

## Bulgaria – Electronic Communication and Electronic Files now Available Option for Employers

As of May 2018 the new Ordinance on the Rules and Requirements for Creation and Storage of Electronic Documents at the Employee's File<sup>1</sup> (the '**Ordinance**') entered into force in Bulgaria allowing employers to keep electronic records of employees.

### Background

From January 2017, the Bulgarian Labour Code<sup>2</sup> introduced the possibility for employers to create and record part of the employee's file in an electronic format. However, prior to the adoption of the Ordinance this option was not applicable in practice. This led to an extensive analysis by the courts<sup>3</sup> and the Ministry of Labour and Social Affairs<sup>4</sup> mainly focusing on the option for electronic applications for leave and their approval.

### New Legal Framework

The new Ordinance aims to solve the main issues concerning electronic employee files and sets forth unified rules regulating:

- **Types of documents which may form part of the employee's file:**
- unilateral documents created by the employer (e.g. job description, orders by the employer, declarations, etc.);
- unilateral documents created by the employee (e.g. requests, applications, consents, reports, etc.);
- bilateral documents (e.g. the employment agreement, additional agreements or amendments, etc.);
- documents issued by third parties certifying facts related to the employment relationship (e.g. medical certifications, sick leaves, documents related to employee's education, certified notifications for registration of the employment agreement, etc.);

<sup>1</sup> In Bulgarian *Наредба за вида и изискванията за създаването и съхраняването на електронни документи в трудовото досие на работника или служителя.*

<sup>2</sup> Labour Code published in State Gazette No 26 as of 1 April 1986, as amended from time to time.

<sup>3</sup> See Court Decision No. 226/26.11.2013 of Stara Zagora Administrative Court; See Court Decision No. 59/13.06.2016 of Gabrovo Administrative Court.

<sup>4</sup> See Letter of Ministry of Labour and Social Affairs No. 26-710/29.01.2016.

In this respect, the Ordinance envisages an obligation of the employer to specify in the Internal Labour Rules<sup>5</sup> which types of documents will be kept in an electronic file.

- **Requirements for creation of electronic documents**

The rules applicable to the creation of electronic documents should comply with EU law<sup>6</sup> and the Bulgarian Act on Electronic Documents and Electronic Certifying Services<sup>7</sup>. Employers should sign all documents with a qualified electronic signature, whereas the type of the electronic signature for the employees should be specified by the employer in the Internal Labour Rules. Notwithstanding, it is possible for the parties to agree on different electronic signature. These rules aim to guarantee the binding nature of the documents and the possibility to use them as evidence in court proceedings. When electronic documents are created and stored in employee's file, the employer should notify the employee and should specify the rules for such notification in company's Internal Labour Rules.

- **Exchange and service of electronic documents**

The parties to the employment relationship cannot be obliged to receive electronic documents unless they agree to be recipients of electronic communications either in the employment agreement or in other written form. The provided consent could be withdrawn at any time. The electronic documents should be exchanged through a registered electronic delivery service which ensures the possibility for proof of delivery.

- **Storage of electronic document's**

In times of stringent data protection regulation, the Ordinance also stipulates the minimum requirements for the information systems used for storage of employee electronic files to ensure protection from accidental or unlawful destruction of documents or data, unauthorized access, disclosure of employees' data, etc.

The implementation of electronic employee files does not prevent the employee to present documents in hard copy. The provided hard copies may be scanned and uploaded to the electronic employee files, although the hard copy should be also kept.

## Comment

The Ordinance has the potential to achieve economy and efficiency for employers. Although the implementation of electronic employee files is related to some initial costs for the employer, it will provide benefits on the long term. The implementation of

<sup>5</sup> Internal company's documents explicitly regulating the rights and obligations of the parties to the employment agreement.

<sup>6</sup> Regulation (EU) No 910 / 2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

<sup>7</sup> Electronic Documents and Electronic Certifying Services published in State Gazette No 34 as of 6 April 2001, as amended from time to time.

electronic employee files will reduce the cost and the burden of employee documents administration and document exchange. The new rules aim to ensure the effective exchange of electronic documents and to guarantee their binding nature and admissibility as evidence in court proceedings. They will allow employers to introduce more flexible working arrangements (e.g. distance work, extension of secondments when the employee is abroad, etc.) but will also enable employers to be flexible in their communication with employees, particularly when sensitive notifications related to the employment relationship are to be presented.

Further, it will provide flexibility to foreign employers who directly hire employees without having a local entity or other type of establishment in Bulgaria by allowing them to sign employment agreement electronically, to approve employee leaves by electronic means, etc. which will reduce the costs and time for exchange of hard copies.

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