

REGULATION NO. 2001/27

UNMIK/REG/2001/27

8 October 2001

ON ESSENTIAL LABOUR LAW IN KOSOVO

The Special Representative of the Secretary General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo and UNMIK Regulation No. 2000/24 of 21 April 2000 on the Establishment of the Administrative Department of Labour and Employment,

Recalling the International Labour Organization Declaration on Fundamental Principles and Rights at Work aimed at promoting and realizing their universal application in good faith,

For the purpose of setting out the essential labour law in Kosovo,

Hereby promulgates the following:

Section 1

Scope

1.1 The present regulation shall regulate employment in Kosovo, including employment relationships under which work or services is performed.

1.2 Employment relationships within the civil service, UNMIK, KFOR and the offices or missions of foreign governments and international governmental organizations shall not be governed by this regulation.

Section 2

Prohibition of all kinds of Discrimination

2.1 Discrimination in employment and occupation is prohibited. The terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

2.2 The term discrimination includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, age, family status, political opinion, national extraction or social origin, sexual orientation, language or union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

2.3 Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

2.4 Discrimination against a disabled person, whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized natural or mental impairment, is prohibited.

2.5 Discrimination, direct or indirect, against a female employee arising from her pregnancy or childbirth is prohibited.

2.6 Sexual harassment at the workplace is prohibited.

Section 3

Minimum Age

3.1 Eighteen (18) years of age shall be the minimum age for employment or work which by its nature, or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of a young person.

3.2 A person under 18 years of age may only be employed in light work that is not likely to be harmful to his/her health or development, and shall not affect his/her attendance at school.

3.3 A person under 15 years of age may not be employed.

Section 4

Prohibition of Forced or Compulsory Labour

4.1 Forced or compulsory labour is prohibited.

4.2 Forced or compulsory labour shall mean all work or services which is exacted from any person under the menace of a penalty and for which such person has not offered himself/herself voluntarily.

Section 5

Rights to Organize and to Collective Bargaining

5.1 Employees and employers shall be entitled to establish and, subject only to the rules of the organization(s) concerned, join organization(s) of their own choosing without previous authorization. Employees' organizations shall include unions.

5.2 Employees' and employers' organization(s) shall be entitled to establish and join federation(s) and confederation(s). Such organization(s), federation(s) or confederation(s) shall be entitled to affiliate with international organization(s) of employees and employers.

5.3 Employees' and employers' organization(s), and their respective federation(s) and confederation(s), shall be entitled to draft their constitution and rules, elect their representatives, organize their administration and activities, and formulate their programs.

5.4 The public authorities shall refrain from any interference that would restrict employees' and employers' rights, as set out in section 5.1, and their respective organization(s), federation(s) and confederation(s) rights, as set out in section 5.2.

5.5 Employees' and employers' organization(s), and their respective federation(s) and confederation(s), may not be dissolved or suspended by the Administrative Department of Labour and Employment (hereinafter "the Department"), or the authority that will succeed it.

5.6 The acquisition of legal personality by employees' and employers' organization(s), and their respective federation(s) and confederation(s), shall not be made subject to conditions of such a character as to restrict the application of sections 5.1, 5.3, 5.4 and 5.5.

5.7 Unions shall register and submit a copy of their constitution and a list of the names, surnames, dates of birth, and addresses of the persons responsible for the management and administration of the union, with the Department, or the authority that will succeed it.

5.8 Employees and employers, and their respective organization(s), federation(s) and confederation(s), shall exercise their rights under this regulation in accordance with the applicable law in Kosovo.

Section 6

Collective Agreement

6.1 A collective agreement may be concluded between:

- (a) an employer(s) or its representative; and
- (b) a union(s) or, where no union(s) exists, other employees' representative.

6.2 A collective agreement may be concluded at the:

- (a) Kosovo level;
- (b) branch level; or
- (c) level of enterprise.

6.3 A collective agreement shall be concluded in writing and in an official language used in Kosovo.

6.4 A collective agreement may be for a fixed period of no more than 3 years in duration.

6.5 A collective agreement shall apply to employers and its employees who agree to be bound by such collective agreement.

6.6 A collective agreement shall not include provisions that limit employees' rights or that result in less favourable working conditions than those set out in this regulation.

6.7 An employer shall make available a copy of the collective agreement to its employees.

6.8 A collective agreement shall be registered with the Department, or the authority that will succeed it, by the employee, employer, or their respective organization(s). Such registration shall be carried out promptly and without a fee.

