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Law Office

## GEORGIA

### Coronavirus

(COVID-19)

#### and its legal impact on businesses

The coronavirus crisis and the anticipated associated risks to local businesses require an evaluation of the legal tools that can be used and the action plans that can be implemented to address the situation.

The foregoing document intends to outline practical approach and recommendations for preventing and/or mitigating relevant contractual and/or economic risks by local businesses and employers.

#### Contractual relations

Force-majeure is a well established civil law concept in the Georgian legislation.

However, while COVID-19 may be classified as a force majeure event, there are important legal preconditions and exceptions to such a classification.

In the context of private contracts, the WHO guidance of 30 January 2020 (date when WHO defined COVID-19 as an epidemic) and subsequent declaration of the state of emergency by the President of Georgia on 21 March 2020 are likely to help Georgian courts define the occurrence of COVID-19 as a force majeure.

However, in order for a party to be ruled exempt from contractual duties, the following circumstances/preconditions must be met in relation to the event, which in turn must:

- be extraordinary in nature
- be beyond the parties' control
- be non-foreseeable at the moment of the conclusion

of the agreement

- materially impact, or render impossible, the performance of the contract (at the time and in the manner required)

Established court practice indicates that courts employ a detailed analysis of the contractual relationship to assess the characterization of the event and its impact on due performance of the obligations.

Also, only contractual obligations affected by the Force Majeure will be exempted (partial impossibility), therefore a total impossibility is not automatic.

Furthermore, the temporary or permanent nature of the impossibility/event shall also be considered for assessing its impact on non-performance and hence, qualifying the event as a force-majeure.

Actions to avoid default

- Review the contract's hardship/force majeure clauses to identify the scope of their application
- Assess whether COVID-19 qualifies as a force majeure for the purposes of the contract
- Assess whether there is partial impossibility or total impossibility of performance
- Comply with any notice provisions/issue notices, or other preconditions (e.g. taking steps to mitigate its losses), specified by the force majeure/hardship clause
- Implement the termination/renegotiation strategy according to a variety of possible situations

Please consider that the legal assessment of contracts concluded after 30 January 2020 (i.e. announcement of epidemic) shall also be very important, to identify compliance with the foreseeability criteria of a force majeure event.

On 21 March 2020, the President of Georgia declared the state of emergency effective immediately on the entire territory of Georgia until 21 April 2020. On 23 March 2020, the Government of Georgia issued Decree N181 which sets out more detailed instructions on the rights and liberties to be limited during the state of emergency. This may additionally impact the performance of contractual obligations by the parties and simplify exemption under force majeure

## EMPLOYMENT RELATIONS

### *Remedies under the Labor legislation*

One of the major challenges of the COVID-19 outbreak for local employers is the treatment of employees under these extraordinary circumstances.

Some of the issues that need to be assessed the most carefully include whether an employer can terminate an employment agreement during the COVID-19 outbreak and how to pay remuneration to employees who are under self-quarantine or who are unable to return to work due to quarantine measures imposed by the state.

Given the extraordinary nature of the current circumstances, we came up with several scenarios below to examine the corresponding rights and obligations of employers and provide solutions available pursuant to the Labor Code of Georgia.

#### **Scenario #1**

Employees who are currently receiving medical treatment or who are under quarantine or medical observation AND meet any of the following criteria:

- are confirmed to be infected with COVID-19
- are suspected of being infected with COVID-19, or
- have been in close contact with people confirmed or suspected of contracting COVID-19.

Employment is considered to be suspended on the basis of "temporary incapacity to work".

The Employee cannot be required to work in the event he/she refuses to work on the basis of health hazard and the employer shall not terminate the employment relationship without cause.

Further, if an employment agreement expires during the period when an affected employee is receiving medical treatment or under quarantine or medical observation, the term of the employment agreement will not be extended and the term shall expire accordingly.

Compensation Requirements - must be paid normal salary, unless the Employee agreed to unpaid leave or if no medical certificate confirming medical incapacity (due to quarantine, or being under medical observation) is provided.

Upon the employee's return to work, an employer may request medical certification or other documentation.

#### **Scenario #2**

Employees who cannot return to the work place on time due to circumstances related to COVID-19. This would cover employees who are required to self-isolate and thus are unable to return to the office.

Employer should make reasonable arrangements to allow the employee to work from home if possible.

If work from home is not possible, the employer should try to negotiate with the employee to take advantage of any unused leave (paid or unpaid).

Compensation Requirements

Normal salary must be paid to employees who are working from home or who are taking paid leave.

#### **Scenario #3**

The employer suspends operation or business, whether in whole or in part, and requests employees to postpone their return to work due to the impact of COVID-19.

Employers are encouraged to negotiate with employees to reduce salaries, adopt shift schedules, or reduce working hours.

In addition, employers who cannot pay salaries may nego-

tiate with employees to delay payment of salary. Employers are advised to keep record of all communications in case any dispute arises during this process.

Unless an agreement is reached with the employee, an employer may use the remedy of last resort and terminate employment under "objective circumstances" envisaged under the Labor Code of Georgia. It is highly advisable, however, that termination is used only after negotiating paid/unpaid leaves has proven unsuccessful.

### **General recommendations**

Suspension of employment or suspension of payment under such circumstances (due to epidemic outbreak) is not an automatic remedy available to the employer under the Labor Code of Georgia.

Although certain activities and provision of certain services were temporarily banned, no mandatory instructions have been issued by the Government of Georgia in relation to the suspension of employment in private companies.

The Decree N181 of the Government of Georgia dated March 23, 2020 requires certain private entities to temporarily shift to a distance work regime, where possible. Others are required to observe the social distance of at least 2 meters between the employees at a workplace and otherwise comply with recommendations issued by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

As a general note, employers are advised to adopt flexible arrangements for working hours in the face of the COVID-19 situation to meet their obligation to ensure a safe working environment for employees.

Based on the aforementioned, it is advisable to adopt a labor safety (emergency) policy and implement preventative measures based on WHO and local government requirements. An employer can require only some employees to come to the office on the justification that COVID-19 makes it too dangerous to have a large number of employees in the office.

An employer may also encourage their employees to use paid/unpaid vacation or negotiate part time performance of employment duties (with a temporary decrease of salary). Termination may only be used as a remedy of last resort based on specific circumstances in each case.

### **Operation of Force Majeure**

If the COVID-19 outbreak qualifies as a force majeure in the context of employment relations due to a state of emergency or any other government measure causing mandatory suspension of employment relations, employers would be justified in suspending payment of salaries during the period in question. The specific effect and consequences of the force majeure will also depend on the scope of the mandatory measures implemented by the Government and their impact on the business of the respective employer.

Please apply for the professional advice prior to relying on the information given in this article. BLC and its team shall be ready and pleased to provide any information, legal advice and specific recommendations regarding the issues covered herein.

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