Equal rights

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In accordance with Section 7, Paragraph 1 of the Labour Law, everyone has the right to equal access to work, fair, safe, and healthy working conditions, as well as fair pay. These rights must be ensured without any direct or indirect discrimination, regardless of race, color, sex, age, disability, religion, political or other beliefs, national or social origin, property or family status, sexual orientation, or other personal circumstances.

Furthermore, Paragraphs 1 and 9 of Section 29 of the Labour Law stipulate that during the establishment and duration of employment relationships—specifically when promoting an employee, determining working conditions, remuneration, professional training, or qualifications, as well as when terminating an employment contract —any form of differential treatment based on specific characteristics (such as gender, race, color, age, disability, religion, political or other beliefs, national or social origin, property or family status, or sexual orientation) is prohibited.

The prohibition of differential treatment is part of the principle of equality, specifically clarified in the context of an objectively different characteristic which, except in certain cases, must not serve as a basis for different treatment. Case law has confirmed that this prohibition aims to fulfill the objective set out in Section 7, Paragraph 1 of the Labour Law: to ensure equal rights for all to work, fair, safe, and healthy working conditions, as well as fair pay.

The principle of equality means that under the same factual and legal conditions, treatment must be the same, while different circumstances must warrant different treatment. Accordingly, the principle of equal treatment prohibits unjustified differential treatment of persons in comparable situations or equal treatment of persons in different situations altogether. Impairment of rights occurs when a person or group of persons is treated differently in comparable situations or equally in different situations. Meanwhile, the principle of the prohibition of discrimination forbids less favorable treatment (differential treatment of persons in comparable situations or equal treatment of persons in different situations) based on a specific characteristic.

Equal pay

Section 60 of the Labour Law prohibits discrimination between men and women in respect of equal pay for the same work or work of equal value. It must be assessed in the light of the principle of equal treatment laid down in Section 7 of the Labour Law, from which it follows that any discrimination is prohibited in determining pay for work of equal value. Furthermore, in accordance with Sections 7 and 29 of the Labour Law, in determining fair and equal pay, the prohibition of discrimination also applies to other prohibited characteristics - race, colour, age, disability, religion, political or other belief, national or social origin, property or family status, sexual orientation or other circumstances.

The employer thus has a duty to observe the principles of prohibition of differential treatment and observing of equal rights when determining remuneration and to ensure that the remuneration of the employee does not differ significantly from that of other employees of the employer who perform the same work or work of equal value. Neither the Labour Law nor European Union law provides the definition of same work and work of equal value. The performance of the same work is understood to mean that employees perform tasks of identical content, regardless of the fact that the formal job titles differ. In its case-law, the Court of Justice of the European Union has derived: factors such as the nature of the work, the actual duties of the work, education, professional qualifications, working conditions and the skills required to carry out the work must be taken into account to determine whether employees are in a comparable situation and perform work of equal value.

To ensure fair remuneration within the framework of the equality principle established in the first part of Section 7 of the Labor Law, the Supreme Court Senate has recognized that in situations where no discriminatory factors are involved, but an employee does not receive equal pay because it is determined based on unjustified criteria, Section 60 of the Labor Law applies. When solving a dispute concerning the existence/absence of differential treatment in respect of remuneration of an employee, the court must assess the professional qualifications of the employee (e.g. education, skills required to carry out the work, etc.) in order to ascertain its true level, to ascertain the nature of the work and the circumstances in which it was carried out and to compare it with others, including experienced staff (whether the employee did carry out the same or equal value work or whether the remuneration assigned to him corresponds to his qualifications and the nature of the work performed).

Thus, in order to be able to find an infringement of the principle of equal treatment by allowing different treatment, it must first be found that the situations in question have the same (analogous) legal and factual circumstances, whereas the employer behaves differently. Factors such as actual duties, education, professional qualifications, working conditions and the skills required to carry out the work must be taken into account in order to determine whether employees are in a comparable situation and perform work of the same or equal value.