Section 7

Protection against Acts of Anti-Union Discrimination

7.1 Employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

7.2 Acts of anti-union discrimination include:

(a) making an offer of employment subject to the condition that the prospective employee shall not join a union or, where applicable, relinquish union membership; and

(b) discharging or otherwise prejudicing an employee because of his/her union membership, or participation in union activities.

Section 8

Protection against Acts of Interference

8.1 Employees' and employers' organization(s) shall enjoy adequate protection against acts of interference by other organization(s), their agents or members in respect of their establishment, functioning and administration.

8.2 Acts of interference include: promoting the establishment of an employees' organization(s) under the control of an employer or employers' organization(s), or supporting an employees' organization(s) by financial or other means for the purpose of placing such organization(s) under the control of an employer or employers' organization(s).

Section 9

Employment Relationship

9.1 The parties to an employment relationship shall be the employer and the employee.

9.2 An employer means a natural or legal person who provides an employee with work, and pays him/her a salary/wage for the work or services performed. An employer performs its obligations, and may exercise its rights, in accordance with the applicable law, labour contract, and, where applicable, collective agreement.

9.3 An employee means a natural person employed to perform work or services for an employer, under the latter's authority and control. An employee performs his/her obligations, and may exercise his/her rights, in accordance with the applicable law, labour contract, and, where applicable, collective agreement.

9.4 Unless the labour contract provides otherwise, the employment relationship shall begin when the employee reports to work.

9.5 The following types of work or services shall not be considered employment relationships:

(a) occasional work based on family solidarity not carried out for profit and for direct financial compensation;

(b) provision of services or production of goods by one non-dependant party for another on the basis of contracts concluded between such parties; and

(c) community work not carried out for profit and for direct financial compensation.

Section 10

Labour Contract

10.1 A labour contract may be concluded for:

(a) an indefinite period of time; or

(b) a definite period of time.

10.2 A labour contract shall be concluded in writing and in an official language used in Kosovo.

10.3 A labour contract shall be signed and dated by the employer and the employee, and shall include the following provisions:

(a) the parties, their place of residence, and for employer's, their headquarters and registration number in the business register;

(b) the place of work or, if there is no permanent or main place of work, a statement that the work is carried out at various locations;

(c) the name, nature, type of work or services, or a short description of tasks of work or services;

(d) the working hours and, where appropriate, the working hours schedule;

(e) the date of commencement of work;

(f) the duration of the labour contract, where applicable; and

(g) the basic salary/wage and any additional entitlements and emoluments.

10.4 A labour contract shall not include provisions that limit employees' rights or that result in less favourable working conditions than those set out in this regulation and, where applicable, in the collective agreement.

Section 11

Termination of a Labour Contract

11.1 A labour contract shall terminate:

(a) upon the death of the employee;

(b) by a written agreement between the employee and employer;

(c) on the grounds of serious misconduct by the employee;

- (d) on the grounds of unsatisfactory performance by the employee;
- (e) following the expiration of the term of employment; and
- (f) by operation of law.

11.2 A labour contract shall be terminated by the employer on the grounds of serious misconduct or unsatisfactory performance by the employee.

11.3 Serious misconduct shall include the following:

- (a) unjustified refusal to perform the obligations set out in the labour contract;
- (b) theft, destruction, damage or unauthorized use of the employer's assets;
- (c) disclosure of business secrets;
- (d) consumption of drugs or alcohol at work; and
- (e) behavior of such a serious nature that it would be unreasonable to expect the employment relationship to continue.

11.4 Unsatisfactory performance shall include the following:

- (a) unjustified absence from work; and
- (b) repeated mistakes not sufficient in themselves to justify a dismissal, but which given their frequency and seriousness disrupt the normal course of the employment relationship.

11.5 Where section 11.2 applies:

- (a) the employer shall notify the employee in writing that it intends to terminate the labour contract. Such notice shall include the grounds for termination; and
- (b) a meeting shall be held between the employer and the employee, and at such meeting the employer shall provide the employee with an oral explanation of the grounds for termination. If the employee is a member of a union, the employee shall be entitled to have a union representative present at such meeting.

11.6 A labour contract shall be terminated by operation of law where the employer determines that the employee, due to medical reasons, is no longer able to perform the work or services for which he/she was employed, and where there is no alternative work available that he/she would be able to perform. The employer shall give the employee 1 month's notice of termination.

11.7 A labour contract may be terminated by an employer due to economic, technological or structural changes to the enterprise.

11.8 Where a labour contract is terminated, the employer, if requested by the employee, shall provide the employee with a certificate that indicates the name of the employee; the nature or type of work or services for which he/she was employed; the period of employment;

the basic salary/wage and any additional entitlements and emoluments; and an evaluation of his/her performance during the period of employment.

