

# PLANNED AMENDMENTS TO THE LABOR CODE REQUIRE A REGULATORY IMPACT ASSESSMENT (RIA)



In 2019, Dimitri Tskitishvili (Independent MP)<sup>1</sup> initiated work on the amendments to the labor legislation and held a number of meetings with the participation of international, business and non-governmental organizations. The discussion of the draft law was held in a heated environment.

The legislative package is set to be initiated at the spring session of 2020. We present the initial analysis of the significant issues outlined in the package.<sup>2</sup>

## ESSENCE OF THE PLANNED AMENDMENTS

The purpose of the legislative changes is the protection of workers' labor rights.

The legislative changes concern the following principal issues:

- ▶ Working hours;
- ▶ Overtime and the rules for its remuneration;
- ▶ Maternity leave and child care;
- ▶ The procedure for signing an employment contract;
- ▶ Grounds for termination of employment;
- ▶ Powers of the Labor Inspection

Representatives of the business have criticized the proposed amendments, as they may be "threatening" to the business environment. The business ombudsman also made a remark on the legislative changes. The initiative was nevertheless evaluated positively by some NGOs in terms of increasing the rights of employees.

## 1. LIMITATIONS ON WORKING IN MORE THAN ONE WORKPLACE

EXISTING PROVISION	PROPOSED PROVISION
The Labor Code does not envisage hourly restrictions on part-time work.	<ul style="list-style-type: none"> <li>• Restrictions on work for over 48 hours part-time in workplaces that include high risk economic activity</li> <li>• The list of sectors of economic activities with risks should be defined by the government.</li> </ul>

## 2. DURATION OF WORKING TIME

EXISTING PROVISION	PROPOSED PROVISION
• The duration of the working time should not exceed 40 hours a week, while enterprises with specific operating conditions should not exceed 48 hours a week.	<ul style="list-style-type: none"> <li>• The duration of the working time should not exceed 40 hours a week and 8 hours a day.</li> <li>• During a seven-day period, the working time, including overtime, should not exceed 48 hours, except for enterprises with specific operating conditions.</li> </ul>

## 3. OVERTIME WORK

### 3.1 DURATION OF OVERTIME WORK

EXISTING PROVISION	PROPOSED PROVISION
There are no restrictions on overtime work.	The duration of the overtime work should not exceed 3 hours in a day or 8 hours a week.

### 3.2 REMUNERATION OF OVERTIME WORK

EXISTING PROVISION	PROPOSED PROVISION
• The amount of overtime compensation shall be determined by agreement between the parties.	• The amount of overtime compensation shall be determined by agreement between the parties, but not less than 125% of the hourly remuneration.

## 4. OBLIGATION ON NOTIFICATION FOR OVERTIME WORK

EXISTING PROVISION	PROPOSED PROVISION
• There is no obligation to notify the employee in advance.	<ul style="list-style-type: none"> <li>• The employer is obliged to notify the employee a week earlier about overtime work, except in the following cases:                             <ul style="list-style-type: none"> <li>a) When a notification cannot be issued</li> <li>b) Due to the objective needs of the employer</li> </ul> </li> </ul>

## 5. BASIS OF A FIXED-TERM LABOR AGREEMENT

EXISTING PROVISION	PROPOSED PROVISION
Except when the term of a labor agreement is one year or longer, a labor agreement shall only be concluded for a fixed term if <ul style="list-style-type: none"> <li>• a specific amount of work is to be performed;</li> <li>• the seasonal work is to be performed;</li> <li>• the amount of work has temporarily increased;</li> <li>• an employee being temporarily absent from work due to suspended labor relations is replaced;</li> <li>• there are other objective circumstances justifying conclusion of a fixed-term agreement.</li> </ul>	The last provision (objective circumstances) do not represent the basis for concluding a fixed term labor agreement.

## 6. LEAVE

### 6.1 PATERNITY LEAVE

EXISTING PROVISION	PROPOSED PROVISION
No such provision exists.	• An employee, who has become a father, has the right to request a paid paternity leave for a total of 14 days within the 30 days after the birth of the child.

### 6.2 MATERNITY AND CHILD CARE LEAVES, EXTRA MATERNITY OR CHILD CARE LEAVES AND REMUNERATION

EXISTING PROVISION	PROPOSED PROVISION
<ul style="list-style-type: none"> <li>• At employees' request, they shall be granted maternity leave of absence in the amount of 730 calendar days. 183 calendar days of maternity leave of absence shall be paid.</li> <li>• No more than 1000 GEL paid from the State Budget of Georgia.</li> </ul>	<ul style="list-style-type: none"> <li>• At the female employee's request, she will be given maternity and child care leave for a total of 730 calendar days, out of which 156 are paid.</li> <li>• A male employee can use 604 days of leave for child care, out of which 30 days are paid (in addition to the 14-day paid paternity leave).</li> <li>• The mother and father cannot use maternity, paternity and childcare paid leave at the same time.</li> <li>• 80% of the employee's average monthly labor remuneration is paid from the State Budget of Georgia.</li> </ul>

## 7. MINIMUM SALARY

EXISTING PROVISION	PROPOSED PROVISION
• Minimum salary is not defined.	<ul style="list-style-type: none"> <li>• The labor remuneration cannot be less than the minimum salary.</li> <li>• The mechanisms and scope of the minimum salary should be defined by the Law on Minimum Salary. However, this draft law has not been presented during the discussion stage.</li> </ul>

## 8. POWER OF THE LABOR INSPECTION

EXISTING PROVISION	PROPOSED PROVISION
Discretionary powers are not included.	The Labor Inspection uses discretionary powers, defines when and which administrative fine should be applied and/or in the framework defined by law, as well as the amount of the fine to be paid.