According to the second and third parts of Section 60 of the Labor Law, if the employer has violated the rules of equal pay, the employee has the right to claim the compensation that the employer typically pays for the same work or work of equal value. The employee may file a claim in court within three months from the day he became aware, or should have become aware, of the violation of the equal pay rules. According to the case-law, in the event of failure to comply with the time limit for bringing proceedings laid down in the third paragraph of Section 60 of the Labor Law, the employee loses the opportunity to bring an action against the employer on the ground that the latter infringed the principle of equal treatment in determining remuneration, including claiming compensation for damages as provided in the eighth part of Section 29 of the Labor Law, as well as compensation for moral harm related to this infringement of rights.

Both the claim for compensation of the pay difference and non-material damages shall be subordinated or shall arise from the claim to establish the actual fact of violation of the principle of equality, for which the deadline is set in the third part of Section 60 of the Labor Law—three months from the day the employee became aware, or should have become aware, of the violation of the equal pay rules.

Equal rights in the provision of a health insurance policy

According to the legal literature and the case-law, a health insurance policy must be regarded as part of the remuneration, that is to say, another form of remuneration for work under Section 59 of the Labour Law.

The employer can choose the procedure for purchasing and issuing health insurance policies, including the possibility that the procedures for purchasing and granting health insurance policies at each workplace may vary. However, if the employer has chosen and established employee health insurance, then the internally developed procedures and regulations must comply with what is stipulated in the Labour Law. According to Paragraph 6 of Section 44 of the Labour Law, the same rules apply to employees with fixed-term contracts as to those with indefinite-term contracts. Meanwhile, Paragraph 3 of Section 134 of the Labour Law specifies that employees working part-time are subject to the same rules as those working full-time. Additionally, the employer's internally developed procedures must adhere to the principle of equal rights and the prohibition of differential treatment as enshrined in the Labour Law.

Thus, for example, being on parental leave is not related to an employee's abilities, qualifications, or work performance, but rather to the occurrence of specific circumstances—the birth of a child and the need to care for the child. Therefore, being on parental leave cannot be a basis for different treatment of an employee. Similarly, if an employer does not provide health insurance policies to employees who are temporarily unable to work, this constitutes a violation of the prohibition of differential treatment and non-compliance with the principle of equal rights as stipulated in Paragraph 1 of Section 7 of the Labour Law.

On the other hand, a procedure for granting health insurance policies that stipulates their issuance only after a probationary period, provided the employee continues their employment relationship, would be considered acceptable. The legislator has established a special institution—the probationary period—which is specifically designed for the employer to assess the employee's qualifications and abilities for the assigned work, on the one hand, while allowing the employee to evaluate whether the employment conditions meet their expectations with that particular employer, on the other hand. Therefore, it can be concluded that the determination of a probationary period is directly related to the evaluation of the employee's abilities, qualifications, and work performance at the beginning of the employment relationship.

Equal rights if an employment contract has been entered into for a specified period of time

According to Paragraph 6 of Section 44 of the Labour Law, the same rules apply to employees with fixed-term contracts as to those with indefinite-term contracts.

This provision implements the requirements of Clause 4 (the principle of non-discrimination) of Council Directive 1999/70/EC of 28 June 1999 on the framework agreement on fixed-term work concluded by UNICE, CEEP, and ETUC. The clause stipulates that the working conditions applicable to fixed-term employees, despite their contracts or employment being for a specified term, must not be less favorable than those applicable to comparable permanent employees, unless there is an objective reason for different conditions. If necessary, the *pro rata temporis* principle (corresponding to the time worked) should be applied.

Thus, Paragraph 6 of Section 44 of the Labour Law encompasses the principles of equal rights and the prohibition of differential treatment concerning working conditions. The temporary nature of a fixed-term employment contract cannot, by itself, be considered an objective criterion to justify different treatment between fixed-term and permanent employees. Any differential treatment between fixed-term and permanent employees must be objectively justified (i.e., different treatment can only be justified by objective reasons).

Mobbing/bossing

The laws of the Republic of Latvia do not define what constitutes workplace mobbing. Mobbing is a form of psychological terror.