Section 12

Termination of a Labour Contract due to Economic, Technological or Structural changes to the Enterprise

12.1 A labour contract may be terminated by an employer due to economic, technological, or structural changes to the enterprise. Such changes occur where the employer introduces major changes in production, programming, organization, structure and technology that require a reduction in the number of its employees. Where a minimum of 50 employees are discharged within a 6 month period, it shall be considered a large-scale layoff.

12.2 In the event of a large-scale layoff, the following provisions shall apply:

(a) prior to introducing such changes, an employer shall notify its employees and, where applicable, the employees' union(s) in writing of the changes planned and their implications, including the number and type of employees to be discharged; the measures to be taken to alleviate the consequences of such changes; and the rights of its employees as set out in the labour contract and, where applicable, the collective agreement;

(b) an employer shall notify its employees in writing of the termination of the labour contract at least 3 months prior to the date of termination;

(c) an employer shall notify the employment office in writing of the employees to be discharged in order that it may provide such employees with assistance in seeking alternative employment;

(d) an employer shall take appropriate measures to limit the number of employees to be discharged by limiting or freezing the hiring of new employees; internal reassignment of employees; limiting overtime work; reducing working hours; providing vocational retraining; and promoting improvement of skills;

(e) in determining the number and type of employees to be discharged, the employer shall take into account the following: an employee's performance; vocational training and skills; work experience; position; category and type of work; years of service; age; and other criteria that may be set out in a labour contract and, where applicable, collective agreement;

(f) an employee may not be discharged until the employer provides a single severance payment to the employee. The severance payment shall be paid to the employee on the date of termination at the following scale:

- (i) from 2 to 4 years of service, 1 months' salary;
- (ii) from 5 to 9 years of service, 2 months' salary;
- (iii) from 10 to 19 years of service, 3 months' salary;
- (iv) from 20 to 29 years of service, 4 months' salary; and
- (v) 30 years of service or more, 5 months' salary; and

(g) where an employer recommences employment within a 2 year period from the date of termination, preference will given to those equally qualified employees who have been discharged.

12.3 Employees discharged as a result of bankruptcy and reorganization administered by a court shall not be governed by this regulation.

Section 13

Equal Pay for Women and Men

An employer shall pay equal remuneration, which includes the basic salary/wage and any additional entitlements and emoluments payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value.

Section 14

Salaries/Wages

14.1 Salaries/wages shall be payable:

- (a) at least every month;
- (b) to the employee personally or via bank transfer; and
- (c) with an accompanying pay slip.

14.2 The pay slip shall indicate the following:

- (a) name and headquarters of the employer, and the employer's registration number in the business register;
- (b) name and surname of the employee;
- (c) month and year for which the salary/wage is paid;
- (d) number of working hours during this period;
- (e) period of paid leave, if any leave has been taken during this period; and
- (f) amount of monthly salary/hourly wage.

14.3 Salaries/wages shall be paid in Deutsche Marks ("DM") in Kosovo.

Section 15

Minimum Wage

All employers shall pay their employees at least the minimum wage, the lowest wage in the salary scale, as set by the Administrative Department of Public Services, or the authority that will succeed it.

Section 16

Working Time

16.1 The working week shall begin on Monday at 12:01 a.m. and shall end on Sunday at midnight.

16.2 Working hours shall mean the period, except break time, during which the employee performs work or services for the benefit of the employer.

16.3 Working hours shall be determined by the employer. An employer shall inform its employees prior to any change to the working hours schedule.

16.4 Working hours shall be posted in the workplace.

16.5 Working hours shall not exceed 40 hours per week.

16.6 A working day shall not exceed 12 hours.

16.7 In the mining sector, a working day for employees underground shall not exceed 8 hours.

16.8 In the road transport sector, a working day for drivers shall not exceed 9 hours.

16.9 An employee shall be entitled to a 30 minute unpaid rest break during a working day.

16.10 An employee shall be entitled to a 10 hour rest break between two successive working days.

16.11 An employee shall be entitled to 1 day off during the working week, and where it is necessary for him/her to work during this period he/she shall be entitled to 1 additional day off during the following working week.

16.12 For an employee in a non-managerial position, every working hour over 40 hours per week shall be considered overtime.

16.13 Working hours between 10:00 p.m. and 5:00 a.m. shall be considered as night work, and paid as overtime.

16.14 Overtime may not exceed 20 hours per week and 40 hours per month.

16.15 Overtime shall be paid at a rate of 20% per hour or, at the request of the employee, be compensated with corresponding time off during the following month.

16.16 A person under 18 years of age shall not be permitted to work over 40 hours per week.

16.17 A disabled person and a pregnant woman in her third trimester shall not be permitted to work over 40 hours per week.

