




EUROPEAN TIME

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EU LABOUR STANDARDS IN GEORGIAN LAW AND PRACTICE

GEORGIAN LABOUR CODE VS GEORGIAN LAW ON PUBLIC SERVICE

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Annex XXX of the Association Agreement outlines EU directives, provisions of which should be reflected in Georgian legislation and practice within the timeline set by the agreement. Legal approximation implies not only transposition of European standards in the national legislation but also implementation/enforcing them.

EU Labour directives reflect minimal standards of protection of labour rights which is deteremined by the historical and legal aspects of the EU.

- ✔ Directives are not immediately enforceable. They don't have the power of direct applicability. They require to be transposed into national legislation;
- ✔ National legislation has to comply with minimum standards defined by directives; The EU states have the possibility to establish higher and more powerful standards than prescribed in directives;
- ✔ Minimal standards, as a rule, relate to any employee in the private or public sector;
- ✔ EU states have the opportunity to take national practice and specificity into account, elaborate individual instruments and mechanisms for enforcement or liability.

Minimal standards of the EU labour directives are used in all types of labour relations and labour contracts. This is due to not only the juridical nature of the directives or/and the practice of their implementation but also this aspect is outlined in directives.

Conceptualization and cognition of the above-mentioned is significant with the view of the implementation of the Association Agreement and effecient administration of the legal approximation process. Minimal standards of employees' protection defined by directives should be applicable to any employee in Georgia in both private and public labour relations. **Legal approximation in the field of labour law should be equally carried out in** both private **and public spheres.**

Several examples discussed in the brochure are dedicated to the reflection of EU directives in the legislation of Georgia regulating labour, namely, the Labor Code of Georgia and the Georgian Law on Public Service. These examples are vitally important to assess the tendencies of the implementation of the Association Agreement and the legal approximation process in the field of labour law.

Based on provisions of the Association Agreement and the notification sent to Georgia by the EU, complying with the obligations arisen from XXX annex of the agreement shall be counted from September 1, 2014. Thus, the part of the Association Agreement related to the area of labour law is effective from 2014 on the basis of provisional application.

MATERNITY LEAVE - 92/85 DIRECTIVE

This directive applies to improvement of safety and health conditions at work for **women who are *pregnant or have recently given birth or are breastfeeding.***

According to Annex XXX of the Association Agreement, Directive 92/85 had to be implemented in 4 years – in 2018.

The directive represents the ***tenth individual directive***, which is adopted on the basis of the **frame directive 89/391** of safety and health. ***The framework directive applies to all sectors of activity whether public or private*** (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

PAYMENT OF MATERNITY LEAVE

According to the directive, **the maintenance of payment, and/or entitlement to an adequate allowance should be guaranteed for workers having right to maternity leave.**

The allowance shall be deemed adequate if it guarantees income at least equivalent to that which the employee concerned would receive in the event of a break in her job activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation.

WHAT ARE THE PRINCIPLES, QUANTITY OR THE SCHEME OF THE MATERNITY LEAVE PAYMENT FOR THE EMPLOYEES IN PRIVATE AND PUBLIC SECTORS IN GEORGIA?

PRIVATE SECTOR

According to Articles 27-29 of the Georgian Organic Law - Labour Code of Georgia:

The length of the maternity leave ***(pregnancy, giving birth and child-care)*** is 730 calendar days. **Only 183 calendar days are paid.** In case of complications with the birth- giving process or giving birth to twins, **200 calendar days shall be paid.**

Maternity leave due to pregnancy, giving birth and child care is **paid from the state budget of Georgia.**

Cash allowance for paid maternity leave for the period of *pregnancy, childbirth and childcare* shall not exceed 1000 GEL. The same amount is determined for both 183 and 200 calendar days.

Employers and employees may agree on extra payment.

PUBLIC SECTOR

According to Article 64 (2) of the Georgian Law on Public Service:

The length of the maternity leave (pregnancy, giving birth and child care) is 730 calendar days. **Only 183 calendar days are paid.** In case of difficulties with giving birth or giving birth to twins, **200 calendar days shall be paid.**

Maternity leave is paid from the budget of the respective public body.

Maternity leave payment for the public servant is the amount of the salary and salary increments determined for the given class; the public servant having a military or a special rank, is paid the money determined for his/her ranks and years served together with salary and salary increments determined for the given class.

The labour code has created unprecedented practice of legal regulations: it has defined the fixed amount of the maternity leave payment in the law rather than the payment method/rule. Such an approach implies restricting the change of the maternity leave payment scheme despite the increase of the salary or the economic development of the country. Complexity of procedures defined to amend the organic law of Georgia also needs to be taken into the account.	The Georgian Law on Public Service defines the rule of payment of the maternity leave rather than the amount of the payment. Increase of the salary in the public sector is automatically reflected in the amount of the maternity leave payment.
Women employeed in the private sector receive the amount defined by the law (not exceeding 1000 GEL) despite the place of employment, years served, amount of salary, etc.	Employed women at the public service receive almost the same amount of financial income during whole maternity leave which they would receive while working. They are given not only basic salary but also salary increments for 183 days or equivalent to 200 calendar days.
The Labour Code of Georgia equalized ordinary childbirth (183 days) with difficult childbirth or twins-birth (200 days) as it determined the maximum amount for both cases - not more than 1000 GEL. In private sector, the amount of payment for the maternity leave is much less than monthly salary. 183-200 calendar days are approximately 6 months. For 6 months, women receive only 1000 GEL. Even in case of maximum minimal payment (e.g. 250 GEL per month) the employee would receive more salary during 6 months than it is defined for maternity leave.	The rule of payment for the maternity leave defined by the Law on Public Service takes into account a differentiated approach to ordinary and problematic childbirth or twin-birth. The payment amount of the maternity leave in public sector is different depending on the occupational position of women, their class rank, years served, etc.

