

THE IMPLICATIONS OF COVID-19 PANDEMIC ON BUSINESS

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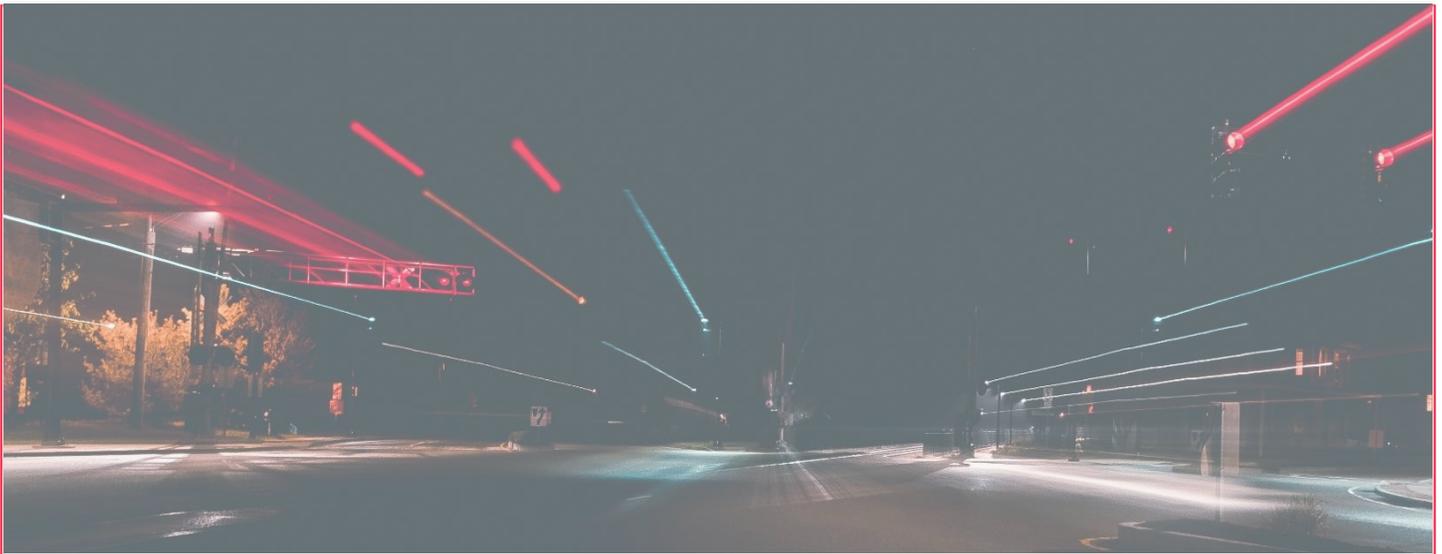


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REGULATION OF LEGAL ISSUES



As the new coronavirus is spreading rapidly throughout the world, international and local businesses face new challenges posed by the pandemic, the epidemic, the quarantine, and the constraints imposed by government agencies to combat outbreak. These factors make regulations applicable to functioning business entities and labor relations more relevant than ever.

The purpose of this review is to identify and address those important questions that business entities are concerned with regarding to their ongoing operations and management of labor relations.

1. CURRENT LEGAL SITUATION

1.1. PANDEMIC

On March 11, the World Health Organization declared a pandemic. The fact of declaring the pandemic does not imply enactment of the special legal regime. According to the Law of Georgia on Public Health, a pandemic is an extremely wide spreading of a contagious disease (throughout several countries, continents, or worldwide), affecting a significant part of the population;

1.2. STATE OF EMERGENCY

On 21 March 2020, the President of Georgia (upon initiative of the prime minister) declared a state of emergency on the whole territory of Georgia.

- According to the Constitution of Georgia, state of emergency can be declared when due to epidemic or other special circumstances state bodies are unable to normally exercise their constitutional powers.
- The state of emergency has been declared throughout the country for a period of one month meaning that until April 21, 2020, a special legal regime is enacted on the territory of Georgia which restricted number of constitutional rights, including rights of movement, right of ownership, and right of assembly. Furthermore, capacity to provide public services has been restricted as well.