16.18 A person under 18 years of age and a pregnant woman shall not be permitted to work during the hours 10:00 p.m. and 5:00 a.m.

16.19 Where work is organized in shifts, the labour contract and, where applicable, the collective agreement shall indicate the working hours.

Section 17

Annual Leave

17.1 An employee shall be entitled to paid annual leave during the calendar year.

17.2 The period(s) of annual leave shall be determined by the employer after consultation with the employee.

17.3 After 1 year of employment, an employee shall be entitled to 18 working days of paid annual leave during each calendar year. Such annual leave shall be earned at a rate of 1.5 days for each completed calendar month of employment.

17.4 During the first year of employment, an employee shall be entitled to 12 working days of paid annual leave. Such annual leave shall be earned at a rate of 1 day for each completed calendar month of employment.

17.5 Unless otherwise agreed between the employer and the employee, paid annual leave shall be taken during the calendar year in which it is earned, but no later than 31 January of the following calendar year. Paid annual leave may not be carried over beyond 31 January of the following calendar year and may not be encashed, except upon the termination of the labour contract.

Section 18

Official Holidays

18.1 An employee shall be entitled to paid leave during official holidays.

18.2 If an employee is required to work on an official holiday, he/she shall be paid at an overtime rate or shall be entitled to 1 day off for each official holiday that he/she works.

Section 19

Maternity Leave

A female employee shall be entitled to at least 12 weeks paid maternity leave upon the birth of a child. This leave shall be considered as a working period and shall be paid by the employer at a rate of no less than two-thirds of the woman's earnings.

Section 20

Compassionate Leave

20.1 An employee shall be entitled to compassionate leave for a marriage, birth or death in his/her family. The period of leave and the rate at which it is paid shall be subject to agreement between the employer and the employee.

20.2 An employer may, at the request of the employee, approve compassionate leave for other family events.

Section 21
Unpaid Leave

An employer may, at the request of the employee, approve unpaid leave.

Section 22
Sick Leave

22.1 An employee shall notify the employer within 48 hours of taking sick leave.

22.2 Where sick leave is taken as a result of a work-related accident or illness, an employee shall be entitled to his/her salary/wage for such period.

Section 23
Employees' Register

23.1 An employer shall maintain an employees' register.

23.2 The employee's register shall record the following information about each employee:

- (a) name and surname;
- (b) nationality;
- (c) date and place of birth;
- (d) address;
- (e) name, nature or type of work;
- (f) date of commencement of employment; and
- (g) the date of termination of employment, where applicable.

23.3 An employer shall maintain an employees' register for 3 years after the register is closed.

Section 24
Labour Inspection

24.1 A labour inspection shall be conducted by a labour inspector designated as such by the Department, or the authority that will succeed it.

24.2 A labour inspector may, without prior notice, inspect the workplace and the employer's headquarters during working hours. An employer shall cooperate with the labour inspector, and shall make available all official documents relating to employment and the conditions of employment, including the employees' register.

24.3 An employee and, where applicable, his/her respective employee organization(s) shall cooperate with the labour inspector.

24.4 A labour inspector shall also perform the following functions:

- (a) ensure the enforcement of this regulation and other relevant provisions in the applicable law relating to working conditions, working hours, salary/wage, safety and health;
- (b) provide technical information and advice to employers and employees on the most effective means of complying with this regulation and other relevant provisions in the applicable law;
- (c) notify the Department, or the authority that will succeed it, in writing of deficiencies in the applicable law; and
- (d) advise on issues relating to the reorganization or restructuring of an enterprise.

Section 25

Penalties

25.1 Where a labour inspector determines that an employer is in violation of a provision of this regulation, such labour inspector may issue a written warning to the employer or impose a fine as specified below.

25.2 A violation of sections 2, 3, 4, 5, 7, 12 and 24 may be punishable by a fine of up to 20,000 DM.

25.3 A violation of sections 6, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21 and 22 may be punishable by a fine of up to 10,000 DM.

25.4 An employer may request that the Department, or the authority that will succeed it, review the labour inspector's decision to fine the employer. An employer may appeal to a competent court in Kosovo for a review of the decision made by the Department, or the authority that will succeed it.

Section 26

Implementation

The Special Representative of the Secretary-General may issue administrative directions in connection with the implementation of the present regulation.

Section 27

Applicable Law

The present regulation shall supersede any provision in the applicable law which is inconsistent with it.

Section 28
Entry into Force

This regulation shall enter into force on 8 October 2001.

Hans Haekkerup
Special Representative of the Secretary-General