# Newsletter
## Labour

Amendments to Employment Law

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**We begin the month of March with a new newsletter on the changes to the labour legislation. Waiver of labour credits and the presumption of an employment relationship in digital platforms are some of the recent changes to be highlighted here.**

### I – Waiver of Labour Credits by the Employee

With the entry into force of the amendments to the Labour Code, it will no longer be possible for employees to waive their labour credits, except if this is the result of a judicial transaction. The so-called "abdicative remission" is no longer likely of extinguishing these credits, which has relevance when before termination of employment contracts.

### II - Term Employment Contracts

The scope of the rule preventing the successive conclusion of term employment contracts (or temporary employment contract) is extended to the admission or assignment of an employee whose work is carried out in the same professional activity (and not only in the same job post). The same extension applies to the conclusion of service contracts for the same activity (and no longer only for the same object).

It is also now mandatory that a term employment contract for an unspecified duration expressly refers its foreseeable duration. This formality does not currently exist.

Also, the employer's duty to communicate the reason for the termination of a term employment contract to the supervisory authority for equality at workplace, will also cover those concluded with caregiver employees.

### III - Employment Contracts and Digital Platforms

Although the presumption of an employment contract is already foreseen in the Labour Code, the classic evidences of legal subordination have

proved to be insufficient to frame new types of service provision such as those provided via digital platforms. Therefore, a specific labour regime is now foreseen, establishing a new presumption of employment contract aiming the digital platform service providers.

There are now six evidences of employment that Courts may assess in order to determine the existence of a labour relationship:

- the digital platform sets the remuneration or establishes maximum and minimum limits for the same;
- the work equipment and tools used by the service provider belong to the digital platform;
- the digital platform has the power to give instructions and to determine specific rules concerning the presentation of the service provider, his/her conduct towards the service user or the way the provider's activity is rendered;
- existence of monitorisation and supervision of the provider's activity;
- the digital platform restricts the provider's autonomy as regards his/her work organisation (e.g. choice of working time or periods of absence);
- enforcement of disciplinary powers.

If dealing with an employment contract, the labour rules, compatible with the nature of the activity performed, shall apply, namely those regarding to work accidents, termination of contract, prohibition of unlawful dismissal, minimum remuneration, holidays, limits on normal working hours, equality and non-discrimination.

However, such qualification may be avoided if the digital platform manages to prove that the services were rendered with autonomy or that the provider's activity was, in fact, rendered to the intermediary of the digital platform.

This new presumption of employment applies also to digital platforms for individual transportation of passengers, such as Uber.

## IV - Social Security Code

Along with the Labour Code, the Social Security Code has also undergone some changes and although fewer in number, they are significant.

Thus, in case of failure to communicate the admission of an employee to the social security services, it will be to consider that the employment relationship **started on the first day of the 12th month prior to the non-compliance** (and no longer on the sixth month). This amendment is quite relevant and should be taken into consideration by companies due to the fiscal, contributory and labour impact it may have.

Moreover, the repeated failure to comply with this obligation is considered a very serious administrative offence and the following accessory sanctions are now foreseen:

- Deprivation of the right to financial support, subsidies or benefits granted by a public entity or service, namely of a fiscal or contributory nature or coming from European funds, for a **period up to two years.**

- Deprivation of the right to participate in public bidding or tenders, for a **period up to two years**.

Furthermore, failure to regularise the lack of communication of an employee within the 24 hours as of the beginning of the contract, will be considered a very serious administrative offence.

Alongside these amendments, there is now the obligation upon the Social Security services, to communicate to the Supervisory Authority for Work Conditions, whenever the admission of a foreign worker (not belonging to the EEA) or a stateless person, is communicated.

## V- General Taxation Infringements Law

In line with the above-mentioned changes, the General Taxation Infringements Law now establishes that **failure to regularise** the communication to the social security authorities within the six months following the expiry of the legal deadline, will result in a **prison sentence of up to three years** or a **fine of up to 360 days.**

It is necessary, however, to be before a tax debt surpassing €7,500.00.

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