- During the state of emergency, the President upon submission of the Prime Minister issues decrees which have the force of the organic law. The decree is then submitted to the Parliament for approval, If the Parliament does not approve the decree, then it shall be annulled.

1.2.1 FUNCTIONING OF BUSINESS ENTITIES

The following emergency measures will be implemented and the following activities will be restricted during the state of emergency:

- Freight Forwarding

The Government of Georgia shall be empowered to regulate the transportation of passengers and the freight forwarding on the territory of Georgia in a manner different from the legislation of Georgia. *

- Movement

International air, land and sea travel were suspended, except exclusions determined by the government of Georgia.

- Right of ownership

The Government of Georgia has been authorized to limit right of ownership and to use the property and tangible property of natural and legal persons for quarantine, isolation and medical purposes. The Government of Georgia is entitle to exercise such measures whenever it is necessary for the aforementioned purposes.

- Right to conduct a business

The private entities shall be prohibited, restricted or ordered to carry out certain activities based on the resolution of the Government of Georgia in accordance with the procedure provided in the same Resolution.*

Currently the order N14-1 of the Ministry of Environment and Natural Resources Protection of Georgia on “Defining Some Measures to Prevent the Possible Spread of Coronavirus in Georgia” (dated 17 March 2020) is in force. However, it should be stressed that the said order is not legally binding and outlines recommendations according to which services of public catering facilities (including cafes, restaurants, bars, fast-food restaurants, canteens, banquet halls and other) are restricted partially. In particular, activities of those facilities related to directly servicing customers shall be continues continued only through delivery services.

According to the statement by the Prime Minister of Georgia as of March 19, all retail facilities, except for food service facilities working through delivery services, food retailers, pharmacies, gas stations, and entities providing banking services, should be closed.

It should be stressed that until further normative acts are issued the current restrictions apply to facilities that offer retail/service directly to consumers. According to the official explanation of the Ministry of Economy and Sustainable Development, any permitted economic activity shall continue in usual manner and construction, production, transportation are not restricted.

1.2.2.SANCTIONS

Violating the regime of the state of emergency will be subject to the flowing sanctions:

- Fine in the amount of GEL 3,000 for individuals;
- Fine in the amount of GEL 15,000 for legal entities.

Repeating the same act will result in criminal liability and in particular, imprisonment for up to 3 years.

1.2.3. EMPLOYER RIGHTS DURING THE STATE OF EMERGENCY

According to the Georgian Law on State of emergency, during the period of a state of emergency the management of enterprises, institutions and organizations may, if necessary, temporarily engage workers and employees, without their consent, in tasks which are not envisaged by their employment contracts.

Therefore, due to enactment of state of emergency, the special legal was introduced in the country and such regime will be regulated by the Constitution of Georgia and the decrees of the President. Other acts will only continue to apply to the extent that they do not contradict to the aforementioned normative acts.

1.3. FORCE MAJEURE

Whether the current situation represents a matter of force majeure shall be determined per case. Based on analysis of court cases the following issues must be considered:

- The event must be special in its nature
- It must be beyond the control of the parties
- It should not be foreseeable when executing a contract
- It must have a significant impact on the fulfilment of the contract or make it impossible to fulfil it (within the terms and conditions envisaged under the Contract).

While the first three criteria are easily verifiable within the current pandemic, the assertion of existence of criterion 4 is the most important. Force majeure must have a significant effect on the fulfilment of the contract or must make it impossible to fulfil (within the terms and conditions envisaged under the contract).

In many cases the employment contracts explain what a force majeure is and set out the conditions for parties to be exempted from the liability. However, if there is no such agreement between the parties, then the relevant party may be exempted from liability in accordance with article 401 of Civil Code of Georgia. No default shall be deemed to have occurred if the obligation is not performed due to circumstances not caused by the obligor’s fault.

* Upon issuance of the resolutions, we present the information in the form of annexes

It is quite possible for the parties to have agreed on a force majeure clause, which does not include determination of a specific case of force majeure that might occur in the future. This is also logical because force majeure is not foreseeable. Article 401 of the Civil Code of Georgia also covers such cases. Whether or not a particular case arisen in the event of a dispute would be deemed as force majeure shall be decided by the court.

