

An overview and critical evaluation of the most important changes brought by the new Labour Law 5053/2023



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A. PROBATIONARY PERIOD

The previous legislation, the current labour law 5053/2023 and the regulation provisions of Directive 2019/1152

In accordance with the previous legislation and with the Article 17 par. 5 of Law 3899/2010, which was added to article 74 par. 2 of Law 3863/2010, employment under an employment contract of indefinite duration is considered as a probationary period for the first twelve (12) months from its effective date and can be terminated without notice and without compensation for dismissal, unless otherwise agreed by the parties.

According to Article 8 of Directive 2019/1152 entitled "Maximum duration of any probationary period":

«1. Member States shall ensure that, where an employment relationship is subject to a probationary period as defined in national law or practice, **that period shall not exceed six months.**

2. In the case of fixed-term employment relationships, Member States shall ensure that the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work. In the case of the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.

3. Member States may, on an exceptional basis, provide for longer probationary periods where justified by the nature of the employment or in the interest of the worker. Where the worker has been absent from work during the probationary period, Member States may provide that the probationary period can be extended correspondingly, in relation to the duration of the absence».

According to the aforementioned article of the Directive, article 4 of the Greek Law 5053/2023 entitled "Probationary period - Probationary employee", stipulates the following:

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1. The employer may, when concluding an employment contract of indefinite duration, agree with the employee a probationary period of up to six (6) months, during which the contract or employment relationship is subject to probation.

2. If, during or at the end of the time period referred to in par. 1, the employer considers that the employee's probationary service is successful and retains the employee in his/her undertaking, the starting date of the contract shall be the initial date of the employee's recruitment for all his/her rights based on his/her employment.

3. If, during or at the end of the time period referred to in par. 1, the employer considers that the employee's probationary service is not successful, the probationary contract shall be automatically terminated, and the time spent shall be counted as time worked for all rights accrued up to the point of termination.

4. In the case of a dependent fixed-term employment contract, the agreed probationary period shall be proportional to the total time provided for in the contract and, in any case, may not exceed one quarter (1/4) of the total period of employment, up to a maximum of six (6) months. If the contract is renewed for the same position and the same duties, provision for a new probationary period shall not be permitted.

5. If the employment relationship is suspended for any reason during the probationary period, the duration of the probationary period shall be extended according.

6. In any case and during the probationary period, all the provisions protecting the employee related to his/her contract or dependent employment relationship, in particular Articles 162 to 179 and par. 1 of Article 339, shall apply.

The Practical Impact

The previous provision defined the statutory period during which the employer may terminate the employment contract without notice and without paying compensation for dismissal. The regulatory contribution of the new provision is that the probationary period is subject to the agreement of the parties and may be agreed for a maximum period of six (6) months.

This means in practice that if a probationary period is agreed:

a) In the case of indefinite duration contracts, the contract shall terminate automatically after the end of the probationary period, without notice and without the obligation to pay compensation for dismissal.

b) In the case of definite-term contracts, the contract shall terminate automatically at the end of the probationary period without reasonable cause.

Remarkable points - Main points of concern

- 1) This rule of law implements the fifth principle of the European Pillar of Social Rights (EPSR), according to which any probationary period must be of reasonable duration, is a highly significant innovation in the field of European Labour Law.
- 2) The new provision introduces two anti-systemic elements, the automatic termination of indefinite duration contracts without the obligation to comply with the legal restrictions relating to the termination of this type of contract and the automatic termination of definite-term contracts without cause. However, this automatic termination leads to the abolition of the abuse dismissal control and the special protection applicable during pregnancy and a period after childbirth.
- 3) A positive element is that the Greek legislation did not make use of the possibility allowed by the Directive to provide, on an exceptional basis, for longer probationary periods, in cases where this is justified by the nature of the employment or the employee's interest.

- 4) The purpose of the probationary period, the assessment of the other party's suitability, could be fully served by a definite-term contract, since the probationary period constitutes a justification for choosing this type of contract.
- 5) It is noteworthy that even though the new law defines the maximum duration of the probationary period to six (6) months, maintains the twelve-month employment period as a waiting period that the employee must complete in order to activate the restrictions imposed by Laws 2112/1920 and 3198/1955 in relation to the termination of indefinite duration employment contracts, i.e. the obligation to give notice and to pay compensation for dismissal. However, this waiting period is nothing more than a legal probationary period. The provision of the six-month probationary period while maintaining the 12-month employment period as a precondition for the application of the restrictions for the termination of an undefined duration employment contract does not change the substance of the matter. Both the six-month period provided for in the new law and the 12-month period provided for in Laws 2112/1920 and 3198/1955 have the same function, i.e., allow the employer to judge whether the employee is suitable for the specific job and, if his/her judgment is negative, to terminate the employment relationship without any special formalities and restrictions. The employee will have to complete another six-month probationary period in order their employment relationship to be covered by Laws 2112/1920 and 3198/1955.

Consequently, a matter of incompatibility arises between the national legislation and the Directive. For the compatibility of the Greek legislation with the Directive, it should be provided that the conditions for a valid termination of indefinite duration contracts must be activated at six (6) months, in accordance with the provisions of the probationary period.

This conclusion is confirmed by paragraph 27 of the same Directive, according to which the the maximum probationary period of six (6) months is set in order: "any entry into the labour market or transition to a new position should not be subject to prolonged insecurity". But this prolonged insecurity is maintained by the regulation of Greek law, as until the completion of the twelve-month period, the employee can be fired without notice and without compensation for dismissal.

- 6) Finally, the Greek provision raises a question of violation of Article 4 par. 4 of the revised European Social Charter, according to which the employee has the right to a reasonable notice period regarding the termination of their employment relationship.
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