## 9. DISCRIMINATION

EXISTING PROVISION	PROPOSED PROVISION
The direct and indirect concepts of discrimination are not defined.	Direct and indirect concepts of discrimination have been defined: <ul style="list-style-type: none"> <li>• Direct discrimination has been defined as there occurs a mistreatment of an employee compared to other persons on the basis of discrimination that has been defined by law.</li> <li>• Indirect discrimination has been defined as a concept when a neutral statute, criteria or practice puts a person in an unfavorable position compared to other persons on the basis of discrimination that have been defined by law.</li> </ul>

## 10. ISSUE OF EQUAL PAY

EXISTING PROVISION	PROPOSED PROVISION
No such provision exists.	<ul style="list-style-type: none"> <li>• The employer should ensure equal pay for equal work for men and women.</li> <li>• To ensure this principle, the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia will issue the rules and regulations.</li> </ul>

## 11. PRINCIPLE OF REASONABLE ACCOMMODATION

EXISTING PROVISION	PROPOSED PROVISION
No such provision exists.	<ul style="list-style-type: none"> <li>• On the basis of the principle of reasonable accommodation of persons with disabilities, the employer is obliged, upon necessity, to carry out respective activities to provide an equal employment opportunity, career growth prospects and raising of professional qualifications for person with disabilities, except for in cases when this would imply disproportionate weight on the employer.</li> </ul>

## 12. ADDITIONAL TIME OFF

EXISTING PROVISION	PROPOSED PROVISION
No such provision exists.	The legal representative or guardian of the person with disabilities has, in addition to leave, the right to use one day in a month as additional time off or establish an alternative working time with the employer.

## 13. RIGHT TO MEDICAL EXAMINATION

EXISTING PROVISION	PROPOSED PROVISION
No such provision exists.	The employee shall, on request, be granted additional time for medical examination if such medical examination has to be carried out during working hours. <p>Working hours missed due to medical examinations, in case of submission of documentation confirming the medical examinations, will be considered justified and the labor remuneration will be paid. The number of missed working hours during the month should not exceed 1/8 of the working hours. This restriction does not apply to medical examinations during pregnancy.</p> <p>The same rule applies for medical examination leave to a person with disability's legal representative or supporter.</p>

## ASSESSMENT

The planned amendments to the labor law are a positive development in protecting employees' rights, but it is important to take into account the interests of all parties in the reform of the labor law. Legislation should not establish unreasonable barriers to doing business, which will ultimately have a negative impact on the labor market and the economic development of the country.

It is important not to introduce additional regulations where, on the one hand, we deprive the employee of the opportunity to earn more from his or her labor, and on the other hand, the employer is unable to cope with the burden of new regulations and, as a result, be forced to terminate the employee or take the labor relationship into an undocumented setting, which will have a negative impact on the employee.

The process of reforming labor legislation should be positively assessed on the basis of the proposed amendments that stem from international commitments:

- ▶ Determining paternity leave for child care;
- ▶ Defining concepts of direct and indirect discrimination;
- ▶ Define the Code of Reasonable Accommodation for the Equal Treatment of Persons with Disabilities;
- ▶ The issue of equal pay for men and women;
- ▶ Granting employees additional vacation time;
- ▶ Allowing employees more time for medical examinations;
- ▶ Increased maternity leaves due to pregnancy and childbirth. However, these changes will have a significant impact on the state budget and, therefore, should be supported by a government opinion.

The following issues are problematic in the legislative amendments:

- ▶ The initiative presented was designed without an RIA and the Impact of Regulation (RIA). Although there was no commitment to carry out an RIA and the government was not the initiator<sup>3</sup> of the amendments, it was advisable to carry out the RIA due to the importance of the reform. The proposed amendments will have a significant impact on the state budget, the labor market, and will also have a significant financial impact on employers.
- ▶ In regards to the list of economic activities, it is important to define the principle by law that will be subsequently be used for defining the sectors.
- ▶ It is not advisable to set limits on overtime, as it is, in its essence, a right of the employee, not an obligation. Therefore, there is no justification for placing limitations on the possibility of additional work.
- ▶ The "abolition of other objective circumstances" may become employers as it will no longer be possible to use it as the basis for a term contract. The necessity for this may be based on the specific nature of the work.

- ▶ Determining the minimum wage requires a respective opinion from the government, as these amendments will have a significant impact on the state budget. Moreover, it is important to carry out an in-depth analysis of the impact of the minimum wage on the employees.

- ▶ Legal issues will arise on the division of powers between the Labor Inspection and the Public Defender, namely both have the same powers on the same issue (discrimination in labor relations). In the future, this can cause different interpretations of legal norms and non-uniform practice.

1 Membership is provided according to ongoing period; he was a member of the Majority while working on the draft law.

2 This issue has not yet been submitted to the Parliament as a legislative initiative and therefore the issues outlined in the analysis may be worded differently if initiated. (Draft law version as of October 24).

3 The obligation to submit a regulatory impact assessment report relates only to government initiatives in cases established by law.