2. BENEFITS

2.1. BENEFITS IN THE TOURISM SECTOR

The Revenue Service has introduced certain tax benefits for taxpayers employed in the tourism sector. In particular, on March 16, 2020, the deferral of tax payments to persons employed in the tourism sector has been announced.

Persons employed in the tourism sector may postpone the payment of declared Personal Income Tax (PIT) and Property Tax due until November 1 of the current year. This benefit is related to the following tax returns:

- Tax return of withholding tax (WHT);
- Annual PIT return;
- Annual Property tax return.

2.2 The rules and restrictions for using these benefits:

Benefits are applied to the business entities, which provide:

- accommodation services (hotels, hostels, guesthouses etc.);
- Catering services (restaurants, cafes, bars and other catering facilities)
- Tour operating services (travel agencies);
- Transportation services (airline services, car renting services and provision transport services to tourists in various ways);
- Excursion services;
- Conference services;
- Entertaining services (entertainment centers, movie theaters, centers for children and other similar entertainment venues);
- Other entities providing organized services to tourists (other than those listed above)

2.2 The benefits will apply to the taxes accrued in the following reporting periods:

- On the basis of withholding tax return - the taxes for the February, March, April and May reporting periods accrued as of the due dates in March, April, May and June of 2020.
- On the basis of the annual PIT return - PIT accrued during the reporting period of 2019 and current (advance) tax accrued as of the due date of May 15, 2020.
- On the basis of the annual property tax return -tax accrued during the reporting period of 2019 and current (advance) tax accrued as of the due date of June 15, 2020.

2.4 procedures of applying benefits:

To apply for the benefits, a person should apply to the Revenue Service electronically (<https://eservices.rs.ge/ServiceRequestNew.aspx?p=721>).

- Revenue Service shall respond to an application within 10 business days.
- If satisfied, the payment of the relevant declared tax will be deferred until November 1, 2020.
- The interest accrued on declared and unpaid taxes is subject to cancellation as of November 1.
- No measures will be taken to ensure securing deferred tax payments.

2.5. ANNOUNCED PRIVILEGES FEES

The Government of Georgia has announced assistance for priority sectors affected by the spread of coronavirus. *

3. SELF-ISOLATION

The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs Of Georgia (hereinafter “Ministry”) has adopted a new recommendations for the new Coronavirus (COVID-19) for people in self-isolation. According to the recommendation, the person is required to be in isolation for 14 days which precludes the person from performing his/her work obligations in case of inability of working remotely.

* Upon issuance of the resolutions, we present the information in the form of annexes

In addition to declaring a state of emergency, the relevant authorities designated by the legislation of Georgia were allowed to forcibly place a person to places designated by the Government of Georgia for violations of the isolation or quarantine rules as established by the Government of Georgia. The Government of Georgia has been given the right to impose isolation and quarantine rules and violations of those rules by natural and legal persons will be subject to sanctions set forth the decree.

3.1. LABOUR RIGHTS OF A PERSON IN SELF-ISOLATION

According to the Appendix to the Recommendations, if a person placed in self-isolation is employed, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs Of Georgia upon request is authorized to issue a certificate having the equal force as the sick-leave medical paper.

According to the order of the Minister of Labor, Health and Social Affairs of Georgia N 281/N, Article 8 , during epidemiological (epidemic, pandemic, epidemic explosion) events in the country, the Ministry upon request is entitled to issue a certificate to persons who are in contact with infectious diseases and are under the quarantine at a non-medical institution, including at home, and are unable to work for avoidance of spreading the epidemic. Such certificate would equal force as the sick-leave medical paper.

Provisions regarding temporary disability expertise and about issuance of sick-leave medical sheet shall not apply when issuing the aforementioned certificate. The procedures for issuing the certificate are defined under the individual administrative-legal act of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs Of Georgia.

