

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



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B. PARALLEL EMPLOYMENT

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

In accordance with the previous legislation and in particular with the Article 189 of the Individual Labour Law Code entitled: "Prohibition of employment during rest time", the employer shall not be permitted to employ on the same working day employees or workers who have worked in another factory or at another workplace for the entire legal daily working time. It is only permitted to employ workers who worked on the same day for other employers for less hours than those specified in this Chapter, but only for the time required to complete the statutory maximum daily working time.

According to Article 9 of Directive 2019/1152 entitled "Parallel employment":

1. Member States shall ensure that an employer neither prohibits a worker from taking up employment with other employers, outside the work schedule established with that employer nor subjects a worker to adverse treatment for doing so.
2. Member States may lay down conditions for the use of incompatibility restrictions by employers, based on objective grounds, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.

According to article 9 of the Directive, article 9 of the Greek Law 5053/2023 entitled "Parallel employment", stipulates the following:

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Agreements or clauses prohibiting an employee from working for other employers outside the working hours agreed with a particular employer are not permitted unless they are justified by objective reasons such as health and safety, protection of business confidentiality, working in competing undertakings or avoiding a conflict of interest. Agreements or clauses prohibiting the employment to other employers are invalid. In the case of multiple insurance or multiple contribution payments, the employee's monthly pensionable earnings shall be increased in accordance with paragraph a' of par. 2 of Article 28 of Law No. 4387/2016 (A' 85). The parallel employment referred to in the third subparagraph shall be permitted without prejudice to the provisions in force on working time and rest periods for employees, in particular Articles 162 to 179 of the same Law. Any discriminatory treatment of the employee by the employer due to the employment with other employers is prohibited. By decision of the Minister of Labour and Social Security, any necessary matters concerning the information to be provided to the employer regarding the existence of parallel employment and any special matters for the application of this provision shall be determined.

Remarkable points - Main points of concern

- 1) The provision of the new Law introduces a reservation in favor of the existing provisions concerning the working time and rest of employees. Since the list of reservations is indicative, conformity concerns with the rest of the legal system arise, in particular with Articles 180 and 167 of the Individual Labour Law Code.

Given that Article 180 of this Code stipulates a maximum daily working time of eight (8) hours and a maximum weekly working time of forty (40) hours, the following questions be raised:

- Does the eight-hour daily limit refer to employment with one or more employers?
- If the eight-hour limit is the daily limit for employment at one employer, will it be legal for an employee to work for a second employer beyond the eight-hour limit?

According to a strongly supported opinion, the eight-hour limit has been set as a daily limit regardless of the number of employers. This provision, besides, does not only refer to the daily limit of eight (8) hours but also to the weekly limit of forty-eight (48) hours. Therefore, the provision of Article 180 of the Individual Labour Law Code is still in force and is not repealed.

Furthermore, according to Article 167 of the Individual Labour Code, the weekly working time of employees may not exceed an average of forty-eight (48) hours per period of a maximum of four (4) months, including overtime. This practically means that an employee who is employed full-time by the first employer cannot be employed by a second employer for more than one and a half hours!

- 2) A question also arises as to whether and to what extent the employer is given the possibility to employ the employee overtime.

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- 3) This regulation allows a margin for abusive behavior within groups of undertakings by avoiding payment for overtime work on the basis that the employee offers work to another employer.