The term "mobbing" (from the English word *mobbing*, to mob—"to harass, to attack") typically refers to psychological terror carried out by employees, where one or more colleagues systematically and hostilely target another colleague(s) in an unethical manner. On the other hand, the term "bossing" (from the English word *bashing*, to bash—"to attack") usually refers to psychological terror carried out by an employer or management against an employee(s).

Emotional disagreements at work are often incorrectly interpreted as mobbing by employees. However, not every strict and firm requirement imposed by an employer should be classified in this category. Psychological influence can be deemed unlawful if it is inherently destructive and aimed at the constant humiliation of a person. On the other hand, isolated conflicts, disagreements—such as those regarding the application of internal regulations—and an employer's use of legally provided rights or fulfillment of duties do not constitute mobbing.

The Labour Law does not provide direct regulation on issues related to mobbing. Despite the lack of specific legal provisions, existing laws can be applied to address the harmful effects of mobbing. These laws include the principle of equal rights (Section 7 of the Labour Law), the prohibition of differential treatment (Section 29 of the Labour Law), the protection of honor and dignity (Section 1635 of the Civil Law), and others. Jurisprudence has established that the prohibition of differential treatment in the Labour Law is aimed at achieving the objective set out in Paragraph 1 of Section 7, which is to ensure that everyone has equal rights to work, fair, safe, and health-friendly working conditions, as well as fair remuneration.

Additionally, it should be noted that the Labour Protection Law stipulates the employer's duty to monitor the work environment and assess workplace risks, including psychological and emotional factors. This involves identifying and evaluating whether there is a tense psychological atmosphere at work—unfavorable or strained relationships between employees, unfavorable or strained relationships with the employer, mobbing, and bossing. The employer must implement occupational safety measures to eliminate or reduce the impact of these workplace factors, ensuring that no

harm comes to employees' safety or health while at work.

Given that the Labour Law is not comprehensive in regulating all situations that may arise within employment relationships, and considering the private law nature of employment relationships, any infringement of the employee's rights or legally protected interests should initially be addressed within the company. Thus, if an employee believes they are being subjected to mobbing by colleagues or bossing by the employer, they have the right, during the course of the employment relationship, to file a complaint with the employer (according to Section 94 of the Labour Law). The complaint should highlight the circumstances indicating an infringement of the employee's rights and request that the infringement be stopped (such as halting mobbing or bossing, eliminating differential treatment, and ensuring equal rights to work, fair, safe, and health-friendly working conditions).

Similarly, the employee has the right to seek protection of their infringed rights and legitimate interests by submitting an application to the State Labour Inspectorate regarding possible violations of legal norms regulating employment relationships or occupational safety.

If the employer does not remedy the infringement of rights without waiting for the results of the State Labour Inspectorate's investigation, the employee has the right to seek protection of their infringed rights and legitimate interests by filing a lawsuit in court. According to Paragraph 1 of Section 1 of the Civil Procedure Law, every natural person has the right to the protection of their infringed or contested civil rights or legally protected interests in court by submitting a statement of claim. Additionally, when filing a statement of claim in court, the employee has the right to seek compensation for damages and moral harm if the damage or moral harm was caused by the employer’s actions or inaction.

Given that current legislation does not regulate the burden of proof in cases of mobbing, there is a basis for applying by analogy the "reversed burden of proof" principle outlined in Paragraph 3 of Section 29 of the Labour Law, as used in cases of violations of the prohibition of differential treatment. This means that if an employee, in their statement of claim, points to circumstances or actions by individuals that *prima facie* suggest manifestations of mobbing, the burden of proving that these actions comply with the principle of equal treatment shifts to the employer (*see the judgment of the Civil Cases Department of the Senate of the Republic of Latvia dated April 6, 2017, in case No. SKC-308/2017*).

In cases of mobbing, the principle of equal rights is violated because the employer treats one employee worse than others. In this situation, it is not necessary to identify a specific characteristic that differentiates this employee from others (as would be required in cases of violation of the prohibition of differential treatment or discrimination). The employee in such a situation is entitled to similar protection as an employee whose rights under the prohibition of differential treatment have been violated. Therefore, the legal remedy provided in Paragraph 8 of Section 29 of the Labour Law applies by analogy (*see the judgment of the Senate of the Supreme Court dated August 20, 2019, in case No. SKC-605/2019*).