If required, persons in isolation or self-isolation should contact the Ministry of Health at info@moh.gov.ge, provide complete information on their conditions, including an ambulance medical sheet and information on an employer and request the certificate having the equal force as sick-leave medical sheet. The certificate shall be provided to the employer and the employee shall be entitled to remuneration on the basis of the certificate for the whole period of his/her isolation/self-isolation in accordance with the provisions established by the labor contract.

4. ALTERATIONS OF LABOUR CONDITIONS

Due to the current situation, the following issues related to amendments to employment contracts are on the agenda:

4.1 „COMPULSORY” LEAVE

The leave is usually employee's right. However, due to the current situation, it should be evaluated if the employer is entitled to unilaterally send an employee on paid/unpaid leave. The duration of paid and unpaid leave and the procedure for granting leave represent the essential terms of the employment contract. Therefore, amending these terms is permissible only with the agreement of the parties.

Due to the current economic situation, it possible for the employer to offer paid/unpaid leave to the employee. In such case, proper communication between the parties, assessment of the existing situation and reaching an agreement that favors the mutual interest of the parties is important.

4.2. REDUCTION OF WORKING TIME/SALARY

Working time and remuneration are also the essential terms of an employment contract and may be modified by the agreement between the parties. Accordingly, the employer may not unilaterally reduce working time (except for a 90-minute alteration) and/or reduce the employee's salary.

4.3. SUSPENSION OF LABOUR RELATIONS

Article 36 of the Labor Code of Georgia provides a comprehensive list of cases where the employment relationship may be suspended. The epidemic does not represent the basis for suspension of labor relations according to the legislation. However, the parties may agree to terminate the employment contract depending on the economic situation of the employer and the situation in the country.

4.4. TERMINATION OF LABOUR RELATIONS

Termination is the ultimate measure that an employer can take only when there is no possibility of continuing the employment relationship. An employment contract might be terminated based on the article 37 (1) (a) of the Labor Code of Georgia - economic circumstances, technological, or organizational changes requiring downsizing. If the dispute arise, the burden of proof shall be upon the employer - it must prove that it has taken all possible means to maintain the employment relationship.

4.5. PROCEDURE FOR TERMINATING LABOUR AGREEMENTS

In case of termination of employment contract, employer shall be obliged to notify employee about termination at least 30 calendar days in advance and, employees shall be granted a severance pay in the amount of at least one month's salary. An Employer may notify an employee about termination at least three calendar days in advance and in such case an employee shall be granted a severance pay in the amount of at least two months' salary.

If an employment contract is terminated based on any of the aforementioned reasons, an employer shall be obliged to compensate an employee for unused leaves in proportion to the duration of labour relations.

According to the Article 34 of the Labor Code of Georgia when labour relations are terminated, an employer shall be obliged to make final settlement to an employee no later than seven calendar days, unless otherwise defined by a employment contract or law. An employer shall be obliged to pay an employee 0.07 per cent of the delayed sum for each day of any delayed compensation or payment.

Also according to the Article 42 of Administrative Offences Code of Georgia violation of the labour legislation and labour protection rules by an official of an enterprise, institution, organization (regardless of its ownership and organizational-legal form) shall carry a fine of up to the amount of 100 times the minimum wage - minimum 4,000 GEL (minimum amount is - 40 GEL).

4.6. MASS LAYOFF

If the employer makes a decision to terminate the employment contact with at least 100 employees within 15 calendar days based on the above mentioned ground (economic circumstances, technological, or organizational changes requiring downsizing), the employer shall be obliged to send a written notice to the Ministry and to those employees whose employment contracts are being terminated, at least 45 calendar days before the layoff. In this case, the obligation to comply with the notice periods determined in paragraph 3.5 shall not apply.

