

# ***Legal Alert***

## Amendments to the Labour Code regarding use of annual paid leave of March 2011

*Bulgaria*

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## Amendments to the Labour Code regarding use of annual paid leave of March 2011

After some of the amendments to the Labour Code ("LC"), adopted in the summer of 2010, regarding the use of annual paid leave have been declared unconstitutional, and others have become subject to controversial interpretations, in February 2011 the Parliament has passed a Bill amending the LC provisions on use of annual paid leave ("leave"). The Bill amending the LC was promulgated in the State Gazette, issue 18 of March 1<sup>st</sup>, 2011 and entered into force on the day of the Bill's promulgation. Several days later a Decree amending the Ordinance on Working Hours, Breaks and Leaves was published (State Gazette, issue 21 of March 15<sup>th</sup>, 2011).

### 1. Leave Schedule

By December 31<sup>st</sup> of the previous calendar year, the employer has to invite the employees to declare their preferences for use of the leave and to approve a leave schedule after consultations with the trade unions and the employees' representatives (if any). According to the transitional provisions of the Bill, the leave schedule for 2011 has to be approved by March 31<sup>st</sup>, 2011.

The leave schedule should specify the duration of the basic leave and additional leave (if any) of every employee, the initial and final date for use of the leave and the calendar year for which the leave is due. The schedule should be approved by the employer in writing, communicated to the employees, and made available to them at the common areas in the office.

The employer can supplement the leave schedule with respect to the new hires and the employees who were not at work at the time when the leave schedule was approved. Amendments to the leave schedule are also possible if there are economic, technological, financial, market and other objective reasons justifying the amendments.

### 2. Use of the leave

Employees have to use their leave by the end of the calendar year for which the leave is due. The Bill explicitly provides that the unused leave or part of it for 2010, including the leave deferred by the employer, can be used by December 31<sup>st</sup>, 2012.

### 3. Granting the leave by the employer without the request/consent of the employee

Generally, the employee can go on leave after (s)he has requested the leave in writing and the employer has given its written consent. However, the employer can unilaterally send the employee on leave without the employee's consent in the events laid down by the Labour Code, including when the employee has not submitted a written request to go on leave by the initial date specified in the leave schedule.

### 4. Going on leave by notification of the employee without the consent of the employer

If the employer has not allowed the employee to go on leave during the period specified in the leave schedule, the employee is entitled to determine the time for use of the leave by himself/herself by submitting a two-week notice to the employer. In that case, the employee can use his/her leave until the expiration of the 2-year limitation period (see p. 6).

### 5. Leave deferral

*On the initiative of the employer*

As before, the employer can defer the use of part of the leave, but no more than 10 working days, for the next calendar year, provided that the production process requires so. According to the Ordinance on the Working time, Breaks and Leaves, the employer should issue an internal order and promptly notify the employee(s) thereof.

*On the initiative of the employee*

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Under the Bill the employee is also entitled to request a deferral of part of the leave (but no more than 10 working days) for the next calendar year. The employee's request should be in writing and can be approved by the employer if justifiable reasons exist.

If both the employer and the employee wish to defer the use of the leave for the next calendar year, please note that no more than 10 working days altogether can be deferred.

The leave is also deferred if the employee goes on parental leave, sick leave or any other statutory leave.

#### **6. Period of limitation**

The right to use annual paid leave lapses if the leave has not been used within 2 years as of the end of the year for which the leave was due, regardless of the reasons for which the leave was not used.

If the leave has been deferred because the employee went on another statutory leave (e.g., parental leave, sick leave), the 2-year limitation period starts from the end of the year in which the employee returned to work.

For further information or assistance in connection with the aforesaid, please contact:

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