

The new Employment Contracts Act

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Some facts about the new act

On 1 July 2009, the new Employment Contracts Act comes to force in Estonia. The main aim of the act is to create a more flexible labour market.

The current Employment Contracts Act from 1992 has been deemed outdated already for many years. After several amendments and some political circus the new act was passed in the Estonian parliament, *Riigikogu*, on 17 December 2008 and will come into force on 1 July 2009.

The new law is supposed to add more flexibility for companies, to support training for employees as well as decrease unnecessary bureaucracy. As an example of the latter, the Employments Record book (Est: *tööraamat*) is finally abolished.

With the new act, the Salary Act (*Palgaseadus*), the Vacation Act (*Puhkuseseadus*) and the final parts of the old Soviet time La-

bour code (*Eesti NSV Töökoodeks*) cease to exist. The principles for salary payment as well as the vacation remain the same and are incorporated in the new Employment Contracts Act.

As from the 1 June there are less actions where there is an obligation for employers to ask permission from authorities. Employers will in most cases have only information obligations towards the authorities.

The rules in the current law regarding non-competition and secrecy were vague and the court practice has changed over the years. Now new rules in this area are in place and as the wording is now more tangible, it will be easier to understand what employers can reasonably demand from employees and when the employer must pay extra for this.

Some main changes

For employers, the new law gives more opportunities to employ using fixed-term agreements, less money to pay in case of redundancies and more obligations for training of employees.

With the new Act, all new employees are considered employed with a four months probation period, during which the employer can terminate the contract with a 15 days notice period if the employee is not up to standard.

A fixed-term employment contract can have a term of up to five years, if this time can be motivated by the tasks the employee has to perform. If a fixed-term contract is made more than twice, the contract will automatically be considered an open-ended contract. A fixed-term contract will end by the term of the contract, no notice will be needed.

The employees are under the new law entitled to privacy and employers cannot without good



reason search through an employees office, check e-mails etc.

Additional pay for evening work will no longer be compulsory. Additional pay for night work stays and is 25% higher than for day work.

The vacation schedule should be finalised by 31 March, instead of 31 January. Unused vacation must at the latest be used during the following calendar year under the new rules.

Changes re down-sizing

Many changes aim to help companies who temporary or more permanently need to down-size. Redundancies will be less costly in the future.

For example, the employer can under the new Act demand employees to work less (and get lesser paid) during 3 months per year. No permission from authorities is needed.

Under the current legislation it is not allowed under any circumstances to terminate employment agreements due to redundancies with pregnant women, employees with children under the age of 3, representatives of employees without a special permission from the Labour Inspector. The new law abandons this rigid view and under certain circumstances allows termination. No approval is requested.

The notice periods and severance pay (in monthly salaries) payable in case of redundancies changes according to the following:

time	Notice		Severance pay	
	Old	New	Old	New
< 1 y.	2 m.	15 d.	2 m.s.	1 m.s.
1-5 y.	2 m.	30 d.	2.m.s.	1 m.s.
5-10 y.	3 m.	60 d.	3 m.s.	1 m.s.
> 10 y.	4 m.	90 d.	4 m.s.	1 m.s.

Pay attention to the following changes!

The following should be taken into consideration by all employers before 1 July 2009

If your employees handle a lot of business sensitive information and you already today have secrecy and non-competition clauses in the employment contracts you should pay attention to the following:

Good news is that under the new law, employers do not need to pay any compensation to employees for keeping production and trade secrets, neither during nor after the employment.

In case of breach of a secrecy obligation, the employment contract should be drafted accordingly and contractual penalty added. The new Act clearly states that contractual penalties are allowed in case of breach of secrecy obligations. In addition, compensation for damages can always be claimed from the employee.

When it comes to non-competition obligations, these are divided into obligations during the term of the employment and obligations after the term of the employment.

During employment, the employment contract may contain non-competition obligations only if it can be motivated by an economical interest of the employer, and if the employee in question gets access to business sensitive information during work. The obligation must be precise and restricted to a territory, time and object.

In case of non-competition obligations after the employment, the same rules apply and in addition the employee must pay compensation to the employee. The compensation must be fair



and is to be paid monthly. Such obligation can never be longer than one year.

In case of breach of non-competition obligations, contractual penalty can be used. In addition, the employer can always claim compensation for damages.

The old rules from the Soviet Labour code stating that the maximum damages that can be claimed from an employee was one month salary is abandoned and damages can now be claimed from employees as from any person under law.

Is there a need to amend all employment contracts?

The question if all employment contracts need to be amended is not easy to give an answer to.

The answer depends mainly on how your current contracts are worded. Now is however a good opportunity to review all contracts and make amendments, since there is a good reason for it; new legislation comes into force.

The employees have no obligations to accept changes in their contracts suggested by the employer. All the employees' benefits from the new law will be valid no matter how their contracts state. If the employer wants to use its benefits from the new law, most probably the contracts must be amended accordingly.

Upcoming Seminar

The Swedish Chamber of Commerce in Estonia, in association with the Danish-Estonian Chamber of Commerce, organises a business lunch seminar on the new Employment Contracts Act on 14 May 2009 in Tallinn. Speakers at the seminar are MAQS Law Firm's partners Urmas Veinberg and Karolina Ullman.

For registration, please contact:

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