5. REMOTE WORKING

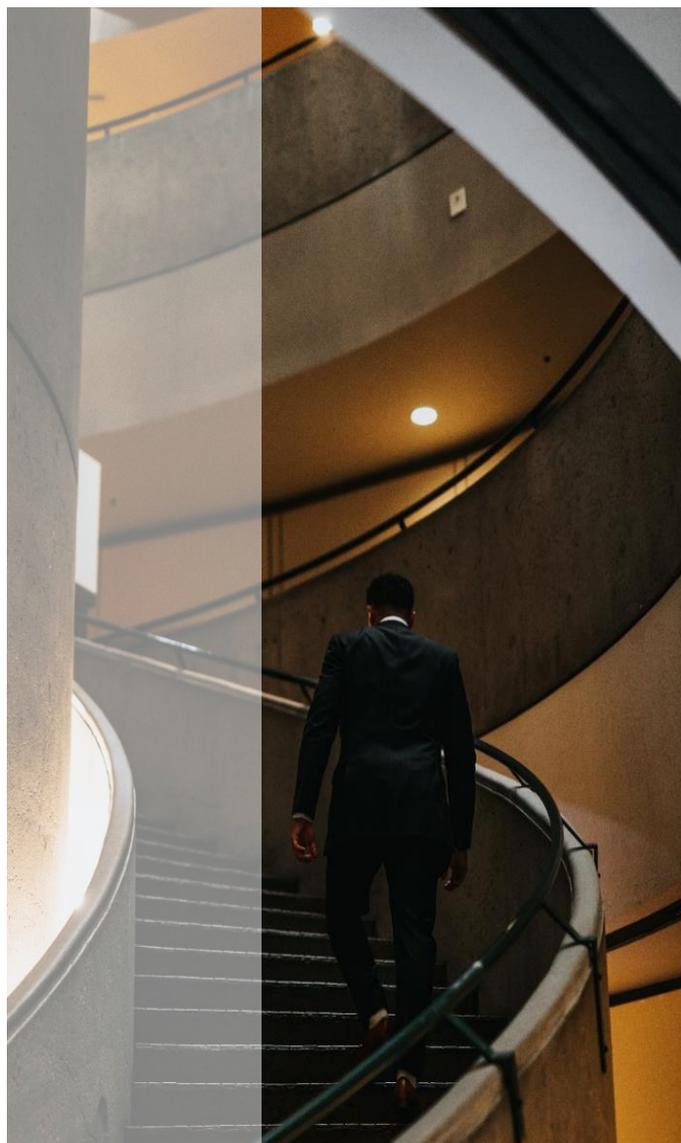
The ability to work remotely is particularly important in light of current events. According to the Article 35 of the Labor Code of Georgia, employers shall be obliged to provide employees with a working environment that is maximally safe for the life and health of the employees. This is a main point for protecting an employee's rights. At this point, there are no legal acts granting employees of private sector the right to work remotely during the pandemic.

On March 12, 2020, the Government of Georgia adopted a decree specifying specific measures in public institutions for the prevention of the new Coronavirus (COVID-19). According to the decree, before reducing the risk of an epidemic, public service leaders should identify the part of staff who will temporarily move to remote workplaces (in particular, employees whose work does not require the presence at work and who can work remotely).

According to the same decree, working remotely does not mean reducing working hours or the leave. If it is required, the employee must appear immediately upon request (no later than 1 hour) at the workplace.

According to the Article 35 (3) of the Labor Code of Georgia employees may refuse to perform the work, assignment, or instruction that contradicts law or, due to the lack of occupational safety standards, obviously and substantially endangers their or third person's life, health, property, or the safety of the natural environment. Employees shall be obliged to immediately inform the employer of a circumstance being the reason for refusing to fulfil their obligations under the employment contract.

In case of the dispute, the employee must prove that the existing circumstances comply with the above-mentioned norm, and the assessment of the matter is a prerogative of the court.



6. CONCLUSION

Existing legislation, including the Labor Code of Georgia, does not provide an unambiguous answer to all existing questions, although all issues should be resolved on the basis of a general analysis of the situation. The fundamental principles of labor relations and interests of business entities have to be considered, so that to avoid neglecting the fundamental rights of employees and to give the business chance to adapt to new conditions in timely manner, in order to minimize the risks of economic recession in the country.

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For more information on COVID19 visit:



<https://stopcov.ge/>

Official Website of the Government of Georgia Created for the Prevention of Coronavirus in Georgia.



<https://www.covdata.ge/>

BDO website designed to combat Coronavirus and facilitate the dissemination of correct information, which has no commercial purpose.

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