly implies that in case of possible labor disputes with employees, the adverse consequences regarding non-proving the matters related to working time of employees (for instance, issues connected with non-attendance) will bear the employer. In particular, it will be burdensome for the employer to prove matters regarding non-attendance of employee in cases where the procedure of recording the daily and weekly working time is not established.
19. **The employer shall adopt internal legal acts regarding the safety of employees in the below mentioned case.**
The employer is obliged to adopt internal legal acts on ensuring the safety and health protection of employees, only if the requirements for ensuring the safety and health protection of employees are defined by the legislation of the Republic of Armenia regarding the given field of activity carried out by the employer.

21. **More flexibility for the mothers with the children under *two* years of age regarding the breaks.**
A woman with a child up to two years of age, in addition to the break hours provided for rest and eating, shall be provided with an additional break of not less than half an hour every three hours. At the request of the woman, these breaks can be combined with a break for rest and eating, or combined and provided at the beginning of the working day or moved to the end of the working day with a corresponding reduction of the duration of the working day. For the breaks defined by this part, the employee shall be paid the average hourly salary.

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