According to Paragraph 8 of Section 29 of the Labour Law, if the prohibition of differential treatment and the prohibition of creating adverse consequences are violated, the employee, in addition to other rights provided in this law, has the right to seek compensation for damages and compensation for moral harm. In the event of a dispute, the amount of compensation for moral harm is determined by the court at its discretion.

It has also been established in case law that an employee who has experienced psychological terror and therefore no longer wishes to continue the employment relationship can utilize the termination provision outlined in Paragraph 5 of Section 100 of the Labour Law. A situation where the attitude of the individuals perpetrating the mobbing has made the employee's presence at the workplace intolerable can be considered a valid reason for termination under Paragraph 5 of Section 100 of the Labour Law (*see the judgment of the Civil Cases Department of the Senate of the Republic of Latvia dated April 6, 2017, in case No. SKC-308/2017*).

According to Paragraph 5 of Section 100 of the Labour Law, an employee has the right to terminate their employment contract in writing without observing the notice period specified in Paragraph 1 of Section 100 of the Labour Law, if there

is an important reason. An important reason is any circumstance that, based on considerations of morality and fairness, prevents the continuation of the employment relationship.

Case law has recognized that the purpose of this provision is to protect employees from employer actions that do not align with widely accepted standards of morality or ethics, infringe upon the employee's dignity, create situations that may be harmful to the employee's physical or mental health, and so forth. If, in such a situation, the employee would be required to work for an additional month to terminate the employment (as per Paragraph 1 of Section 100 of the Labour Law), it could cause undue hardship or suffering. Therefore, the law also provides for immediate termination of the employment relationship (*see the judgment of the Civil Cases Department of the Supreme Court dated October 11, 2018, in case No. SKC-860/2018*).

It follows from the above that when an employee terminates their employment contract under Paragraph 5 of Section 100 of the Labour Law, they must specify in writing the particular circumstances that led to this decision and that prevent the continuation of the employment relationship. Upon receiving the employee’s resignation, the employer is obligated to respect it, and the employment relationship must be terminated immediately, regardless of whether the employer agrees with the resignation or not.

The basis for a resignation made under Paragraph 5 of Section 100 of the Labour Law is the employee's subjective assessment of the situation and circumstances, leading them to a categorical conclusion that continuing the employment relationship is impossible, based specifically on considerations of morality and fairness. This decision by the employee is essentially punitive towards the employer (see Section 112 of the Labour Law) due to the employer's unjustifiable, illegal, and possibly unethical actions (*see the judgment of the Civil Cases Department of the Supreme Court dated January 20, 2015, in case No. SKC-1793/2015*).

The requirement to specify the particular circumstances justifying a resignation under Paragraph 5 of Section 100 of the Labour Law is crucial because the determination of whether the employer must pay severance compensation depends on the objective existence of the circumstances mentioned in the employee's resignation, and their alignment with the qualifying characteristics of Paragraph 5 of Section 100 of the Labour Law. This is independent of the employee's subjective attitude towards these circumstances. The employer's obligation to pay severance compensation, even if they cannot influence the termination of the employment relationship, is based on this objective assessment (*see the judgment of the Senate of the Supreme Court dated December 16, 2021, in case No. SKC-1060/2021*).

Paragraph 2 of Section 112 of the Labour Law states that if an employee terminates their employment contract in accordance with the provisions of Paragraph 5 of Section 100 and the employer agrees that the reason specified by the employee is valid, the employer is obligated to pay the employee severance compensation in the amount specified in Paragraph 1 of Section 112 of the Labour Law. Furthermore, Paragraph 2 of Section 122 of the Labour Law stipulates that if an employee terminates their employment contract under Paragraph 5 of Section 100 and the employer disputes the validity of the reason given by the employee and has not paid the severance compensation as provided in Section 112, the employee may file a claim in court for the recovery of severance compensation within one month from the date of termination.