Provisions of Directive 92/85 on *Adequate Allowance of the Maternity Leave* are represented in Georgian Law on Public Service but not in Georgian Labour Code. It should be emphasized that in both cases the state budget is the general source for the payment of maternity leave.

The legal regulation model by Labour Code of Georgia for the payment of maternity leave contradicts the objectives and protective function of the labour law and is far from moral and ethical values.

The aim is not to equalize with the standards of EU states or even up the remuneration of employees in private and public sectors. The goal is to ensure fair differentiation and follow the principle of proportionality and adequacy.

The norm creates many problems, including the demographic one. Instead of strengthening the role of women in the society it leads to diminishing it and increases dependence of women on others. To avoid poverty, the employee is forced to terminate the maternity leave, leave the new-born baby and return to labour relations.

Women employed in the public sector enjoy minimal European standards of the directive. Women employed in the private sector can not benefit from the minimal standards of the directive. Such practice of equal treatment violates the objectives of the Association Agreement and principle of legal approximation.

ANTE-NATAL EXAMINATIONS

According to the directive, pregnant women shall be entitled to time off, without loss of pay, to attend ante-natal examinations, if such examinations have to take place during working hours.

Labour Code of Georgia does not reflect the above-mentioned norm

According to Article 64 (5) of the **Georgian Law on Public Service**, "Public servants attending ante-natal examinations during working hours because of pregnancy shall be deemed to be respected without loss of pay in case of submission of documents confirming the examination".

ORGANISATION OF WORKING TIME – 2003/88 DIRECTIVE

XXX annex of the Association Agreement determines that directive 2003/88 *concerning the Certain Aspects of the Organisation of Working* Time shall be implemented in 6 years – in 2020 .

The Directive applies to labour relations in both public and private sectors.

WORKING HOURS

The Directive defines the weekly working time with the view of healthcare and security provision of employees. The average working time for each seven-day period, including, overtime, should not exceed 48 hours.

According to Article 14 of the **Georgian Labour Code**, daily and weekly working times do not exeed 8 and 40 hours, respectively. However, according to Article 17, work shall be deemed overtime for adults when an employee works during the period exceeding 40 hours a week. The Code does not specify the upper limit of the duration of the weekly working time in accordance with the directive, including overtime hours which constitutes the legal basis for unlimited work in practice. In other words, employers are equipped with the power which can lead to abuse of employees' rights.

Georgan Law on Public Service reflects the requirement of the directive. According to Article 61 (3), *"Weekly duration of the working time, including, overtime, should not exceed 48 hours."*

REST TIME

According to the directive, every worker is entitled to a minimum uninterrupted rest period of 24 hours for each seven-day period.

Georgian Labour Code does not regulate the issue of uninterrupted one-day rest time during the week. Actulally, employees have no legal right to even rest for one day a week. According to the Labour Code, all seven days a week are considered working days. Within the framework of private labour relations and labour contracts, using the right of rest depends on the good will of the employer.

Georgian Law on Public Service estabilishes the higher standard than required by the direcitive. According to Article 60 (2) *"5-day working week has been established for the public servants"*. i.e. the remaining 48 hours (two days) are deemed to be uninterrupted rest time.

PART-TIME WORK – 97/81 DIRECTIVE

The obligations arisen from XXX annex of the Association Agreement, related to Council Directive 97/81/EC of 15 December 1997concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, had to been implemented in 4 years – in 2018.

The directive emphasizes the importance of part-time work in modern labour relations, facilitates access to part-time work for men and women and gives them equal opportunity in order to prepare for retirement, reconcile professional and family life and take up education and training opportunities to improve skills and career opportunities for the mutual benefit of employers and workers in a manner which would assist the development of enterprises.

Discrimination against part-time workers is prohibited. With respect to employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time. Where appropriate, the principle of *pro-rata temporis* shall apply.

As far as possible, employers should give consideration to such issues as: requests by employees to transfer from full-time to part-time work; requests by employees to transfer from part-time to full-time work or increase their working time; timely provision of information on the given opportunities, etc.

Georgian Labour Code is not familiar with the concept of part-time work. The issue is not regulated.

Georgian Law on Public Service regulates the aspects of part-time work. According to Article 61(4), "*Taking into consideration the health conditon, a public servant has the right to do part-time work while bringing up a child under the age of one year and during pregnancy*".

SUMMARY

Examples mentioned above reveal the challenges and unenviable trends in the process of implementation of the Association Agreement, namely, those disregarding the principles of legal approximation and requairements of directives. Minimal standards of protection defined by directives apply to all employees despite the field and nature of activities. The Association Agreement could not be deemed implemented until provisions of directives are reflected only in the Georgian Law on Public Service rather than in Georgian Labour Code. Such fulfillment is of discriminatory nature.

The aim of the Association Agreement is to establish decent work, prohibit discrimination, encourage social progress, which equally applies to employees in the private and public sectors of Georgia.